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SOCIAL CONTRACT THEORIES

Political Obligation or Anarchy?

VICENTE MEDINA

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To my father,
who sacrificed all of his dreams
in order to make mine come true.

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Chapter 1

INTRODUCTION

This work deals, as the title suggests, with social contract theories. In its pages I explain and assess various social contract theories and I conclude that the concept of the *social contract*, as articulated by Hobbes, Locke, Rousseau, Kant, and Rawls, is inadequate for the development of a coherent political philosophy. Moreover, I argue that the contractarians as well as the anticontractarians here considered fail in their account both of *political authority* and of *political obligation*.

The material is divided into three parts. The first part consists of an exposition of the outstanding representatives of the contractarian tradition—Hobbes, Locke, Rousseau, Kant, and Rawls. (It is worth noticing that I am using the terms *contractarianism*, *social contract tradition*, and *social contract approach* synonymously.) These philosophers are called *contractarians* because they use the concept of the *social contract* to develop their distinct political philosophies. The similarity, however, is only superficial, since they use the concept of such a contract in different ways and for different purposes; their similarities and differences are explained in detail. In my exposition I also indicate some difficulties I find with various concepts—such as of the state of nature, of human nature, of freedom, and the connection between the social contract and natural rights.

In the second part I present some major anticontractarian arguments, namely those advanced by conservatives such as Hume and

Hegel and by liberals such as T. H. Green.¹ Conservatives and liberals all agree, of course, that the social contract tradition is inadequate.

In the third and last part I address three major questions. First, are the utilitarian (Hume) and idealist (Hegel and Green) objections to contractarianism sound? I answer in the affirmative. Second, is the concept of the social contract necessary for the development of a general theory of rights that accounts for natural or moral rights? My answer is in the negative. Third, is the concept of the social contract necessary or sufficient to establish a general *prima facie* moral obligation to obey the state and its institutions? A distinction is made among *natural obligations*, *artificial obligations*, and *duties*. The term "political obligation" is used to designate a species of *artificial obligations* (self-assumed obligations), and I argue that, since most citizens do not have political obligations, the legitimacy of the state and its institutions ultimately depends upon their moral qualities.

Nothing dramatic follows, however, from the fact that the contractarians and the anticontractarians I discuss fail to justify political obligation. Most citizens, even without political obligations, ought to obey the laws of the land, since there are usually legitimate *moral* reasons for compliance. That being the case, I argue that we ought to respect the law not because we have a political obligation to do so, but because there are important moral reasons for doing so.

II

Before taking up those social contract theories I consider important, I think it worthwhile to explore briefly the genesis of the concept of the social contract. The origin of the concept can be traced back to the Greeks. Glaucon, in Book II of Plato's *Republic*, defended such a concept. He argued that it is in the interest of all "to make a compact with one another neither to commit nor to suffer injustice, and that this is the beginning of legislation and of covenants between men."² Socrates, in Plato's *Crito*, also presented arguments in favor of the legitimate political obligations of the citizens to the city-state. According to Socrates, the citizens ought to obey the laws of the state because, among other reasons, they have promised obedience to such authority. In other words, they have consented to obey the laws of the state.³

It seems that the notion of a compact or contract is necessarily related to the notion of consent; that is, the consent of the parties

involved in any contractual relation is a necessary condition for the validity of such a contract. Moreover, the notion of consent is also necessarily related to the notion of freedom of choice, for such consent presupposes the possibility of choosing otherwise. If one is compelled to accept a particular state of affairs, one is no longer consenting to it; one is, instead, coerced into accepting it. Therefore, freedom of choice is a necessary precondition for both consent and contract. A contract is roughly understood as an agreement between two or more independent parties who voluntarily choose (consent) to abide by certain rules provided that the other party does not violate it.

The notion of freedom of choice became an important concept in Western moral thought through the writings of St. Augustine—especially in his book *De Libero Arbitrio (On Free Choice of the Will)*.⁴ In this work Augustine argues for the possibility of free will as a necessary condition for responsible moral agency. He writes: "If man is a good, and cannot act rightly unless he wills to do so, then he must have free will, without which he cannot act rightly."⁵ The idea that free will is a necessary precondition of morality was adopted during the Middle Ages by St. Thomas Aquinas.⁶ Aquinas, however, applied his *voluntarism* only to morality; he did not extend it to the concept of *political obligation*.⁷

The idea of moral *voluntarism*—that is, the idea that freedom of choice is a necessary precondition of morality—came into use during the late medieval period to justify the concept of political obligation. This is called *political voluntarism*. This theory, roughly speaking, maintains that people acquire political obligations in a community because they have previously consented to abide by certain rules generally accepted by the majority or by all members of the community.

One of the best examples of a system of political voluntarism was developed by the Spanish scholastic philosopher and theologian Francisco Suárez.⁸ In his work, *De Legibus, Ac Deo Legislatore (On Laws and God the Lawgiver)*, he writes: "It is consonant with natural reason that a human commonwealth should be subjected to someone, although natural law has not in and of itself, and without the intervention of human will, created political subjection."⁹ It seems that, for Suárez, free will and consent are necessary preconditions for the justification of political obligation. He writes: "The multitude of mankind should, then, be viewed from another standpoint, that is, with regard to the special volition, or common consent, by which they are gathered together into one political body."¹⁰ For Suárez (in this particular point

he introduces Hobbes, Locke, and Rousseau) "common consent" is a necessary condition for the formation of a legitimate body or commonwealth. Suárez is one of the first political philosophers to defend such a view, although it is important to note that he did not specify what he meant by the term "common consent." Presumably, he meant the consent of all or most of the members of the community. Thus, whoever did not consent to the formation of a particular commonwealth was not a member of it.

In writers such as Aquinas and Suárez we also find a very important concept that is historically, although not logically, connected to the social contract tradition—the concept of *natural law*. Such a concept is also found in Greek philosophy. For example, Aristotle in Book V of *Nicomachean Ethics* distinguished between two kinds of justice: *natural justice* and *legal justice*. He contended that "the natural is that which has the same validity everywhere and does not depend upon acceptance; the legal is that which in the first place can take one form or another."¹¹

The idea of *natural law* interpreted as a universal valid rule applicable to all persons at all times regardless of their differences was adopted and developed by the Stoics. For the Stoics, the Law of Reason and Natural Law were the same thing.¹² This is the law that Cicero talked about in *De Republica* when he said, "True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting."¹³

Stoicism had a great influence on Roman jurisprudence. The Romans distinguished among three different kinds of law. First was the *jus civile* or positive law; this law was applicable only to Roman citizens. Second was the *jus gentium*; this was essentially the law of contract, but it was sometimes identified with the *jus naturale*, sometimes considered to be the law universally accepted by all nations and thus distinguished from the *jus civile* of some particular nation. This law was applicable to Roman citizens as well as other people. And third was the *jus naturale* or natural law. This law consisted of moral principles which could be used to decide hard cases. This law, like the *jus gentium*, applied to people other than Romans.¹⁴

Roman jurisprudence with its Stoic influence had a great impact on medieval Christian philosophy. Aquinas is the best representative of this tradition. He distinguished among four different kinds of law: *eternal*, *divine*, *natural*, and *human law*. Eternal law was the law of God as it applied to creation. The other three kinds of law were species of eternal law. Divine law was the Will of God as revealed in the

Scriptures. Natural law was the Will of God as apprehended by human reason. Finally, human law was arrived at through the specification of natural law by way of conclusion and determination and varied from place to place and time to time.¹⁵

The Christian Natural Law tradition, with its great emphasis on God, was slowly transformed into a secular tradition during the seventeenth and eighteenth centuries.¹⁶ Among its representatives were philosophers such as Grotius, Pufendorf, Hobbes, Locke, Rousseau, Kant, and Fichte. What they all had in common was that, even though they talked about God and natural law, they placed greater emphasis on the faculty of *human reason*. The natural law tradition, according to Ernest Barker, created a favorable condition for the social contract view of politics and society.¹⁷

III

One of the problems with the social contract is to determine precisely what the nature of such a contract is. Since each contractarian philosopher uses the concept in a different way, they arrive at different conclusions. Thus the first question that comes to mind is—What is *contractarianism*? I propose to characterize it in the following general terms. *Contractarianism is a theory which maintains that all of our basic political rights and duties are derived from some kind of explicit or implicit contract among a collection of individuals*. Hence, the social contract is the act by which those individuals acquire all of their basic political rights and duties.

The *social contract* has been associated with two different concepts: the concept of the *contract of government*, and the concept of the *contract of society*.¹⁸ A good example of the contract of government is given by David G. Ritchie:

The formula according to which the Nobles of Aragon are said to have elected their king, even if it be not authentic, represents at least the principle [contract of government], in an extreme form, of feudal monarchy. "We who are as good as you choose you for our king and lord, provided that you observe our laws and privileges; and if not, not."¹⁹

Such a contract does not have anything to do with the origin of society. Nonetheless, it presupposes the existence of a previously formed community. The contract of government purports to explain the origin

of legitimate political authority. The members of a particular community promise or consent to obey their ruler as long as the latter respects and promotes their basic rights and interests.

A contract of society, by contrast, purports to explain the origin of society. Such a contract explains how civil society came into being. Hobbes, Locke, Rousseau, and Kant used the concept of the *state of nature* to explain how individuals living under those conditions chose to come to terms with one another and agreed to form civil society. A good example of the social contract is embodied in the covenant of the Pilgrim Fathers where they resolved: "We do solemnly and mutually, in the presence of God and of one another, covenant and combine ourselves together into a civil body politic."²⁰

The two contracts, the contract of government and the social contract, are logically independent. Neither contract implies or presupposes the other. One may uphold the view that the foundation of society is grounded on a social contract without any reference whatsoever to the contract of government. Likewise, one may uphold the contract of government without any reference to the contractual origin of society. What the contract of government presupposes is the existence of some form of community, but whether such a community was originally founded on a *social contract* is a different question.

There is no inconsistency in maintaining a contractarian view of *political authority* and at the same time maintaining some other view with respect to the origin of society. These are two independent philosophical issues; the reason we find them together in the history of political philosophy is due, I believe, to historical coincidence rather than to logical or conceptual necessity.

But if we want to defend a contractarian view of the origin of society and simultaneously deny the existence of any common authority which has the power to enforce rules in the community, then, according to Suárez, we are being inconsistent.²¹ If a number of people agree to form a community to achieve some common end, but do not want to follow at least some common rules to achieve such an end, they are being inconsistent. There is no way we achieve a common end without at least some common rules; such a common end necessarily presupposes at least one common rule to achieve that end. Moreover, it also presupposes the recognition of a common authority to enforce rules; otherwise such rules would be without any force, and the end for which the individuals decided to form a community would very likely not be achieved.

This is probably one of the reasons why the major representatives

of the social contract tradition put their emphasis on the *social contract* rather than on the *contract of government*. Having already grounded the origin of civil society in the idea of a social contract, the concept of *political authority* follows smoothly from the idea of such a contract without the need for a contract of government. The concept of a social contract presupposes the concept of political authority; otherwise there would not be sufficient reason to accept such a contract in the first place.

**ADVOCATES OF
CONTRACTARIANISM**

Chapter 2

HOBBS

Hobbes is a revolutionary figure in the history of philosophy because, among other things, he abandoned the traditional Platonic and Aristotelian approach to politics, in which politics was essentially an extension of ethics. Instead, he tried to develop a logically impeccable scientific approach to politics, in which morality became simply a function of the logical consequences of self-interest.

Hobbes is both a psychological and an ethical egoist.¹ People, according to Hobbes, always want to promote their own good, and, furthermore, they ought to do so. He presents his psychological egoism in the following passage of *De Cive*: "whatsoever is voluntarily done, is done for some good to him that wills it."² In *Leviathan* he writes: "of the voluntary acts of every man, the object is some *Good to himself*."³ He also defines natural right in egoistic terms. In *De Cive* he defines the word "right" as "that liberty which every man hath to make use of his natural faculties according to right reason. Therefore, the first foundation of natural right is this, that *every man as much as in him lies endeavour to protect his life and members*."⁴ And in *Leviathan* he explains: "The Right of Nature, . . . *Jus Naturale*, is the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life."⁵ For Hobbes, there is only one natural right—to preserve one's own life at all costs. Clearly then Hobbes defines natural right in terms of liberty, which in turn is defined in a naturalistic way. In *De Cive* he defines liberty as "*an absence of the lets and hindrances of motion*."⁶ And in *Leviathan* he writes: "By Liberty, is understood, according to

the proper signification of the word, the absence of external Impediments." Liberty is therefore the power or ability a man has to do what he wills. This being so, then "A Free-Man, is he, that in those things, which by his strength and wit he is able to do, is not hindred to doe what he has a will to."⁸

It is important, however, to keep in mind Hobbes's distinction between what he calls "the Right of Nature," or natural right, and "a Law of Nature," or natural law. He also defines natural law in egoistic terms as, for example, in *De Cive*: "The law of nature . . . is the dictate of right reason, conversant about those things which are either to be done or omitted for the constant preservation of life and members, as much as in us lies."⁹ In *Leviathan* he writes: "A Law of Nature, (*Lex Naturalis*.) is a Precept, or generall Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same."¹⁰ Natural law, unlike natural right, imposes an obligation on us. We are obliged by this law to avoid doing anything incompatible with the preservation of our lives. This obligation is *prudential* grounded in self-interest. If human beings are psychological egoists, as Hobbes argues, they would never try to harm themselves, unless they were misled by false beliefs about their own welfare.

I turn now to Hobbes's concept of the "state of nature." He uses this concept for at least three different purposes: (1) to present and develop his psychological egoism; (2) to establish its inconvenience in perpetrating a state of war of all against all; and, most important of all, (3) to use it as a logical device to justify the institution of civil society.

According to Hobbes, people in the state of nature are in a constant state of war: "Hereby it is manifest, that during the time men live without a common Power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man, against every man."¹¹ He recognizes that the state of nature is not "generally" historical. He believes that "It may peradventure be thought, there was never such a time, nor condition of warre as this; and I believe it was never generally so, over all the world: but there are many places, where they live so now."¹² Later he emphasizes the nonhistorical character of the state of nature: "But though there had never been any time, wherein particular men were in a condition of warre one against another; yet in all times, Kings, and Persons of Sovereign authority, because of their Independency, are in continual jealousies, and in the state of posture of Gladiators; having their weapons pointing, and their eyes fixed on one another."¹³ We can infer

from this that, according to Hobbes, the state of nature is not historical. He uses this concept mainly as a logical device to demonstrate what would happen if there were no "common Power to fear" in civil society. The result, given his assumptions about human nature, would be a war of every person against one another.

We need not worry whether Hobbes intended his concept of the state of nature to be historical, since its importance lies in its explanatory power rather than its historical applicability. One clear function of this concept is to characterize human nature, or what he calls "the natural condition of mankind," as a compendium of dark forces. For Hobbes, human beings are acquisitive, fearful, violent, and egotistical individuals who can be deterred only by fear. This explains why the state of nature is a potential state of war among people.

Hobbes is operating with a one-sided concept of human nature. People are not, in fact, simply acquisitive, fearful, violent, and egotistical individuals; they are also benevolent, compassionate, and friendly. Even assuming the truth of Hobbes's psychological egoism—a very far-fetched assumption—it does not follow that people are essentially and foremost acquisitive, fearful, and violent. What does follow is that sometimes an individual, or a group of individuals, might use violence to promote his or her own welfare, but this need not be a general rule. Thus Hobbes's assumption about human nature is at the least doubtful if not simply false. Fewer difficulties with his portrait of human nature would arise had he considered his portrait only a partial and not a complete characterization of humanity.

One of the basic problems of Hobbes's political philosophy is precisely his one-sided characterization of human nature as essentially antisocial. It is true that people sometimes struggle for what they want or need by using violence. It is also true that some people distrust others and that some are concerned with their reputations. Yet, from this it does not follow that these are the essential characteristics of human nature. What does follow is that various individuals act from various motives and various reasons in their everyday life. We cannot encapsulate human nature, as Hobbes tries to do, by reducing it to a certain number of antisocial traits and leaving out other traits.

If human nature were in fact as Hobbes presents it, it would be very difficult for people to live in any sort of community. For Hobbes, therefore, civil society is not a product of people's natural inclinations but an artificial product of their reason and self-interest. Hobbes makes a radical distinction between reason and human nature; he portrays these two aspects of humanity as irreconcilable forces, which explains

his rejection of the Aristotelian interpretation of man as a political animal.¹⁴ According to Hobbes, then, people are moved by their desire for power and profit, which they can achieve only by entering into a peaceful civil society. Consequently, the formation of civil society is a by-product of self-interest. This is the logical outcome of Hobbes's psychological egoism.

Hobbes also believes that men are essentially equal, and that their differences in physical and mental abilities do not grant them any privileges over others.¹⁵ From this natural equality, taken in conjunction with their psychological egoism and the absence of political power or authority in the state of nature, it follows that "if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their End, . . . endeavour to destroy, or subdue, one another."¹⁶ This leads to a state of war of every person against one another. In this state:

nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice. Force, and Fraud, are in warre, the two Cardinall vertues. Justice, and Injustice are none of the Faculties neither of the Body, nor Mind. . . . They are Qualities, that relate to men in Society, not in Solitude.¹⁷

Consequently, Hobbes argues, in the state of nature there can be no "Propriety, no Dominion, no *Mine* and *Thine* distinct."¹⁸ A man possesses something only if he can get it and only so long as he can keep it.

According to Hobbes, there cannot be any injustice in the state of nature because he defines injustice as "*the not Performance of Covenant*."¹⁹ Covenants cannot be binding, he argues, unless there is a recognized power or authority to enforce them. He indicates that "Covenants, without the Sword, are but Words and of no strength to secure a man at all."²⁰ Since a commonly recognized power does not exist in the state of nature, it follows that the concepts of justice and injustice do not apply in this state.

From the state of war of all against all "it followeth, that in such a condition, every man has a Right to everything; even to one another's body. And therefore, as long as this Natural Right of every man to everything endureth, there can be no security to any man."²¹ From these considerations Hobbes derives this "generall rule of Reason"—"*That every man, ought to endeavour Peace, as farre as he has hope*

of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of Warre."²² This "generall rule of Reason" contains the first and "Fundamentall Law of Nature; which is, to seek Peace, and follow it."²³ It also contains the fundamental Right of Nature "which is, *By all means we can, to defend ourselves.*"²⁴

From the two general precepts of nature—"the Fundamentall Law of Nature" and "the Right of Nature"—follow the second Law of Nature:

*That a man be willing, when others are so too, as farre-forth, as for Peace, and defence of himselfe he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe. For as long as every man holdeth this Right, of doing anything he liketh; so long are men in the condition of Warre.*²⁵

Since the state of nature is such an inconvenient state, it is in the interest of all to give up their natural right to everything as long as everybody else is willing to do so.

Given the contentiousness of human nature, these two laws are not sufficient to secure peace among people. A third law is necessary, one which presupposes a common power with sufficient force to ensure that people act compatibly with these laws. This law is: "*That man performe their Covenants made.*"²⁶ This is a necessary condition for bringing about peace among people. Only through covenants, according to Hobbes, can individuals secure peace, provided that they honor them. However, covenants between individuals are valid only "if there be a common Power set over them both, with right and force sufficient to compell performance."²⁷ Hence covenants performed in the state of nature, in which such a "common power" is absent, are invalid or void.

In short, the laws of nature or natural laws require the institution of sovereignty and political society. The first law of nature prescribes that if we want to preserve ourselves, we ought to seek peace. The second law prescribes that if we want peace, we must be willing to lay down our natural right or liberty to everything as long as everybody else is willing to do so. But, in order to limit our natural right or liberty, a third law is necessary: a covenant among people to circumscribe these limits. Yet these conditions, although necessary, are not sufficient to guarantee the transition from the state of nature or state

of War to a political society. Something else is needed: a sovereign with sufficient power to force individuals to honor their covenants. Only after we covenant with one another to obey the laws the sovereign enacts can a civil or political society emerge. The third Law of Nature, according to Hobbes, is

the Fountain and Originall of JUSTICE. For where no Covenant hath preceded, there hath no Right been transferred, and every man has right to everything; and consequently, no action can be Unjust. But when a Covenant is made, then to break it is *Unjust*. And the definition of INJUSTICE is no other than *the not Performance of Covenant*. And whatsoever is not Unjust, is *Just*.²⁸

Given that without covenants there cannot be justice or injustice, right or wrong, and given that a necessary condition for the validity of covenants is the existence of a power strong enough to make people comply with them, it follows that the third Law of Nature is an imperative for the creation of a civil society in which covenants can be secured. The power to secure and enforce covenants can exist only in a civil society, and it is only after this power has been instituted that morality becomes possible. According to Hobbes, moral concepts have no place in the state of nature. *Power*, or the ability to acquire and retain as many things as one can, is what counts in such a state.

If people want to avoid the evil of the state of nature, they must institute a commonly recognized power with sufficient force to make them comply with the laws of nature. The only way to achieve this, according to Hobbes, is

to erect such a Common Power, as may be able to defend them from the invasion of Forraigners, and the injuries of one another . . . [and] to conferre all of their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will: which is as much as to say, to appoint one Man, or Assembly of men, to beare their Person; and every one to owne, and acknowledge himselfe to be Author of whatsoever he that so beareth their Power, shall Act, or cause to be Acted, in those things which concerne the Common Peace and Safetie; and therein to submit their Wills, every one to his Will, and their Judgements, to his Judgement.²⁹

By this unanimous act of volition or *social contract*, a commonwealth is instituted. Hobbes puts it succinctly when he says:

A *Common-wealth* is said to be *Instituted*, when a *Multitude* of Men do Agree, and *Covenant*, every one, with every one, that to whatsoever Man, or Assembly of Men, shall be given by the major part, the *Right to Present* the Person of them all, (that is to say, to be their *Representative*;) every one, as well he that *Voted for it*, as he that *Voted against it*, shall *Authorise* all the *Actions* and *Judgements*, of that Man, or Assembly of Men, in the same manner as if they were his own, to the end, to live peaceably amongst themselves, and be protected against other men.³⁰

There cannot be, Hobbes argues, any contract between the people and the sovereign, "Because the Right of bearing the Person of them all, is given to him they make Sovereigne, by Covenant onely of one to another, and not of him to any of them." Moreover, covenants, according to Hobbes, are possible only between persons, and the multitude of natural persons in the state of nature is transformed into a people only when they authorize some individual or group to represent them. He proceeds to emphasize the irreversible nature of this contract: "there can happen no breach of Covenant on the part of the Sovereigne; and consequently none of his Subjects, by any pretense of forfeiture, can be freed from his Subjection."³¹ This amounts to the claim that after individuals covenant with one another and institute a sovereign they are bound to obey it. Sovereigns can never commit any injustices against their subjects because Hobbes defines "injustice" as the violation of covenant and Sovereigns do not covenant with their subjects. Moreover:

because every Subject is by this Institution Author of all the Actions, and Judgements of the Sovereigne Instituted; it followes, that whatsoever he doth, it can be no injury to any of his Subjects; nor ought he to be by any of them accused of Injustice.³²

It is important to notice, in order to understand Hobbes's theory of sovereignty, the two different meanings he assigns to the concept of "person." He uses this concept to refer both to human beings and to what he calls "artificial persons." A person is "he, whose words or actions are considered, either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether Truly or by Fiction."³³ He proceeds to make a distinction between a "natural person" on the one hand and an "artificial person" on the other. When someone's words or actions "are considered as his owne, then he is called a *Naturall Person*. And when they are considered as representing the words and actions of

another, then he is an *Artificial person*.³⁴ Artificial persons derive their authority through the *consent* of the natural persons they represent. Consequently, since sovereigns are artificial persons, the authority or sovereignty to represent and act for their subjects is derived from their *consent*.

For Hobbes, an "artificial person" is constituted when each member of a multitude of natural persons gives up his or her natural right to all things and covenants with the others to choose a representative. This representative body or artificial person is what Hobbes calls "the Sovereign." These natural persons cannot under any circumstances give up, alienate, forfeit, transfer, renounce or annul their natural right to life. All other rights can be given up in two ways: either by renouncing them or by transferring them to another person.³⁵ Persons renounce their right to something X when they voluntarily declare by words or actions that they are surrendering their right to X so that X can be rightfully acquired by another person or other persons. On the other hand, persons transfer their right to something X when they voluntarily declare by words or actions that they are conveying their right to X to some specific person or group of persons. The words or actions by which persons renounce or transfer their right create, as Hobbes indicates, "the Bonds, by which men are bound, and obliged." But a person's word, although necessary, is not sufficient to create an obligation. Instead, people are obliged to honor their words, Hobbes argues, "from Feare of some evil consequence upon the rupture."³⁶ Fear is what guarantees that people perform their obligations.

Rights can be transferred in two ways: either by *contract* or by *gift*. A contract, according to Hobbes, is "the mutual transferring of Right," for instance, "as in buying and selling" or "exchange of goods."³⁷ If, however, one of the parties to the contract promises to perform in the future while the other party performs in the present, or if both promise to perform in the future, the contract is called a "Pact" or "Covenant." On the other hand, if there is no mutual transferring of rights and one of the parties transfers his or her right to something X to a person or group of persons, this is called a "Gift."

According to Hobbes, political authority or sovereignty is granted by the people as a "gift" to the sovereign only if and so long as the sovereign protects them. It can be acquired in two different ways: either by contract or by force. The first he calls "Common-wealth by Institution," the latter "Common-wealth by Acquisition." For Hobbes the only relevant difference between the two is that in the first "men who choose their Sovereign do it for fear of one another, and not of

him whom they Institute." In the latter, "they subject themselves to him they are afraid of."³⁸ In both instances, however, the people obey the sovereign out of *fear*. "Power" or "political authority" is legitimized through fear. "Covenants entered into by fear, in the condition of mere Nature [state of nature], are obligatory."³⁹ It does not make any difference whether the "gift" of political authority or sovereignty is granted or recognized through consent or coercion, the end result is the same: obey sovereigns so long as they protect you. It is in the best interest of people to respect and perform their covenants in order to overcome the state of nature and its anarchy which, according to Hobbes, is the greatest evil of all. The alternative to submission in a commonwealth by acquisition is death at the hands of the victors, and in a commonwealth by institution the return to a state of war of all against all. Accordingly, it is in people's interest to comply in both cases, provided the sovereign guarantees their safety.

According to Hobbes, a multitude of natural persons can be transformed into an artificial person only after the institution of a sovereign has taken place so that this sovereign can preserve its will. This, however, does not seem to hold true, since it is possible and indeed necessary that before a multitude in the state of nature can consent to transfer all its rights to a sovereign it must first be an artificial person with a will of its own that enables it to choose a sovereign. This would happen when various natural persons get together and will that a certain individual or group be their sovereign so long as the latter has the power to guarantee their safety. That being the case, a covenant between the artificial person and the sovereign is therefore possible. Once a Hobbesian sovereign is instituted, the initial artificial person must cease to be, because the natural persons who compose it have consented to transfer all of their rights to the sovereign authorizing the latter to speak with one voice for all the rest. From this, however, it does not follow that the subjects confer this power or authority unconditionally. They might prefer to confer sovereign power on an individual or group provided that he or it promises not to violate certain conditions. Once these conditions are violated, there is no obligation to obey the sovereign. Even Hobbes recognizes that the retention of sovereignty depends upon the sovereign's power to protect. If the sovereign fails to protect, the obligation to obey ceases.

If, contrary to Hobbes, an artificial person emerges whenever the multitude of natural persons who compose it will something in common, then the problem is how to discover this common will. One possibility is through the enactment of a constitution which recognizes

the right of every person to vote in order to determine the common will by a majority of votes. Once majority rule is accepted, those who vote in favor of a particular rule or law as well as those who vote against it ought to abide by the result, provided that the outcome does not violate their basic rights. In this system, the power of the sovereign to declare the common will of the subjects is limited by a constitution. But if we use the concept of sovereignty in this way, Hobbes can object that once sovereignty is limited by any rules or principles, it ceases to exist as such because, by its very nature, sovereigns are the ultimate authority with sufficient power to impose their will on subjects. The sovereign, Hobbes would argue, is the ultimate authority to which subjects can appeal to settle disputes. If subjects could unite to form an artificial person with a common will independent of the sovereign's will, and if a dispute arises between the two as to what the common will is, then, Hobbes argues, there is no higher authority to settle this dispute. Therefore, the sovereign and the subjects would both return to the state of nature. This, according to Hobbes, would be contrary to the purpose of the institution of the commonwealth, which is to avoid anarchy and preserve peace.

We need not accept Hobbes's conclusion, since it is possible to divide sovereign authority into different bodies, none of which has absolute or unlimited authority. This is what happens in a constitutional republic when there is a distinction between the Legislative, the Judiciary, and the Executive powers of government. Each limits the other, according to certain rules prescribed by the constitution, so that political authority is legitimate only if it is compatible with the constitution, as in the Constitution of the United States. This system provides peaceful and relatively secure means by which the people and the government can settle disputes without resorting to violence. Hence, it is simply false to argue, as Hobbes does, that the only possible way to secure peace among people is by instituting an all-powerful sovereign or "Leviathan." There are other alternatives, such as limited sovereignty, which is understood as the separation of powers in the government. This seems a reasonable alternative. Historical experience indicates, as in the case of the United States, that limited sovereignty is a better and more effective tool to secure basic moral (human) rights than a government with absolute authority, which has a greater possibility of degenerating into a despotic dictatorship.

John Locke foresaw this problem when he argued against absolute authority on the ground that even if people's safety were the only reason for the institution of such an authority, the authority could be

even more dangerous than the state of nature because the people would have no safeguards to protect against that authority's despotic use of power. As Locke puts it: "This is to think, that men are so foolish, that they take care to avoid what mischiefs may be done them by *polecats*, or *foxes*; but are content, nay, think it safety, to be devoured by *lions*."⁴⁰ If, as Hobbes argues, people are contentious beings, and if it is only under an all-powerful sovereign that their safety can be secured, then who or what can guarantee that this sovereign would not abuse power? The answer to this question seems evident: nobody and nothing can prevent these abuses from happening because, according to Hobbes, the sovereign is the ultimate authority to determine what would and would not constitute an abuse of power. Hence the sovereign may always justify any arbitrary use of power. If subjects tire of the arbitrary use of power by the sovereign, they may, Hobbes argues, try to depose their ruler but only if they can reasonably expect to get away with it. This is hardly a solution, since once a sovereign is overthrown and a new Hobbesian sovereign emerges, the same abuses of power may occur again.

In the Hobbesian model of absolute sovereignty, there are no safeguards against tyranny. Consequently, if we have an alternative model of sovereignty, such as the separation of powers, by which we can prevent tyranny and at the same time protect to some extent the well-being of the people, then this seems a more reasonable and preferable model of sovereignty.

Hobbes disregards any pluralistic or popular model of sovereignty because a covenant or social contract to institute a sovereign authority (and hence a commonwealth) is possible only among those who will be subject to such authority. Thus, Hobbes argues, there cannot be a covenant between subjects and their sovereign. Once the people consent to the institution of a sovereign, they are obligated to obey so long as the sovereign protects them. Were they to disobey the sovereign, they would act unjustly, since they would violate the covenant they made; and Hobbes defines injustice as the violation of covenants. Given that subjects can covenant only with one another and not with the sovereign, Hobbes argues, they can never act justly against the sovereign no matter how tyrannical their ruler may be. They are justified in disobeying and even in revolting only if the sovereign endangers their lives, since they can never relinquish their fundamental *natural right* to self-preservation.

The traditional concept of justice is broader than Hobbes's contractual concept. Justice cannot be defined only in terms of contractual

relations because one can legitimately argue that some contracts are unjust, such as a contract in which one or both parties are under duress. Hobbes also has a narrow concept of morality, which he defines in terms of self-interest. But it is doubtful that these sometimes antithetical concepts can be reconciled. If, whenever a moral obligation conflicts with an individual's self-interest, the latter takes precedence over the former, the concept of moral obligation would be useless and morality itself reduced to a set of prudential rules of conduct. This is not what we normally understand by morality. The concept of morality is broader than the concept of self-interest. When we are morally obliged, there is something we ought to do, whether it is to our advantage or not.

The concepts of *moral obligation* and of *self-interest* are two radically different concepts, and neither presupposes or implies the other. It is possible to talk about moral obligations without mentioning self-interest and vice versa. It is also possible and sometimes true that a moral obligation is contrary to self-interest. This is precisely what we understand by the nature of morality. If our fulfillment of moral obligations were to be parasitic upon the promotion of our self-interest, the concept of moral obligation would be otiose. But the concept is not otiose, since there are circumstances in which one can say that persons are morally obliged to do A rather than B even though A is not in their self-interest.

Another important concept in Hobbes's political philosophy is his concept of *law* and its different species. He defines law in general as "the word of him, that by right hath command over others."⁴¹ He distinguishes between two main species of law: *divine* and *human*. He then divides divine law into natural and positive. Natural law is "a Precept, or generall Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of perserving the same; and to omit, that, by which he thinketh it may be best preserved."⁴² Natural laws are laws if and only if they are commanded by God; otherwise "they are but Conclusions, or Theoremes concerning what conduceth to the conservation and defence of [men]."⁴³ Divine natural laws are "Eternall and Unversall";⁴⁴ they apply to all people at all times regardless of their different values. However, divine positive laws are "those, which being the Commandments of God . . . are declared for such, by those whom God hath authorised to declare them."⁴⁵ Since there is a disagreement among individuals as to the nature of God's commandments, anything that is not contrary to divine natural law can be declared divine positive

law by the "Laws of the Commonwealth."⁴⁶ For their part, all human laws are civil laws. Hobbes divides them into *sacred* and *secular* laws. The first "pertain to religion . . . and are not determined by any divine positive law. For the *civil sacred laws* are the *human laws* . . . concerning *things sacred*."⁴⁷ On the other hand, all civil laws that are not sacred are secular, and they are referred to simply as civil laws.⁴⁸ The civil law has two parts: *distributive*, and *vindictive* or penal. The first specifies the property and civil rights of all subjects, whereas the second defines the punishment imposed on those who violate civil laws.⁴⁹

Even though Hobbes rejects the Christian natural law tradition with its great emphasis on God, he is, nonetheless, a natural law theorist who places great emphasis on reason and self-interest. God plays a secondary role in Hobbes's political philosophy, since he grounds political obligation in self-interest rather than in a Divine Will. Consequently, God may be omitted from Hobbes's political philosophy without any major consequences. He seems to be aware of this when he argues:

I HAVE derived the Rights of Sovereigne Power, and the duty of Subjects hitherto, from the Principles of Nature only; such as Experience has found true, or Consent (concerning the use of words) has made so; that is to say, from the nature of Men, known to us by Experience, and from Definitions (of such words as are Essentiall to all Politicall reasoning) universally agreed on.⁵⁰

In fact, Hobbes goes so far as to maintain that the supreme authority on religious matters is the sovereign.

Seeing therefore I have already proved, that Sovereigns in their own Dominions are the sole Legislators; those Books only are Canonically, that is, Law in every nation, which are established for such by the Sovereign Authority.⁵¹

This seems to be the main reason why, in his discussion of a Christian commonwealth, he says: "All that is NECESSARY to *Salvation*, is contained in two Vertues, *Faith in Christ*, and *Obedience to Laws*."⁵² The laws Hobbes is referring to are the laws of the sovereign. If there is ever a conflict between divine positive laws and the laws of the sovereign, the latter, according to Hobbes, must always prevail, since the sovereign has the ultimate authority in society to decide the content

of all positive laws. Sovereigns have the right to enact, enforce, and interpret the law for their subjects. In holding this, Hobbes reduces laws to commands of the sovereign. What sovereigns command become automatically the law of the land no matter how arbitrary the law might be. Hobbes even denies the authority of the Bible, unless sovereigns command that their subjects accept its authority.

And this Law of God, that commandeth Obedience to the Law Civill, commandeth by consequence Obedience to all the Precepts of the Bible; which . . . is there onely Law, where the Civil Sovereign hath made it so; and in other places but Counsell; which a man at his own perill, may without injustice refuse to obey.⁵³

The precepts of the Bible, that is, are laws only if sovereigns recognize them as such; and if not they are "but Counsels." This constitutes Hobbes's final break with the Christian natural law tradition. Hobbes's position amounts to "a denial that there is any divine positive law independently of the commands of the sovereign."⁵⁴

Nonetheless, Hobbes does not deny the existence of natural laws even though his interpretation of this concept differs from the traditional natural law interpretation. For him, natural laws are "Immutable and Eternal" rational precepts that apply to all men at all times regardless of their different values.⁵⁵ They apply to all people insofar as they are rational. Rationality, however, is understood by Hobbes in terms of self-interest and practical efficacy rather than in moral terms. For example, a person X is rational in doing any act Y or seeking any end Z only if (1) X, by doing Y or seeking Z, promotes his or her interests, and (2) X uses the best (most efficient) means known in doing Y or seeking Z. This explains why, according to Hobbes, natural laws oblige *in foro interno* and not always *in foro externo*.⁵⁶ They oblige in conscience as rational precepts and prudential considerations rather than as moral or legal rules. Insofar as we are rational, Hobbes argues, we endeavor to seek peace, and in order to achieve it we "ought" to follow certain rules. This "ought" is hypothetical rather than moral; it indicates the practical means by which we can best achieve a particular end. In short, this "ought" indicates practical efficacy: the most effective means to achieve a specific end. On the other hand, obligations *in foro externo* are, according to Hobbes, artificial or contractual obligations. People incur artificial obligations by promising to perform in the future. If they fail to fulfill their promise, they are inconsistent. People ought to fulfill their promises for two main reasons: (1) it is

generally in their interest to do so and (2) it would be self-contradictory for them to break promises without legitimate justification.

There is an unbridgeable gap between Hobbes's concept of natural law and the traditional Christian interpretation of it. According to the latter view, natural laws are moral laws originating in God to guide human conduct. They prescribe (*in foro interno*) as well as *in foro externo* how we ought to act regardless of our different values. On the other hand, for Hobbes, natural law obliges always *in foro interno* (we, as rational agents, want to promote our best interest by seeking peaceful means of coexistence) but not always *in foro externo* (only if others are willing to seek peace too). Therefore, Hobbes's concept of natural law is ultimately reducible to a prudential or hypothetical precept: seek peace only if others are willing to covenant to do likewise.

Another important difference between Hobbesian and Christian natural law is that the latter views natural laws as laws regardless of their compatibility with civil laws. According to the Christian view, natural laws are more important than civil laws in the sense that, given a conflict between them, natural laws would take precedence over civil laws. In other words, according to the Christian interpretation, civil laws that conflict with natural laws ought not to be obeyed. In the Hobbesian view, natural laws are true laws because they are commanded by God. But, unlike the Christian view, Hobbes holds that the sovereign has the right to determine which laws are commanded by God. In this sense it is the sovereign who has the right to determine the content of natural law. Consequently natural laws, Hobbes argues, are valid only if they are part of the civil laws or at least compatible with them. Here Hobbes breaks with the medieval Christian position according to which the Church, rather than the State, has the right to determine the content of divine law.

Civil laws, according to Hobbes, are obligatory because (1) compliance with them is necessary to bring about peace, (2) peace is necessary to escape the state of war or state of nature, and (3) the subjects have covenanted with one another to obey the laws enacted by the sovereign who has sufficient power to enforce them. Moreover, the fundamental law of nature is "Seek Peace" as long as there is hope of obtaining it; this, however, is possible only within civil society and only if there is a sovereign with sufficient power to enforce civil laws. Consequently, natural law, according to Hobbes, requires hypothetical obedience to civil laws: seek peace only if others are willing to do so. But since the content of natural law is determined by the sovereign, it

follows that civil laws are obligatory not because they are just and sanctioned by natural law, as in the Christian natural law tradition, but because they are commanded by a sovereign with sufficient power to enforce them. Although in Hobbes's view the legitimacy of civil laws seems to be derived from natural law, in fact it is derived from the power of the sovereign to enforce the laws. Therefore, whatever sovereigns command is law and hence obligatory, provided they do not threaten their subjects' lives, since their political obligation lasts only so long as sovereigns protect them.

Nevertheless, as Hobbes points out, there is such a thing as a bad law. This is a law that infringes upon the common good of the people, namely their preservation. But a bad law in Hobbes's view is still a law and hence obligatory because, even when sovereigns fail to act according to their fundamental natural duty—"the procuration of the *safety of the people*"³⁷—they are accountable only to God rather than to their subjects. Yet, according to the Christian natural law tradition, an unjust law is not obligatory.³⁸ This is not to say that a Hobbesian sovereign will not be concerned with the needs of subjects. On the contrary, a good sovereign will pay attention to their needs and will try to administer justice impartially and provide for those who do not have the means of subsistence. A good sovereign will make good laws because "the good of the Sovereign and People, cannot be separated."³⁹ The preservation of the subjects depends on the power and the will of the sovereign to protect them, and the sovereign's stability depends, to a great extent, on the willingness of the subjects to obey. One way of preserving the sovereign's stability is by enacting good laws to keep subjects happy.

According to Hobbes, "the end of Obedience is Protection." However, if the subjects of a commonwealth are obliged to obey the sovereign as long as they are protected, why bother to use the concept of a contract to establish the subjects' political obligation to the sovereign? The coherence of Hobbes's political philosophy is unaffected by eliminating the contract from it because his concept of "power" is sufficient to establish the subjects' political obligation to obey the sovereign. Hobbes's concept of the social contract is therefore a useless fiction employed to persuade the public that, no matter how tyrannical and unjust a sovereign might be, they still have an obligation to obey so long as they are protected.

Protection, however, though necessary, is not sufficient to justify political obligation. Protection is to political obligation as life is to human rights. Without life, human beings would not be able to exercise

their rights and pursue their interests. But life in itself is not sufficient to guarantee the exercise of rights; for this something else is needed. An analogous situation exists in the case of "protection." Moral agents might be politically obliged to obey a sovereign only if he provides a reasonably safe society in which they can exercise their rights and pursue their interests. But once protection and safety are achieved, something else is needed to acquire political obligations. Sovereigns who systematically infringe upon their subjects' rights and interests are not worthy of their respect and obedience, even if they have voluntarily consented to obey. On the other hand, if sovereigns protect their subjects and treat them fairly, they are worthy of respect as well. As E. F. Carritt put it, we ought to obey an authority (sovereign) when it, "upon the whole, secures to our fellow men a justice and a well being which we see no better way affording them."⁴⁰

Hobbes's concept of political obligation is also inadequate for other reasons. For instance, he argues that when we recognize or consent to a certain sovereign, we are in fact responsible for all acts of that sovereign. Yet that is arguably false. If we presently recognize a certain political authority or sovereign, it does not follow that we are responsible for all or even some of the sovereign's present and future acts. For example, we might have recognized the sovereign's authority for reasons that were later on betrayed. If so, one might argue, our obligations to the sovereign would no longer be binding. If this is true, then Hobbes's concept of political obligation is defective. I postpone a more thorough exposition of this concept for the last chapter.

Chapter 3

LOCKE

In order to understand the role of the *social contract* in Locke's political philosophy, it is essential to be clear about other concepts. Locke, like Hobbes, uses the concept of the "state of nature" to develop his political theory. More specifically, he uses this concept for three different purposes: (1) to develop his concept of human nature, (2) to develop his concept of prepolitical society, where there is no commonly recognized political power or authority, and (3) as a logical device to explicate the origin of civil society. Locke, unlike Hobbes, Rousseau, and Kant, uses the concept of the state of nature in a historical sense.¹ He thinks of it as a historical fact set at some point in the distant past. Like Hobbes, he argues that the concept of the state of nature amounts to the absence of any political society; however, he does not think that the absence of a political society precludes all other forms of social relations.

Locke, unlike Hobbes, is not a clear writer. Nonetheless, I believe that even though he does not always define his concepts, there is an underlying coherence in his political theory. Unlike Hobbes, when he discusses the state of nature, he describes it in a positive way, while indicating that violations of natural rights might occur in this state. He writes:

To understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a *state of perfect freedom*. . . . A *state* also of *equality*, wherein all the power and jurisdiction is reciprocal.²

Later he says:

The *state of nature* has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all *equal and independent*, no one ought to harm another in his life, health, liberty, or possessions . . . for men being all the workmanship of the one omnipotent, and infinitely wise maker . . . they are his property.³

Thus the state of nature is a "state of perfect freedom" and "equality"; it is also a state in which the "law of nature," namely reason, is present. In such a state people possess, in virtue of their nature (humanity), some basic natural rights and duties: to respect life, liberty, and property.

Locke contrasts the state of nature with the state of war. The state of nature is "a state of peace, good will, mutual assistance and preservation," whereas the state of war is "a state of enmity, malice, violence and mutual destruction." He, therefore, specifies the radical difference between the two states.

Man living together according to reason, without a common superior on earth, with authority to judge between them, is *properly the state of nature*. But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is *the state of war*.⁴

Hence, what characterizes the state of nature, besides the absence of a common judge to settle disputes, is a disposition on the part of its members to act and solve their disputes peacefully and to assist and protect each other as much as possible. This, it seems, amounts to the claim that, in the state of nature, people are naturally inclined to act rationally (to promote their self-interests by respecting the interests of others). But this does not guarantee that all or most people in such a state will act in this way. Human social relations are too complex, and sometimes people's judgments are obscured by their self-interest, pride, and prejudices. The state of war, on the other hand, is characterized by a disposition on the part of people to use brute force to further their own interests.

Locke sometimes talks about the state of nature in a derogatory way, and to some it might seem as if he were equating the state of nature with the state of war. But he does not. He maintains only that a state of war sometimes exists in the state of nature.

To avoid this state of war . . . is one great reason of men's putting themselves into society, and quitting the state of nature: for where there is an authority, a power on earth, from which relief can be had by *appeal*, there the continuance of the *state of war* is excluded, and the controversy is decided by that power.⁵

Later he asks: "If man in the state of nature be so free . . . why will he part with his freedom?" To which he answers: "That though in the state of nature he hath such a right [to do as he pleases], yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others."⁶

This makes him willing to quit a condition which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join society with others . . . for the mutual *preservation* of their lives, liberties and estates, which I call by the general name, *property*.⁷

In these two passages Locke is not, as C. B. Macpherson maintains, reducing the state of nature to the Hobbesian state of war. Macpherson misses the point when he contends that "the difference between the state of nature and the Hobbesian state of war has virtually disappeared."⁸ There is a radical difference between Locke's concept of the state of nature, where the precepts of natural law, including the natural rights to life, liberty, and property, ought to be respected, and Hobbes's concept of the state of nature, where the fundamental law of nature is to preserve one's life at all costs and the fundamental natural right is one's power to preserve that life.

What Macpherson fails to see is that for Locke a state of war is a state of affairs that might be actualized either in the state of nature or in civil society. That is why Locke claims: "Want of a common judge with authority, puts all men in a state of nature: force without right, upon a man's person, makes a state of war, both where there is, and is not, a common judge."⁹ For Locke, a necessary and sufficient condition for the existence of a state of nature is the absence of a commonly recognized political authority to settle disputes among individuals. Whenever a group of individuals finds itself in this situation, it is in a state of nature. On the other hand, for Locke, unlike Hobbes, the absence of a commonly recognized political authority is neither necessary nor sufficient for the presence of a state of war. A state of war is present, according to Locke, whenever a person uses violence or

force against another person and there is no third party to arbitrate and settle the dispute. This might take place either in the state of nature or in civil society. Consequently, the Lockean state of nature cannot be reduced to the Hobbesian state of war.

However, from the fact that Locke does not reduce the state of nature to the state of war it does not follow that he identifies the state of nature with a state of peace. He recognizes that in the state of nature the enjoyment of natural rights is "very uncertain" because "the greater part [of men are] no strict observers of equity and justice."¹⁰ Therefore, for Locke, as for Hobbes, the inconveniences of the state of nature with its imminent threat of war is sufficient reason for quitting this state for civil society, since in civil society there is an institutional and commonly recognized political authority to safeguard the individual members of society against the arbitrariness of various of its members. It is in this context that Locke maintains:

The great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of property. To which in the state of nature there are many things wanting.¹¹

One should not be misled by Locke's use of the term "property" in this passage. He uses it in two ways. Sometimes he refers to property in the narrow sense, as all sorts of material goods, especially land. At other times he refers to property in a broader sense, as the life, liberty, and material goods of individuals. In the passage above, Locke uses the term "property" in the broad sense. Thus, civil society and government are not instituted, as Macpherson maintains, to protect only "bourgeois property," or what in Locke's terminology amounts to "possessions" or "estate," that is, property in the narrow sense. On the contrary, civil society and government are instituted, according to Locke, to protect property in the broad sense: life, liberty, and estate (material goods).

Macpherson maintains that the common denominator of seventeenth-century British political thought is what he calls "possessive individualism." He argues that both Hobbes and Locke present man "as essentially the proprietor of his own person or capacities, owing nothing to society for them." He goes on, "The individual was seen neither as a moral whole nor as a part of a larger social whole but as an owner of himself."¹² According to Macpherson, both Hobbes and Locke conceive of people as appropriators. But I believe they present a double concept of human nature: people as appropriators and as the

property of God. According to both Hobbes and Locke, people are appropriators because by exercising their power or ability in the state of nature they acquire possessions of material goods that later, when civil or political society is instituted, become legally recognized as property. On the other hand, people are the property of God because their destiny is within God's omnipotent power. As Hobbes points out:

Whether men will or not, they must be subject always to the Divine Power. By denying the Existence, or Providence of God, men may shake off their Ease, but not their Yoke.¹³

Locke concurs:

for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property.¹⁴

If we read Locke carefully, and in this respect I agree with Macpherson, we find that he is more Hobbesian, at least in his moral theory, than he appears to be. They both define good and evil in terms of pleasure and pain. Locke believes that "Things then are good or evil only in reference to pleasure and pain."¹⁵ For Hobbes, "Pleasure . . . is the appearance, or sense of Good; and Molestation or Displeasure, the appearance, or sense of Evil."¹⁶ But from this it does not follow that Locke's political philosophy is Hobbesian in nature. On the contrary, a radical schism exists between his moral theory and his political philosophy. In no respect does one depend on the other.

One ought not to forget (and in this respect Macpherson is careless) that there is an essential difference between Hobbes's and Locke's political philosophies. Hobbes is a revolutionary in political philosophy, since he tries to ground it on new bases: self-interest and power. Locke, on the other hand, is a faithful disciple of the Christian medieval tradition of natural law. Thus, even though Locke is an ethical hedonist in morals, he is a staunch defender of natural rights—we possess in virtue of our nature or humanity.

Macpherson purports to show that there is an inconsistency in Locke's concept of human nature. Locke sometimes refers to the state of nature as "a state of peace, good will, mutual assistance and preservation,"¹⁷ and sometimes he recognizes the potential danger of such a state, since the enjoyment of rights "is very uncertain, and constantly exposed to the invasion of others: for all being kings as

much as he, every man his equal, and the greater part no strict observers of equity and justice."¹⁸ From these two passages Macpherson concludes that the state of nature in Locke's political philosophy is "indistinguishable from the state of war."¹⁹ He goes on to argue:

The contradiction between Locke's two sets of statements about natural man is fundamental. The state of nature is sometimes the opposite of the state of war, sometimes identical with it.²⁰

Moreover, in his introduction to the *Second Treatise*, he contends that "this ambiguity about the state of nature simply reflects Locke's fundamental ambiguity about human nature."²¹ But the alleged contradiction between the state of nature, described by Locke—sometimes as a peaceful state and sometimes as a state of war—is not a contradiction at all. Locke, contrary to Macpherson's contentions, does not reduce the state of nature to a state of war but maintains only that a state of war might exist in the state of nature, since if a dispute occurs between two or more persons in this state, there would not be any legitimate authority to whom they could appeal to settle their disputes.

Apparently Macpherson thinks that the above explanation is not sufficient. He argues that Locke holds two inconsistent views of human nature. One portrays people as rational and peaceful individuals, the other as aggressive and acquisitive beings. This inconsistency, Macpherson argues, leads to a contradiction between Locke's theory of natural rights and his concept of society. Locke, on the one hand, was defending a universal *formal* theory of *natural rights* while also defending a class-divided society consisting of those who have property on a grand scale and those who own only their own bodies and labor.²² According to Macpherson, Locke was unaware of the fundamental contradiction between upholding both his universal formal theory of natural rights and his class-divided concept of society.

I concede that there is a tension in Locke's position but not a contradiction, as Macpherson argues. If we claim, as Locke does, that we possess a natural right to own substantial amounts of property, then, even if we assume that we acquire this property under conditions of justice, we can still object to this acquisition on the grounds that the present just state of affairs could be easily transformed into an unjust situation by those who own property on a grand scale. The reason is that, with their accumulation of property, they have also accumulated greater powers and privileges which can be used to impose their will on those who possess no property and, to that extent, undermine their

natural right to liberty by constricting their realm of possible choices in society. Rousseau recognizes this point when he argues that *political liberty* and *equality* are possible only when "all have something, and none of them has too much" because "laws are always useful to those who possess and injurious to those that have nothing."²³ Certainly, a tension exists between Locke's formal theory of rights and the exercise of those rights in society, since his natural right to liberty might, under some circumstances, be in conflict with his natural right to own substantial amounts of *property*. His political philosophy can be characterized in different ways depending on which one of these two rights takes precedence over the other.

But Locke's and Hobbes's political philosophies are fundamentally different. We cannot, as Macpherson tries, run both together. Locke is operating with a more comprehensive concept of human nature than Hobbes. Hobbes presents a consistent but abstract concept of human nature. For him individuals are essentially contentious and warlike, whereas for Locke they are contentious but also peaceful and sociable. Hobbes's one-sided concept of human nature seems to imply some sort of psychological and physical necessity. This is one-sided because his observations about human nature are not accurate. People are both contentious and peaceful. Hobbes philosophical anthropology is incomplete, to say the least. For him, for example, humans, necessarily contentious, are primarily and essentially motivated by *self-interest*. Therefore, in Hobbes's view, the contentious nature, together with radical egoism, conditions an individual's way of relating to others. Locke, in contrast, does not present a one-sided concept of human nature. Like Hobbes, he presupposes that people are motivated by *self-interest*, but unlike Hobbes, he also presupposes that human nature is potentially both contentious and peaceful. Since Locke, unlike Hobbes, is within the Christian natural law tradition, he emphasizes the natural human condition of individuals as free and rational moral agents. This is partly why the notion of consent plays such an important role in his political philosophy. For Locke people are essentially free: they can choose to abide by the principles of natural law, which are discoverable by reason, or they can choose to ignore them.

What characterizes human nature in Locke's political philosophy is neither the right to own substantial amounts of property nor possessiveness (as Macpherson argues), but the freedom to choose among different ways of life within the parameters of the natural law and its corresponding natural rights. The aim of Locke's political philosophy

is to show that people are essentially free to choose their way of life, provided they do not interfere with other people's natural rights. Thus it seems that the fundamental natural right in Locke's political philosophy is neither the right to life nor the right to property but the *right to liberty*. In order to exercise his natural right to liberty, a person needs to be alive and to be able to acquire certain goods to satisfy basic needs. A person has a natural right, therefore, to those goods that satisfy basic needs, such as food, clothing, and shelter, as well as intangible goods, such as education, work, and self-respect.

Locke defines the natural right to liberty in a negative way: "man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule."²⁴ Individuals are free, according to Locke, as long as they are not coerced. However, negative freedom or freedom from coercion presupposes positive freedom or the freedom to act. Locke may be characterized as a *radical voluntarist*, a person who recognizes a fundamental value in our capacity to choose. Locke distinguishes natural liberty from liberty in society. "The *liberty of man*, in society, is to be under no other legislative power, but that established, by consent, in the commonwealth, nor under the dominion of any will, or restraint of any law, but what that legislative shall enact, according to the trust put in it."²⁵ Both types of *liberty* are essential components of the natural right to liberty, since, according to Locke, the natural rights of individuals do not cease to be when people enter civil society. On the contrary, they enter civil society in order to protect those rights.

Locke's natural right to property is more complex and more controversial than the two previously discussed rights. It is important to remember, when we are talking about the natural right to property, that the concept of a natural right is a moral concept. Thus the concept of a natural right to property is also moral. The question of whether one actually possesses something is irrelevant to the question of whether one is morally entitled to possess anything. The first question is an empirical question and can be answered by presenting empirical evidence. The second is a moral question and must be addressed as such.

Locke presents several conditions that must be met if anyone is to acquire *property*. To say that person X has a natural right to property P (where "P" stands for any physical object) is to say:

1. P is not owned by any other person;

2. X mixes labor with nature in order to remove P from its natural condition, and in this process X adds something to nature in acquiring P, namely labor;²⁶
3. There is enough and as good left in common for others (sufficiency condition);²⁷
4. X can own only "as much as [he] can make use of to any advantage of life before it spoils [spoilage condition]."²⁸

He justifies the natural right to property in this way. Since human beings own their body, they also own their labor. When persons work to acquire some goods, they are actually adding something to those goods, namely, their labor. If the thing is not owned by anyone else, one is not violating any other person's rights by taking possession of it, provided that one does not violate the *sufficiency* and *spoilage* conditions.

Locke's labor theory of property is parasitic upon his view of the natural right to liberty. Since people have the capacity for acquiring different objects, and moreover, since this capacity is a by-product of their freedom (and this is extremely valuable in the moral sense because it is a necessary condition for ascribing moral agency), it follows that, according to Locke, the natural right to own property is a consequence of the natural right to liberty. The latter not only explains the acquisition of property, but justifies it. In fact, the natural right to liberty moralizes the acquisition of property. Yet the value of the natural right to liberty is even weightier in the justification of political authority. Hence the importance of "*consent*" in Locke's political philosophy.

If Locke is indeed a Christian radical voluntarist (one who, like St. Augustine, defines human moral goodness in virtue of free will),²⁹ one can then account for the central role that the concept of "consent" plays in his political theory. He argues, in the spirit of Francisco Suárez, that the consent of a people is a necessary although not a sufficient condition for the formation of a legitimate political authority.³⁰ But what does he mean by "consent"? I believe that John Dunn is close to his meaning when he argues that the notion of consent in Locke's theory amounts to the absence of coercion.³¹ People, according to Locke, acquire political obligations only through their own consent.

Men being, as has been said, by nature, all free, equal and independent, no one can be put out of this state, and subjected to the political power of another, without his own consent.³²

For Locke, consent can be either "express" or "tacit." By express consent, he means something similar to an overt verbal expression, such as the taking of an oath. By tacit consent, he means continued voluntary residence within the territory subject to the jurisdiction of a given government, regardless of whether one agrees with its policies or laws. It seems, as John Dunn indicates, that "if a government is legitimate almost any adult behavior, except emigration, constitutes consent."¹³ But there are at least two problems with this interpretation. First, what, if anything, constitutes a legitimate government? And second, is it really the case that by living in a particular community we are consenting to all the rules and norms of that community? According to Locke, a legitimate government is any government that respects natural rights. If this is the case, then there is a general obligation to obey such a government as long as we openly or tacitly consent to it, provided it does not violate natural rights.

It does not seem to follow, however, that because we live in a particular community we consent to all the rules and norms of this community. What follows is that we should, as a matter of prudential consideration (self-interest), consent to at least some of its rules and norms. Otherwise, we would not be able to live in such a community because we would be permanently ostracized by the rest of its members, or we would be physically eliminated either by being jailed or executed. If we do not follow certain rules of survival, such as not killing innocent people or not stealing from them, we would not last long as members of a community.

But, I would argue against Locke, even if we were to live under a legitimate government (one that respects important natural or moral rights) we would not have a general obligation to obey it. The reason is that even a legitimate government is not infallible and can sometimes make unjust rules. Thus, the fact that we live under its jurisdiction is not morally sufficient to obligate us to consent to all of its rules. We, as moral agents, have a greater obligation not to consent to unjust rules. A government that honors natural rights is worthy of our respect, and we have an obligation to consent to its rules insofar as they are just. We might even be morally justified in consenting to an unjust rule, provided (1) that by our consent we can reasonably expect to bring about a better state of affairs than by our refusal, and (2) that our consent does not amount to a gross violation of the rights of others.

The concept of consent is of paramount importance for Locke's political theory. If, indeed, each person has a natural right to liberty, as Locke argues, then it follows that each person is entitled to act as

he or she pleases, provided that the individual does not violate the natural rights of others. Moreover, since in the state of nature all people have this right, it follows that a necessary condition for the establishment of a commonwealth or civil society is the consent of each of its members. Those who do not consent to the formation of a commonwealth are simply excluded from it.

Another important concept in Locke's political theory is the concept of legitimate political authority and its relation to the notion of consent. The consent of the people is, according to Locke, a necessary condition for the institution of legitimate political authority. However, the legitimacy of any political authority does not issue simply from the consent of the people, but also from its respect for both natural law and natural rights. In other words, the consent of the people in any community is necessary but not sufficient for the institution of a legitimate authority. People have a moral obligation to respect political authority not only because they have consented to its institution but also because it is just. A political authority, for its part, will command the respect of its people because it respects their rights. John Dunn is right when he argues:

Certain sorts of injustice must always destroy the legitimacy of political authority, even if those who suffer them are physically coerced or ideologically befuddled into submitting to them. Locke's theory does not make consent equivalent to either efficient physical control or successful conditioning.³⁴

What people can consent to is limited, according to Locke, by their own natural rights. Hence, the notion of consent in Locke's theory is a normative notion. One is morally justified in consenting to what is morally right and not otherwise. For example, in Locke's theory we are not morally justified in consenting to be enslaved because our consent in this case violates our natural right to liberty and this is morally impermissible. This is not to say, however, that it is impossible for a person to approve being enslaved. A person can assent to this state of affairs, but from this it does not follow that he or she is morally justified in doing so. Therefore, some acts, regardless of whether we consent to them, are morally impermissible because they violate natural law and natural rights.

Locke's notion of consent involves two acts of consent. The first is the unanimous consent of a people to make a social contract in order to abandon the state of nature and establish civil or political society.

The second is the consent of a people, within civil society, to choose their own representatives. At this point, they also agree to hand over all their powers to the majority (the principle of majority rule).

It is important to notice that Locke uses the principle of majority rule as a procedural and normative principle. This principle derives its moral force from the fact that each person, according to Locke, has an equal right to liberty, which means that no one by nature has any authority over anyone else. Yet, it can be argued against Locke that the fact that we all have equal rights to liberty does not tell us which principle of decision-making ought to be adopted. It is conceivable that people could voluntarily consent to be governed by the will of a single person or a group of persons rather than by majority rule, provided that this person or group of persons does not violate their natural rights. But, according to Locke, this is not a legitimate alternative because, by trying to avoid anarchy, we are leaving the door open for tyranny. That the majority will tyrannize the minority is less likely than the opposite. That being the case, the principle of majority rule seems to be a more reasonable principle to adopt than any other alternative.

No matter what procedural principle the people of any particular commonwealth consent to, they can never hand over more power than they have. Therefore, when Locke maintains that all members of a commonwealth hand over their power to the majority, he is not arguing that whatever the majority decides would be morally right. This is the case because the principle of majority rule is a moral as well as a prudential principle. The consent of all people in a commonwealth legitimizes the authority of the majority to make decisions on behalf of all, provided that the decisions enhance and protect the ends for which the people decided to form a political society in the first place and do not violate the natural rights of any member of society.

The right of the majority to govern the minority is, Locke argues, a moral right. But from this it does not follow that the majority's decisions are always right, or that the people who consent to the rule of the majority must always consent to all of the majority's decisions regardless of how arbitrary and unjust they may be. The rightness or wrongness of a decision does not issue from the consent of any number of people. The moral quality of a decision is determined by moral considerations rather than by choice. Consequently, neither the principle of majority rule nor the notion of consent can determine the moral quality of any particular act or rule.

The members of a commonwealth always retain supreme power to

alter the political body they have chosen. For Locke, ultimate sovereignty resides with the people (popular sovereignty) since, even though civil society was created by a contract, no such contract exists between the people and their government. According to him, the relationship between the people and their government is *fiduciary* rather than contractual. Therefore, whenever the government betrays their *trust*, the people have a natural right to change it.³⁵ It follows, therefore, that the idea of government by consent involves the natural right to revolution.

I conclude, then, that the social contract in Locke's political philosophy is of paramount importance because he, unlike Hobbes, grounds political obligation on consent. Political authority is legitimate, according to Locke, only if people consent to it and only if it does not violate their natural rights. Indeed, the contract, in Locke's view, justifies a general obligation to obey the law and hence legitimizes the authority of the government.

Chapter 4

ROUSSEAU

Rousseau's views are open to several different interpretations. Four of these may be referred to as the Hobbesian, the Lockean, the Kantian, and the Marxist interpretation. Each stresses one or two aspects of his thought. For example, the Hobbesian interpretation emphasizes the concept of absolute sovereignty. The Lockean interpretation emphasizes the idea of popular sovereignty: that the will of the sovereign is concretely determined by the will of the majority. The Kantian interpretation emphasizes the concept of freedom as respect for moral law. The Marxist interpretation emphasizes Rousseau's political egalitarianism and his criticism of excessive private property and inequality in general. Which of these four interpretations is correct? The answer is paradoxical—all and none. All are correct insofar as each stresses some essential aspect(s) of Rousseau's political philosophy. But none is correct insofar as each attempts, but does not succeed, in presenting a comprehensive view of it.

Rousseau is an innovator in political philosophy. His political philosophy constitutes a bridge from the Natural Law tradition to the Idealist School. He is an original thinker, and if we try to encapsulate his political ideas within the parameters of any particular tradition, they lose much of their flavor and originality. Although Rousseau is an indisputable representative of the social contract tradition, he is not a representative of the "liberal individualist tradition" or what C. B. Macpherson refers to as "possessive individualism." To be an individual is to be a proprietor, an owner of oneself and one's capacities without any debts to society.¹ Liberal individualists define liberty in

terms of negative freedom—freedom from subjection to the wills of others. The individual is considered a self-made and self-contained atomic unit with rights and duties independent of society. These are, I believe, essential characteristics of liberal individualism or libertarianism. If so, I maintain that Rousseau is not a liberal individualist in this sense. If he is not a liberal individualist, what is he?

Stephen Ellenburg, in his book, *Rousseau's Political Philosophy*, offers a good characterization of Rousseau's position as nonindividualist and egalitarian.² Ellenburg argues that Rousseau is neither a traditional liberal individualist nor a collectivist. For Rousseau the individual and society are necessarily interdependent: one cannot exist apart from the other. Rousseau's individual realizes his nature in and through society. Moreover, Rousseau is, as Ellenburg indicates, a *radical political egalitarian* because he defends the principle of *absolute self-government*. For Rousseau, individuals are free only if they can govern themselves. Therefore, according to Rousseau, any form of representative government would be considered a form of political subservience.

Rousseau presents the essence of his political philosophy in three works: "Discourse on the Origin and Foundation of Inequality Among Men" (*Second Discourse*), 1754; "Discourse on Political Economy," 1758; and *The Social Contract*, 1762. All of his other works are related to his political theory, but these three are sufficient to understand it.

I shall concentrate first on Rousseau's concept of the state of nature. He, like Hobbes and Locke, uses this expression for at least three different purposes: (1) to refer to prepolitical society, where there is no commonly recognized political power or authority; (2) to assist in the development of his concept of human nature; (3) to assist in his explication of the origin of civil society. He also uses this concept in a fourth way: to explicate the origin of political inequalities and private property.

In *Second Discourse*, Rousseau discusses human nature in its original "primitive state" or "pure state of nature," as contrasted with human nature in civil society. To carry out this mental experiment, he strips the individual of all traits acquired only in society. What remains is, according to Rousseau, natural or primitive people—people in their original condition. Nonetheless, he recognizes that separating that which is artificial from that which is natural in people is extraordinarily difficult.³ He proceeds to present his account of how civilization imparted its rubric on natural individuals, and how they in conse-

quence have been transformed from a state of innocence to a corrupted state of sin.

I agree with Ramon Lemos when he claims that Rousseau's discussion of the state of nature is more extended than, and its purpose different from, that of Hobbes or Locke.⁴ Rousseau is more radical in his analysis of the state of nature than either Hobbes or Locke, since he wants to understand human nature in its original primitive condition, as contrasted with human nature in civil society. Thus Rousseau argues that most philosophers have not gone far enough in their analysis of the state of nature and accuses them of transferring to men in "the state of nature the ideas they acquired in society. They spoke about savage man, and it was civil man they depicted." He goes on to say that "it did not even occur to most of our philosophers to doubt that the state of nature had existed."⁵ This unfair accusation is understandable because Rousseau uses the term "the state of nature" in a sense different from Locke's. He uses it to indicate the absence of all forms of social relations, whereas Locke uses it to indicate only the absence of political society.

For Rousseau the concept of the state of nature is hypothetical:

the investigations that may be undertaken concerning this subject should not be taken for historical truths, but only for hypothetical and conditional reasonings, better suited to shedding light on the nature of things than on pointing out their true origin, like those our physicists make everyday with regards to the formation of the world.⁶

Rousseau's hypothesis of the state of nature is also an attempt to present a theory of human civilization from its genesis to its actual state of corruption. People, according to him, have evolved from a pure state of nature to a highly complex and corrupt state of society. Human goodness has been corrupted by society. If, however, people are naturally good and society is made up of people, then it seems paradoxical to argue, as Rousseau does, that even though people are naturally good they can corrupt themselves. John Flamenatz recognizes this problem when he writes:

Men are first brought together by the need to satisfy their natural wants, and this coming together starts a train of events which, through no fault of their own and no calamity, both develops and corrupts their faculties. Society, at least, is not naturally good even if man is so.⁷

Rousseau tries to explain this paradox by arguing that inequality is the main, although not the only, source of corruption in society.

Natural individuals differ in their physical abilities and mental capacities (*natural inequalities*). Thus when they start a process of social interaction their natural inequalities necessarily lead them to the development of social and economic differences (*artificial inequalities*). These artificial inequalities, together with the development of metallurgy and agriculture and the emergence of private property with its division of labor, bring about the corruption of people in society.

In *Second Discourse*, Rousseau presents a detailed exposition of how the transformation from the state of nature to a state of social corruption came about. For this purpose he divides the state of nature into several stages. The first stage is the presocial, primitive, or pure state of nature where there are absolutely no forms of social intercourse. The second is a quasi-social state; this state, however, can be divided into different stages, where different forms of social relations gradually evolve from the simplest form of social intercourse, such as family relations, to a more complex form, such as tribal relations. The third is a more highly developed social state, in which there is a division of labor and in which significant inequalities exist. In this stage private property is instituted and class antagonism emerges as a serious threat to social harmony.

Natural, primitive, or original individuals in the presocial state of nature are not, according to Rousseau, acquisitive, fearful, violent and egoistic, as Hobbes depicted them. On the contrary, for Rousseau a natural individual is solitary, peaceful, healthy, happy, good, and free. People in this presocial state do not recognize any rules or laws; they do not even recognize other fellow humans because they do not need them for the fulfillment of their basic needs. These needs are few and simple. Natural individuals are similar to animals with one essential difference: their freedom. Rousseau puts it succinctly when he says:

Therefore it is not so much understanding which causes the specific distinction of man from all other animals as it is his being a free agent. Nature commands every animal, and beasts obey. Man feels the same impetus, but he knows he is free to go along or to resist. . . .⁸

This ability to choose is what makes a person a perfectible being and a potential moral agent. Both freedom and perfectibility are what distinguish human beings from other animals. Yet the more important of the two is freedom, since it is a necessary condition for actualizing the capacity for self-perfection.

It is important to note the way in which Rousseau uses the concept

of freedom in *Second Discourse*. Maurice Cranston, in his book *Jean-Jacques*,⁹ presents a good tripartite distinction of this concept. Natural individuals are free, according to Cranston's interpretation, in three different senses: (1) metaphysical, (2) anarchical, and (3) personal. Metaphysical freedom is possessed by all people at any stage of the state of nature, prepolitical society or political society. This freedom amounts to the ability to choose. Anarchical freedom is possessed only by those living in the state of nature; this amounts to the absence of moral, legal, or governmental rules. Personal freedom is the absence of dependence on others and can be exercised only in the pure state of nature where each individual lives a solitary and self-sufficient life.

These three kinds of freedom are species of natural freedom. I call them natural because, with the exception of metaphysical freedom, which can be exercised in either the state of nature or political society, the other two can be exercised only in the state of nature. Furthermore, personal freedom can be exercised only in the pure state of nature.

Metaphysical freedom, however, is a special case of natural freedom because it is natural in two different senses: (1) it can be exercised in the state of nature, and (2) it is an essential aspect of human nature regardless of one's station in the state of nature or in society. This kind of freedom is, I believe, the ground for the natural right to liberty in Rousseau's political philosophy. If so, this freedom is of paramount importance, since liberty, according to Rousseau, is a fundamental value that one ought not to give up because, in doing so, one is giving up one's moral agency.

Rousseau argues that since natural individuals are only potentially rational, one cannot, properly speaking, ascribe rights and duties to them in their original presocial state. In this state the concepts of right and wrong, justice and injustice do not apply. In this respect Rousseau's ideas coincide with those of Hobbes, although for different reasons. Hobbes argues that in the state of nature, "The notions of Right and Wrong, Justice and Injustice have there no place." He goes on, "Justice, and Injustice are none of the Faculties neither of the Body, nor Mind. If they were, they might be in a man that were alone in the world, as well as his Senses, and Passions." He stresses that justice and injustice "are Qualities, that relate to men in Society, not in Solitude."¹⁰

Rousseau, for his part, maintains that natural individuals in the original or primitive state of nature are characterized by two fundamental qualities: self-love (*amour de soi*) and commiseration. The first

"makes us ardently interested in our own well-being and our self-preservation," whereas the latter "inspires in us a natural repugnance to seeing any sentient being, especially our fellowman, perish or suffer."¹¹ From these two qualities it follows, according to him, that the traditional golden rule, "*Do unto others as you would have them do unto you,*" should be replaced by a maxim of natural goodness, "*Do what is good for you with as little harm as possible to others.*"¹² The quality of natural pity or commiseration makes natural individuals essentially good.

If natural individuals are essentially good, and if the original state of nature was such a peaceful state, why did people depart from their original state? There are two basic answers. (1) Human beings in general possess the faculty of perfectibility or self-perfection. This makes any future development of a person's potentialities possible, including the development of rational self-love. (2) Natural events such as earthquakes, floods, and population growth compelled primitive individuals to enter into some rudimentary forms of social intercourse in order to survive. This marked the end of the presocial state of nature and the beginning of the quasi-social state of nature. From then on, an irreversible process of social interdependence developed, and in the process natural individuals lost their personal freedom or freedom from dependence on others. Natural individuals, according to Rousseau, embarked on a process of slow but progressive social bondage.

It was only at the quasi-social stage that the institution of the family emerged. At this same stage people started to live and work together. Rousseau calls this stage "emerging or nascent" society. During this stage tribal relations develop towards more complex forms of social relations. But there is yet only a mild dependence on others, since people still have a sense of self-sufficiency. According to Rousseau, this is the "*golden age*" of humanity. It is a middle position between "the indolence of our primitive state and the petulant activity of our egocentrism."¹³

Even though this middle position would have been the best state for people to remain in, they unfortunately began to cultivate the land and, as a result, brought about the development of both metallurgy and agriculture. With the latter, a fatal division of labor between metal workers on the one hand and farmers on the other became a reality. This in turn created an upsurge of social interdependence among metal workers and farmers. Concurrently, private property was instituted and, as a result, civil society emerged. According to Rousseau:

This first person who, having enclosed a plot of land, took it into his head to say *this is mine* and found people simple enough to believe him, was the true founder of civil society.¹⁴

After the foundation of civil society, Rousseau argued, the *natural inequalities* among people, such as differences of age, health and talent, necessarily led to a highly disproportionate level of *artificial inequalities*: differences in power, prestige, and privileges.¹⁵ The natural inequalities among people together with their desire for recognition in society brought about an increase in artificial inequalities and hence a radical change in human nature. From peaceful and benevolent beings natural individuals were transformed into ambitious and contentious beings. The defining characteristics of natural individuals, self-love and natural pity, were transformed into *amour propre* and selfishness. The latter stems from the development of human rationality and the increase of social interdependence.

Thus, entering civil society, individuals lose their last vestiges of personal freedom and natural independence. They become, Rousseau argues, not only the slaves of new artificial needs but of other people as well. Social individuals are now faced with an inescapable dilemma: On the one hand, if they are rich, they need the service of the poor; on the other hand, if they are poor, they need the help of the rich.¹⁶ Social individuals are inescapably condemned to depend on others. Consequently, people in entering civil society exchange personal freedom for social bondage.

According to Rousseau, social individuals are essentially unhappy and alienated. At least four reasons can be adduced for this: (1) they are alienated from their original nature—from peaceful and benevolent beings, they have been transformed into selfish and belligerent individuals; (2) they are alienated from their natural freedom or independence—no longer able to act as they please, they are now bound by the norms and rules of society; (3) they are alienated from economic and spiritual self-sufficiency—they now depend on the recognition and labor of others for subsistence in society; and (4) their natural inequalities are transformed into greater artificial inequalities in civil society.

Significantly, however, Rousseau does not condemn *inequality* in general; he simply condemns those artificial inequalities, such as the excessive economic ones, that bring about political inequalities. For political equality, he argues, two basic conditions must be fulfilled: (1) the ascription of equal rights and duties to all citizens before the law, and (2) an equal opportunity for all citizens to change or modify the

laws under which they live regardless of their differences in power, property, or prestige. Moreover, he condemns any kind of artificial inequality which might lead to forms of political inequality. This is why Rousseau advocates a simple way of life rather than the great accumulation of wealth.

What is most necessary and perhaps the most difficult in the government is rigorous integrity in dispensing justice to all and especially in protecting the poor against the tyranny of the rich. The greatest evil is already done when there are poor people to defend and rich men to keep in check. It is only at intermediate levels of wealth that the full force of the law is exerted.

It is one of the most important items of business for the government to prevent extreme inequality of fortunes, not by appropriating treasures from their owners, but by denying everyone the means of acquiring them, and not by building hospitals for the poor but by protecting citizens from becoming poor.¹⁷

Rousseau opposes great accumulations of wealth because it brings about political inequalities. Those with greater wealth also have greater access to political power and, therefore, they have greater freedom. They have the freedom to influence and perhaps even oppress those who have less political power. This is unjust, Rousseau contends. Justice is only possible when people enjoy political equality and have an equal opportunity to enact or change the laws.

Rousseau is not, however, against all kinds of inequalities; he defends the view that inequalities of rank and prestige are just if they are proportional to natural inequalities. In this sense, he is not a radical egalitarian. But he is a radical egalitarian in the political sense, because he believes that all citizens ought to have the same rights and duties before the law and an equal opportunity to participate in enacting or changing it. In short, he is a radical political egalitarian but not a radical economic egalitarian.

For Rousseau, natural as well as artificial inequalities are inevitable in civil society because people, once united in civil society, "are forced to make comparisons among themselves" and to take account of their differences in "wealth, rank, power and personal merit." Of these differences, wealth is the most important because it can buy rank and power in society.¹⁸

Although Rousseau is against amassing great wealth, he is not against private property *per se*. In fact he considers the right to private

property "the most sacred of all the citizens' rights."¹⁹ Nor does he advocate that all citizens have the same degree of wealth. On the contrary, he writes:

With regard to equality, we must not understand by this word that the degrees of power and wealth should be absolutely the same; but that, as to power, it should fall short of all violence, and never be exercised except by virtue of station and of the laws; while, as to wealth, no citizen should be rich enough to be able to buy another, and none poor enough to be forced to sell himself.²⁰

Rousseau is searching for the middle ground or the golden mean between the very rich and the very poor. Thus, in order to establish a state of social equilibrium in civil society, he favors a moderate middle class.

If, then, you wish to give stability to the state, bring the two extremes as near together as possible; tolerate neither rich people nor beggars. These two conditions, naturally inseparable, are equally fatal to the general welfare; from the one class spring tyrants, from the other, the supporters of tyranny.²¹

It follows from these considerations that a necessary condition for creating a just political order is bridging the gap between the rich and the poor. In a society where there is a great difference between the "haves" and the "have-nots" political equality is simply an illusion. He argues:

Under bad governments this equality is only apparent and illusory; it serves only to keep the poor in their misery and the rich in their usurpations. In fact, laws are always useful to those who possess and injurious to those who have nothing; whence it follows that the social state is advantageous to men only so far as they all have something, and none of them have too much.²²

For Rousseau private property must serve a social function. It is permissible only if and so long as it promotes the well-being of the community. Political justice is possible, according to him, only if economic justice is also possible, and vice versa; one cannot exist without the other. Although we can conceive of political justice in abstraction, apart from and independent of economic justice, and vice versa, in reality both forms of justice are intertwined. They are in fact

directly proportional to one another. Accordingly, Rousseau argues that "the social state is advantageous to men only when all have something and none have too much." Justice in general is possible only in a classless society.

The concept of the social contract is essential to Rousseau's political philosophy. He uses this concept in two different ways: (1) to explain the nature of legitimate political authority, and (2) to explain the genesis of the state, or how political society emerged from prepolitical society to protect and legalize the possessions of the rich. The poor agree to the institution of political society without realizing that they are instituting a positive legal system which sanctions the wealth of the rich and perpetuates their own misery. Arguing against this "evil contract," Rousseau writes:

the origin of society and laws, which gave new fetters to the weak and new forces to the rich, irretrievably destroyed natural liberty, established forever the law of property and of inequality, changed adroit usurpation into an irrevocable right, and for the profit of a few ambitious men henceforth subjected the entire human race to labor, servitude and misery.²³

I agree with Iring Fetscher's interpretation of Rousseau on this point.²⁴ He contends that, according to Rousseau, a necessary condition for the fulfillment of a "good" social contract is a degree of social and political equality among the citizens. Without this, the contract and hence the institution of political society would be unjust, for when there is conflict as a result of great socio-economic and political inequalities, a social contract is used simply as a subterfuge to end the conflict and perpetuate the *status quo*.

On the other hand, in *The Social Contract*, Rousseau uses the concept of a contract as a political and moral device to transform the unjust *status quo* of actual political life into a just political order. His main purpose in this book is to reconcile the claims of freedom with the claims of justice, the claims of right with the claims of self-interest, "so that justice and utility may not be severed." In order to do this, he proposes to take "men as they are and laws as they can be made."²⁵ That is to say, he wants, while recognizing the power of self-interest, to form a political association in which laws enacted by all of its members will protect the interest of each without transgressing the interests of others. These laws will also protect and promote the freedom of all. He proposes the following enigmatic formula:

To find a form of association which may defend and protect with the whole force of the community the person and property of every associate, and by means of which each, coalescing with all, may nevertheless obey only himself, and remain as free as before.²⁶

The problem with this formula is to explain how one can enter an association which imposes obligations on its members and, at the same time, obey only one's self. Clearly, at some point there is going to be some conflict between what a person wants to do or refrains from doing and what the association requires or forbids be done.

Rousseau believes that this is not necessarily the case because, given the plasticity of human nature, it is possible through education and legal constraint to encourage the members of the association to will or desire only that which is compatible with the *general will* of the association. So that if someone refuses to abide by the general will, "he shall be forced to be free."²⁷ This is precisely the point—how can we be free, and obey only ourselves, when we are being coerced to act against our will?

The answer to this paradox is to be found in Rousseau's concept of liberty. He distinguishes among three kinds of liberty: *natural*, *civil*, and *moral*. I have already discussed natural liberty and its three different species: *metaphysical*, *anarchical*, and *personal*. Civil liberty, as contrasted with natural liberty, exists only where there are rules and norms to be respected. It involves acting according to the rules, norms, and social customs of a particular civil society. Moral liberty, on the other hand, consists, according to Rousseau, in "obedience to a self-prescribed law."²⁸ Moral liberty differs from civil liberty in that the latter establishes a relation between the individual and the rules or norms prescribed by the community, whereas moral liberty is primarily a relation between person and conscience.

Apparently, the kind of liberty Rousseau has in mind when he uses the expressions "obeying only oneself" and "being forced to be free," is moral as well as civil. However, moral liberty is the highest kind of liberty, since it "renders man truly master of himself." Rousseau maintains that a person "ought to bless . . . the happy moment that released him from it [the state of nature] forever, and transformed him from a stupid and ignorant animal into an intelligent being and a man."²⁹

Rousseau's distinction between liberty and independence is important. He indicates this in his *Letters from the Mountain* when he writes:

When everyone does what he pleases, he often does what displeases others; and that is not called a condition of freedom. Liberty consists less in doing what we want than in not being subjected to another's will; it also consists in not subjecting another's will to our own.³⁰

For Rousseau independence, unlike liberty, consists in acting as one pleases without respect for others, whereas liberty is the ability to act according to self-prescribed rules that respect the rights of others. That being the case, the self-prescribed rules of an individual in a society must not conflict with the self-prescribed rules of others in this society. Otherwise liberty and independence would be synonymous. Freedom as independence is basically egoistic. This kind of freedom creates conflicts among individuals. For example, one is free in this sense only when one is able to satisfy wants and desires without any regard for other people's wants or desires. On the other hand, one is morally free only when one's self-prescribed rules are compatible with those of others.

What can guarantee that one's self-prescribed rules are not in conflict with the self-prescribed rules of the other members of society? At this point the idea of a collective self and the concept of *the general will* become crucial to an understanding of Rousseau's ideas. When he refers to the notion of moral freedom as involving self-prescribed moral rules, the term "self" is ambiguous, for it refers to the self of each particular member of the body politic and also to the self as a "moral or collective self." This collective self emerges as a product of the social pact when "Each of us puts in common his person and his whole power under the supreme direction of the general will; and in return we receive every member as an indivisible part of the whole."³¹ The collective self emerges when associates give themselves and all of their rights to the community in order to preserve and promote the common good or general welfare. The means by which this collective self preserves and promotes the common good are through exercising the general will. This will, like that of each individual, aims at self-preservation.

The moral or collective self prescribes laws to the citizens. However, since this moral self is a product of the unity of the citizens' wills as each aspires to the common good, it follows that the moral self is simply an extension of the wills of particular selves as they aspire to generality. Moreover, the particularity or generality of a will depends on its object. If its object is the common good, it is general. If it is some private interest, it is particular.

We obey ourselves only when we act according to the preservation and promotion of the general will, since this will is simply an extension of individual wills as they aspire to generality or the common good. Whenever the citizens act contrary to the general will, they are acting for the sake of their egoistic wants and desires. In this sense, according to Rousseau, they are not morally free. They are slaves of their passions and appetites. They are morally free only when they act according to self-prescribed laws, that is to say, when they act according to the general will. Hence, Rousseau argues, whenever the citizens' actions are incompatible with the general will they must be *forced to be free*, which is to say that they must be constrained by the law to act according to the general will. But since the citizens consent to abide by the general will when they become participants in the social contract, and since this contract guarantees that all have a free and equal voice in the making of the law, it follows that they are not in fact constrained. Where there is consent there cannot be coercion, since a necessary condition of coercion is the absence of consent. This is true if one assumes, as Rousseau seems to do, that once one consents to a particular state of affairs one is bound by it to eternity. This, however, is too strong an assumption, since it undermines one's moral autonomy by disregarding future moral considerations that might outweigh the moral importance of one's initial act of consent. Consent, like promise, is an open-ended concept, and thus it cannot have absolute moral weight.

Iring Fetscher, in the spirit of Robert Derathé, argues that Rousseau is operating with a dual concept of reason.

Reason has a dual and sometimes even contradictory aspect, according to whether it is exercised in the service of the passions of *amour propre* or, "when the passions are silent," is considered with the perception of "order."³²

Fetscher recognizes that the concept of reason which serves the passions is similar to the Humean concept of reason. He sees it as passive reason. However, reason as a perception of order is not passive but active. This is practical reason.

The above distinction corresponds to Rousseau's distinction between a will that is particular and a will that is general. When we are motivated by our selfish interests, our wills are particular. As a result we are unfree, according to Rousseau, because we are the slaves of our passions. On the other hand, when we are motivated by a will that

is general, we are concerned with the common good or general welfare. At this level, active or practical rationality is operating. We are operating with a concept of a moral order. Therefore, it is at this level that we are morally free. This anticipates Kant's notions of freedom as respect for the moral law and practical rationality. According to both Rousseau and Kant, we are morally free insofar as we perform our duties for duty's sake and we are rational to the extent that we are moral.

Rousseau is rejecting the notion of freedom as the maximization of our selfish wants and desires—the result of egoism or *amour propre*. On the contrary, his concept of freedom as respect for the moral law is radically different from this egoistic concept of freedom. Since this law is discovered and instituted by the general will, it follows that we are free, in Rousseau's sense, only if and so long as we act according to the general will. The freedom of the citizen consists, as Fetscher argues, "in his not being dependent on any single man and his whim, but dependent solely upon the law,"³³ which is a law that each citizen helps to establish. Furthermore, virtue consists, according to Rousseau, in acting in accordance with the moral law and hence also with the general will. I am a virtuous citizen provided that I am morally free, and vice versa. Thus Rousseau claims that if we want the general will to be accomplished, we must

make all private wills be in conformity with it. And since virtue is merely this conformity of the private to the general will, in a word make virtue reign.³⁴

Later he says,

A country cannot subsist without liberty, nor can liberty without virtue, nor can virtue without citizens. You will have everything if you train citizens; without this you will merely have wicked slaves.³⁵

The body politic must therefore educate its citizens to be virtuous—to be morally free.

The function of the law, in Rousseau's ideal Republic, is to protect and promote the common good rather than some private or class interest. Therefore, if the law in fact promotes or protects any private or class interest at the expense of the common good, it will lose its legitimacy and the social contract will be broken. This is why Lucio Colletti argues that Rousseau's social pact is different from the liberal natural law tradition:

while to Locke and Kant and the whole liberal-natural-law tradition in general, the contract "is not an innovation in the natural-legal order but tends to consolidate it . . ." to Rousseau, on the other hand, "the contract means the renunciation of the state and freedom of nature and the creation of a new moral and social order."³⁶

If Rousseau's ideal Republic is to be realized, the terms of the social contract must be unconditionally observed. Rousseau argues for this when he asserts, "The clauses of this contract are so determined by the nature of the act that the slightest modification would render them vain and ineffectual." Moreover, if this pact is violated, "each man regains his original rights and recovers his natural liberty, while losing the conventional liberty for which he renounced it."³⁷ By the terms "original rights" and "natural liberty," Rousseau refers to rights and liberties people enjoyed before entering political society. He does not, however, refer to a person's natural rights to life and liberty, since such a person is the bearer of these rights in virtue of his or her nature and, as such, they are inalienable. Only those social or conventional rights possessed in civil society are alienable. He defends the natural rights to life and liberty, although, unlike Locke, he considers the right to property to be a conventional rather than a natural right.³⁸ Moreover, in *The Social Contract* he argues against the institution of slavery and defends the natural right to liberty on these grounds:

To renounce one's liberty is to renounce one's quality as a man, the rights and also the duties of humanity. . . . Such a renunciation is incompatible with man's nature, for to take away all freedom from his will is to take away all morality from his action.³⁹

Rousseau's contract is intended to guarantee both the enjoyment of civil and political freedom and the right to private property. It guarantees, among other things, the right to have an equal voice in the making of laws and hence the right to vote. Moreover, the right to political freedom derives from the natural right to liberty.

In *The Social Contract* Rousseau presents a dual account of freedom. Freedom has both a *positive* and a *negative* aspect. The latter consists in being independent of the will of others, the former in acting according to self-prescribed rules. These two aspects of freedom are necessary but not sufficient to exercise one's right to political liberty within the body politic. Two further conditions must be met if a citizen is to be politically free: (1) each citizen must be equally treated before

the law, and (2) each must have an equal voice in the making of the laws. It follows that Rousseau favors literal self-government. People are politically free only if they can govern themselves. In this sense, Rousseau is a radical political egalitarian, since he advocates literal self-government or direct democracy. For Rousseau sovereignty is *inalienable*; it remains forever with the people.

Rousseau, like Hobbes, rejects the dichotomy between the *social contract* and the *contract of government*. Both postulate a single contract: a contract of society. This idea of a single contract constitutes, as Colletti contends, a revolutionary approach in political theory: "it implies that the government no longer appears as the 'receptacle' of a sovereignty transferred to it by the people . . . , but as a mere executive organ, or precisely a 'commission.'"³⁹

The government, Rousseau argues, has "nothing but a commission," and its task is to respond to the needs and interests of the sovereign, which is the collectivity of citizens. Sovereignty remains always with the people. It is inalienable, indivisible, and incapable of representation. The supreme power of the state remains always in the hands of the sovereign, i.e., in the hands of the people. The sovereign can always, through its general will as expressed through the law, modify, limit, or even dismiss the government whenever it chooses. The sovereign is therefore above the law.

it is contrary to the nature of the body politic for the sovereign to impose on itself a law which it cannot transgress . . . whence we see that there is not, nor can there be any kind of fundamental law binding upon the body of the people, not even the social contract.⁴¹

Later Rousseau argues this point more explicitly when he writes:

there is in the State no fundamental law which cannot be revoked, not even the social compact; for if all citizens assembled in order to break this compact by a solemn agreement, no one can doubt that it would be quite legitimately broken.⁴²

Otto Gierke argues that Rousseau's concept of popular sovereignty amounts to "the declaration of a permanent right of revolution, and a complete annihilation of the idea of the constitutional State."⁴³ However, by the phrase "permanent revolution" Gierke does not mean a violent transformation of the body politic, but the always-present possibility of its legal restructuring. The sovereign can even, for

example, choose to revoke the contract. But this can be accomplished only if there is a unanimous agreement to invalidate it. Thus Rousseau, unlike Locke, does not postulate a right to revolution against tyranny. He does not need this right because sovereignty remains always with the people. In Rousseau's Republic, tyranny or any sort of gross injustice on the part of the sovereign would be impossible. The general will of the people can never be unjust, "since no one is unjust to himself."⁴⁴ The sovereign therefore is always what "it ought to be."

Rousseau believes he has found the formula to reorganize the body politic in such a way that it will necessarily be a just society. For this society the general welfare will be above private interests. Moreover, formal or ideal justice will also coincide with distributive or material justice. Therefore, ideal and material justice will become functions of the law as it is expressed by the acts of the general will. For Rousseau, what the general will determines is what it *ought to be*.

To have moral weight, the law must be just. Otherwise the citizens are not obliged to obey it. The general will, however, is always right. Therefore, for Rousseau, unlike Locke, the citizens do not need to appeal to "heaven" for justice. They appeal instead to the *general will* which is determined by the will of the majority.⁴⁶ The problem with Rousseau's principle of majority rule, however, is that neither he nor anybody else can guarantee that the majority will always be right nor that it will not impose its own will on the minority. That is to say, Rousseau's political theory does not provide any safeguards to avoid the tyranny of the majority. Locke provides at least for the right to revolution. He does so by maintaining that the citizens can delegate their sovereignty to a legislative body provided that this body does not violate their natural rights. Rousseau, as we have seen, cannot provide for this right because his ideal Republic is necessarily just, and therefore sovereignty is essentially inalienable.

This last claim is doubtful. For, as stated above, if the general will is concretely determined by the will of the majority, there is always a danger that the will of the majority, and thus the general will, will not be just, and that the majority will eventually tyrannize the minority. Rousseau might counter by claiming that if the will of the majority is not just, then it is not the general will, since this is always necessarily just. Yet if the only empirical test we have to determine the content of the general will is the will of the majority, then what will prevent this will from being recognized as having the moral and legal imperative-ness of the general will? I do not think Rousseau presents a satisfactory answer to this question.

Colletti is partially right, I believe, when he argues that Rousseau's political theory leads to "the abolition or withering away of the State."⁴⁷ There are two other possibilities. Rousseau's political theory might also lead to the tyranny of the majority over the minority, and to legal anarchism.

The withering away of the state is possible because, according to Rousseau, even though there is a distinction between the citizens and their government, the citizens have an inalienable right to enact the laws by which they will be ruled. Hence, they also have the right to appoint or dismiss their government. Nonetheless, he recognizes the need of government as an executive agency to administer the laws enacted by the sovereign. For Rousseau legislation is a function of sovereignty rather than government, which has only executive and judicial functions.

The tyranny of the majority is possible because if the general will is concretely determined by the will of the majority, as Rousseau argues, there is always the possibility that the majority might end up imposing its views on the minority. But no matter what the majority decides, it can never rightly suppress the rights of the minority to express its views and to vote. If the majority tries to do so, the social contract is violated and the minority ceases to be obliged by it.

Legal anarchism is the least probable of the three, but there is always the remote possibility that it might occur: since the citizens have the right to enact laws, they may start enacting and abolishing too many of them too often thus creating a feeling of insecurity and frustration among themselves. If this were to happen, it would bring about, as Otto Gierke indicates, "a complete annihilation of the idea of the constitutional state."

Rousseau's notion of the social contract is extremely important for his political philosophy for, like Locke, he grounds political obligation on the principle of consent. Thus, for Rousseau, the citizens are politically obliged to obey the law so long as the terms of the contract are observed: (1) the citizens are equally allowed to express their views publicly, and (2) they are equally allowed to vote in order to determine the content of the *general will*. It is clear in Rousseau's political philosophy that the citizens have an inalienable right to decide whom they are going to obey and the rules they are going to follow. If a citizen or a group of citizens violates this right by attempting to impose his views on the rest of society without their prior consent, the social pact is broken and the people are no longer obliged to abide by it.

Whether the notion of the *social contract* can in fact justify *political obligation* remains to be seen.

At least three immediate objections can be raised against Rousseau's notion of *consent*, and since the *social contract* depends upon the latter notion, these objections will apply to it as well. First, Rousseau's notion of consent is hypothetical, and hypothetical consent is not actual consent and thus no consent at all. Second, even assuming citizens at some point in time consent to abide by the *general will*, it does not follow that, under different conditions, they will continue to consent to abide by it. Third, to claim that when citizens refuse to abide by the *general will* society, by punishing them, is "*forcing them to be free*" is simply to leave the door open for justifying coercion disguised as freedom. Punishment always constitutes an infringement of freedom, and since, regardless of what Rousseau says, the general will is always concretely determined by the will of the majority, nothing and nobody can prevent the majority from imposing its views on others by appealing to the idea of a so-called higher freedom.

Chapter 5

KANT

Kant is the last major contractarian political philosopher of the eighteenth century. He is essentially a moral philosopher; his political philosophy is an extension of his moral theory. Thus the formalism of his moral theory surfaces in his political theory. Nonetheless, I shall not deal in depth with his view of the relation between morality and politics, but shall mention it only when necessary for the understanding of his political theory.

Kant develops his legal and political ideas in four relatively short essays: (1) "Idea for Universal History with a Cosmopolitan Intent" (1784); (2) "On the Proverb: That May Be True in Theory but Is of No Practical Use" (1793); (3) "To Perpetual Peace: A Philosophical Sketch" (1795); (4) *The Metaphysical Elements of Justice (Rechtslehre)* (1797). I am especially concerned with the last one, in which he systematically develops his ideas on politics, law, and justice.

Kant applies the same formal analysis he used in his ethical theory to his political philosophy, especially in *Foundations of the Metaphysics of Morals (Grundlegung)*. He intends, in *Rechtslehre*, to establish a metaphysics of political right totally independent of empirical considerations. That is to say, he tries to establish a relationship between the *a priori* concept of pure practical reason and the concepts of political and legal right. He is searching, as he puts it, for "the universal criterion that will in general enable us to recognize what is just or unjust."¹

The relation between morality and politics is important to Kant's political philosophy.

Thus, true politics cannot progress without paying homage to morality; and although politics by itself is a difficult art, its union with morality is no art at all, for this union cuts through the [Gordian] knot that politics cannot solve when politics and morality come into conflict.

He proceeds to indicate the sacredness of moral rights and the supremacy of morality over politics.

The rights of men must be held sacred, however great the cost of sacrifice may be to those in power . . . instead, all politics must bend its knee before morality, and by doing so it can hope to reach, though but gradually, the state where it will shine in light perpetual.²

Whenever political judgments are incompatible with the fundamental moral principle (categorical imperative)—“Act only according to that maxim by which you can at the same time will that it should become a universal law”³—they are morally unjust or wrong. Consequently, politics is ultimately grounded on morality or “laws of freedom.” These laws are known *a priori* and hence are devoid of empirical content. They presuppose, Kant argues, the existence of a pure and free rational will. This is the will he refers to when he affirms that “Nothing in the world . . . can possibly be conceived which could be called good without qualification except a *good will*.”⁴ Thus, as Patrick Riley maintains, “politics and public legal justice can only be instrumental to the possibility of that good will.”⁵ Hence politics and jurisprudence are, in Kant’s view, only means to create a proper and just environment for the recognition of persons as ends-in-themselves, that is, as free and rational moral beings who, in virtue of their rationality and freedom, possess dignity.

In his introduction to the *Metaphysics of Morals*, Kant distinguishes between *juridical* and *ethical* duties: “If legislation makes an action a duty and at the same time makes this duty the incentive, it is *ethical*.” On the other hand, “if it does not include the latter condition in the law and therefore admits an incentive other than the Idea of duty itself, it is *juridical*.”⁶ Hence, the main difference between jurisprudence and ethics has to do with the subjective conditions involved in any action. Jurisprudence and politics deal with the concepts of law, justice, and right. Ethics, on the other hand, deals with the concepts of duty and virtue (doing one’s duty for duty’s sake). He also distinguishes between “duties of justice” and “duties of virtue.” The former are imposed from the outside, since they presuppose an external legislator

with the power of coercion. The latter, however, are imposed from within. I, as a free and rational moral agent and as a supreme legislator, discover and impose the moral law upon myself out of respect for it, and not for any other ulterior purpose. These duties, therefore, do not presuppose any coercive power, although they presuppose a legislator—namely the moral agent.

In order to assess Kant’s political philosophy, it is important to understand his concept of the *state of nature*. Like Hobbes, Locke, and Rousseau, he uses this concept to develop his political philosophy in three different ways. The first is to refer to prepolitical society (for Kant, like Locke, civil and political society are one and the same) where there is no commonly recognized political power or authority. This, as he puts it, is “A nonjuridical state of affairs . . . one in which there is no distributive legal justice.”⁷ Its second use is as a logical device or as an Idea⁸ of pure reason, to explicate the origin of civil and political society. Logically speaking, the state of nature must precede political society. It is, therefore, a necessary precondition for the justification of civil society. And thirdly, he uses the concept of the state of nature, as Rousseau did, to justify the origin of *private property*.

Kant, like Hobbes, talks about the state of nature as a lawless state of anarchy, in which the threat of war is always present.

The state of peace among men living in close proximity is not the natural state; instead, the natural state is one of war, which does not just consist in open hostilities, but also in the constant and enduring threat of them.⁹

In this respect his depiction of the state is purely Hobbesian in nature.

Kant operates with a dual concept of human nature: individuals as they are in themselves and as they appear to be. He is, in short, applying his controversial distinction between a *noumenal* and a *phenomenal* reality to his concept of the self. Whether he has sufficient reason to do this is questionable. According to Kant, as human beings (phenomenal beings) we are not free because we are subject to the laws of nature and our actions are conditioned by our desires. However, as rational beings (noumenal beings) we are essentially free because our actions ought to be determined by reason alone—solely determined by the moral laws we impose on ourselves. This is why he makes a distinction between freedom of choice (*Willkür*) and practical reason (*Wille*); or between what I call the empirical concept of freedom (the ability to choose this rather than that) and the pure concept of freedom,

or freedom to act according to self-prescribed laws. This distinction presupposes a more generic distinction between two different concepts of reason: the Humean concept of reason, or reason as "the slave of the passions"¹⁰ (passive reason), and the pure concept of reason, or reason as the perception of order (active reason).

The distinction between active and passive reason is the ground of Kant's concept of freedom; without this distinction, his concepts of positive and negative freedom would be unintelligible. Kant argues that "A will that can be determined by pure reason [active reason] is called free will." On the other hand, "A will that is determined only by inclination [passive reason] would be animal will."¹¹ Hence, "negative freedom" is "independence from determination by sensible impulses," whereas "positive freedom" is the capacity to act according to the universal moral law—the capacity to act according to the *categorical imperative*. Therefore, "negative freedom" is grounded in the capacity of passive or empirical practical reason to achieve certain empirical ends, whereas "positive freedom" is grounded in the capacity for moral agency—in the capacity of active or pure practical reason to act for the sake of duty itself.

Kant's concepts of positive and negative freedom, however, should not be confused with Rousseau's concept of freedom. Even though his concept of positive freedom is similar to Rousseau's, in that they both appeal to universal concepts, their concepts of negative freedom are radically different. With respect to positive freedom, Kant appeals to the *categorical imperative*, whereas Rousseau appeals to the *general will*. And clearly, the content of the categorical imperative differs from the content of the general will. For Kant, the first is necessary although not sufficient for testing whether a law is just, whereas for Rousseau the latter is both necessary and sufficient for testing whether a law is just.

Moreover, Kant's concept of negative freedom differs entirely from Rousseau's. Kant defines negative freedom as independence from sensible impulses. This is, of course, a subjective condition; it deals with the moods, feelings, and desires of an individual. Rousseau, on the other hand, defines negative freedom as independence from the will of others. This is an objective and hence a political condition; it deals with the minimum necessary requirement for individuals to be politically free. It is important to realize the great difference between Kant's and Rousseau's concepts of freedom. Rousseau's negative freedom is realized in and through political society, whereas Kant's is realized through the subjective condition of individuals. Rousseau's

political philosophy is essentially revolutionary in nature; it is an attempt to redeem human nature and to transform the whole structure of political society. Kant's political philosophy, on the other hand, is essentially conservative; with all its ingenious subtleties, it comes down to a defense of the *status quo*, since the citizens are always categorically obliged to obey the sovereign. He maintains that "There can therefore be no legitimate resistance of the people to the legislative chief of the state."¹²

Kant's concept of human nature is also important. He believes people are by nature both social and antisocial. Individuals, as rational beings, are sociable by nature, although they possess certain irrational or antisocial inclinations. From this antagonism—between their rational and hence social inclinations and their irrational and hence antisocial inclinations—human capacities are developed. As he puts it:

The means that nature uses to bring about the development of all of man's capacities is the antagonism among them in society, as far as in the end this antagonism is the cause of law-governed order in society. In this context, I understand antagonism to mean men's unsocial sociability, i.e., their tendency to enter into society, combined, however, with a thoroughgoing resistance that constantly threatens to sunder this society.¹³

Thus, according to Kant, the empirical person, in contrast to the purely rational person in "the realm of ends," is an egoistic individual. Empirical persons are acquisitive and contentious individuals. But Kant, unlike Rousseau, does not consider these antisocial traits evil; instead, he considers them instrumentally good as a means to people's cultural development and the development of civilization.¹⁴ Kant also praises *natural* and *artificial* inequalities among people: "Inequality among men—that source of so many evils, but also of everything good."¹⁵ He favors inequality because it leads individuals to compete with one another. As a consequence of this struggle a person's natural capacities can be realized:

it is only in society—and, indeed, only in one that combines the greatest freedom, and thus a thoroughgoing antagonism among its members, with a precise determination and protection of the boundaries of this freedom, so that it can coexist with the freedom of others—[and] is only in such a society that nature's highest objective, namely, the highest attainable development of mankind's capacities can be achieved.¹⁶

This sounds, it might be argued, like formal freedom or what Marxist scholars call "bourgeois freedom," which is freedom from coercion or freedom under legal restraint. These restraints are justified, Kant maintains, on the ground that it is only in civil or political society, hence under a strict legal system, that people can peacefully coexist and simultaneously develop all their capacities.

Necessity compels men, who are otherwise so deeply enamoured with unrestricted freedom, to enter into this state of coercion [civil or political society]; and indeed, they are forced to do so by the greatest need of all, namely, the one that men themselves bring about, for their propensities do not allow them to coexist for very long in wild freedom.¹⁷

It seems that Kant, like Locke and Rousseau, rejects the concept of freedom as license or lawlessness, as freedom to do as one pleases without any respect for others. For him, the only morally relevant concept of freedom is freedom as respect for the moral law. This freedom is exercised in society by acting according to the law because the concept of jurisprudence is also an Idea of pure practical reason. Any law is a just law, Kant argues, only if it is compatible with the categorical imperative. A just law applies equally and universally to all citizens. Although Kant can be considered a defender of legal egalitarianism, he is inconsistent on this issue, as I will show later.

Kant also believes, like Hobbes, that individuals are in need of a master. Given his concept of human beings as egoistic and contentious, this seems a reasonable assumption. He writes:

Man is an *animal* that, if he lives among other members of his species, has need of a *master*. For he certainly abuses his freedom in relation to his equals.

He thereby proceeds to argue, in the spirit of Rousseau:

He [man] thus requires a *master* who will break his self-will and force him to obey a universally valid will, whereby everyone can be free.¹⁸

Kant justifies legal coercion only if it promotes greater freedom for everyone in civil society. Any other form of coercion would be unjustified, since it would simply be a transgression of liberty and hence constitute violence. Yet for Kant, coercion and liberty are not antithetical; indeed, legal coercion is a necessary condition for the just

exercise of political liberty. This is the kind of liberty exercised in civil or political society. Furthermore, it is the only kind with which political philosophy ought to be concerned. Legal coercion is a necessary condition for the preservation and promotion of civil society.

Legal coercion is also a necessary condition for the protection and promotion of the only innate right (natural or moral right) of people: the right to freedom.

Freedom (independence from the constraint of another's will), insofar as it is compatible with the freedom of everyone else in accordance with a universal law, is the one sole and original right that belongs to every human being by virtue of his humanity.¹⁹

Kant's concept of the innate or natural right to freedom is similar to Rousseau's concept of negative freedom. For both, political freedom consists in being independent of the constraint of another's will.

Kant is only concerned with political justice, unlike Rousseau, who talks about economic as well as political justice. Kant defines his concept of political justice in this way:

Justice is therefore the aggregate of those conditions under which the will of one person can be conjoined with the will of another in accordance with a universal law of freedom.²⁰

It seems that by "the aggregate of those conditions" he means legal conditions. If this is the case, justice will be defined as the aggregate of those legal conditions under which the freedom of one individual can coexist with the freedom of all according to a universal law. Therefore, a particular legal system is just or right only if it provides the necessary conditions so that the freedom of one can coexist with the freedom of all according to a universal law.

Kant also defines a just or right act in terms of his "Universal Principle of Justice." He writes:

Every action is just [right] that in itself or in its maxim is such that the freedom of the will of each can coexist with the freedom of everyone in accordance with a universal law.²¹

He defines his "Universal Law of justice," which must not be confused with the above principle, as follows:

Act externally in such a way that the free use of your will is compatible with the freedom of everyone according to a universal law.²²

These two principles should not be confused. The universal principle of justice defines the nature of a just action and provides a way of testing whether a particular action is just or right. Hence, it is a moral principle grounded in the spirit of the categorical imperative. On the other hand, the universal law of justice is a political and legal command; as such, it must be sustained by the threat of coercion, since otherwise it would be an empty formula. Thus, even though the universal law of justice has, I maintain, the form of the categorical imperative, it differs radically from it in content. The categorical imperative, like the universal principle of justice, has an ethical connotation, whereas the universal law of justice has a political and hence legal connotation. The universal law of justice, like any law in civil society, is a command sustained by a threat of coercion. Whoever violates it threatens the freedom of everyone else in civil society; he has committed an act of violence against society. Anyone who commits such an act is acting unjustly and consequently deserves to be punished.

The categorical imperative, on the other hand, is not sustained by any threat of coercion. Nonetheless, the universal law of justice is compatible with both the categorical imperative and the universal principle of justice, in that it imposes a moral as well as a legal obligation sustained by an objective condition—the threat of coercion. The difference lies in that the categorical imperative, like the universal principle of justice, imposes only an ethical obligation sustained by a subjective condition—respect for the moral law. The first kind of obligation, Kant argues, is only “indirectly ethical” because, even though it is ultimately grounded in the categorical imperative and the universal principle of justice, its primary function is legal, not moral. It has to deal with external acts rather than motives. The second kind of obligation is “directly ethical.” It deals with motives rather than external acts.

Accordingly, when we adopt the universal principle of justice as our guiding principle, we do this out of respect for the moral law. This is, Kant argues, “a requirement that Ethics imposes on me.”²³ When we act compatibly with the universal law of justice, however, we may do it out of respect for its intrinsic moral worth or because we are afraid of being punished. The motives of our actions are irrelevant as long as we fulfill our legal obligations. Yet concerning the universal principle of justice the law cannot require us to act according to it because, unlike the universal law of justice, it is a purely ethical principle and, as such, belongs to the ideal world or *kingdom of ends*. Jurisprudence

and political theory deal in general with the empirical world and therefore are concerned with external actions rather than with our motives for acting. This is why Kant writes:

For anyone can still be free, even though I am quite indifferent to his freedom or even though I may in my heart wish to infringe on his freedom, as long as I do not through my external action violate his freedom.²⁴

Kant, unlike Rousseau, is not concerned with legislating “virtue.” For Kant, virtue and political freedom are totally different concepts. Virtue belongs to the private and subjective realm—the ethical realm. Political freedom belongs to the public and hence objective realm—the socio-political realm. Rousseau, unlike Kant, argues that there cannot be liberty without “virtue.”²⁵ These two concepts, according to Rousseau, are intimately related—one cannot exist without the other. Rousseau intermingles these two concepts because, unlike Kant, he operates with a concept of *positive liberty*. Virtue and positive liberty amount to the same thing: acting according to the *general will*. But Rousseau, like Kant, believes that political philosophy is essentially concerned with the right to liberty understood in a *negative way*: as independence from subjection to the will of others.

One should not, however, confuse Kant’s concept of *moral autonomy* with his concept of political liberty. They are two different concepts. The first is concerned with the ability to act according to self-prescribed moral rules, whereas the latter is concerned with the ability to make choices in society. Individuals are politically free, according to Kant, when they can act as they please provided they do not interfere with the interests of others. If by acting in a certain way one interferes with the interests of others, society has the right and obligation to punish the person for the transgression. This is why Kant defines “strict justice” as “the possibility of external coercion that is compatible with the freedom of everyone in accordance with universal laws.”²⁶ Hence, for Kant, the state’s coercive power and political freedom go together. The power of coercion is a necessary condition for the protection of political freedom because without it there would be no safeguards for the exercise of this freedom. The existence of the state is a necessary evil to prevent the violation of freedom in society.

The requirements of justice, according to Kant, can only be satisfied in civil society, that is, in a juridical state of affairs. In a nonjuridical state of affairs, i.e., in the state of nature, individuals cannot wrong one another. He argues:

If men deliberately and intentionally resolve to be and to remain in this state of external lawless freedom, then they cannot wrong each other by fighting among themselves. . . . Nevertheless, in general they act in the highest degree wrongly by wanting to be in and to remain in a state that is not juridical, that is, a state of affairs in which no one is secure in what belongs to him against deeds of violence.²⁷

Thus Kant, like Hobbes, believes that "right" and "wrong" are ill-defined until a civil society is created. Consequently, in the state of nature,

no one is bound to refrain from encroaching on the possession of another man if the latter does not in equal measure guarantee that the same kind of restraint will be exercised with regard to him.²⁸

People have a moral obligation to abandon the state of nature and to force others by the use of violence, if necessary, to enter civil society, where they will find the necessary conditions to develop their ethical capacities. Hence, if individuals do not want to renounce all concepts of justice they ought to enter civil society.²⁹

For Kant, legal justice, like morality, can be exercised only in civil society. Legal justice is important because it is instrumental to the development of moral capacities. It protects and guarantees political freedom in society so that individuals can pursue their own goals, provided always they do not interfere with the rights and interests of others.

Even though the exercise of justice and morality is only possible in society, Kant believes that the state is not the inventor of rights but its *protector*. According to Kant, persons have a natural right to liberty whether or not they live in society. But this right can only be guaranteed within it. If the state of nature is, as Kant argues, a nonjuridical state of lawlessness, then, being a state of anarchy, the threat of violence is always present. In such a state, protection of the innate right to liberty or of any of the acquired rights, including the right to private property, is insecure. The state is justified, then, on the ground that people can enjoy their rights only in civil or political society, where there is a suitable authority to enforce and adjudicate infractions of the law. It is only in this state that justice or the protection of moral rights is possible. In Kant's words:

The first decision that [man] must make, if he does not wish to renounce all concepts of justice, is to accept the principle that one must quit the

state of nature. . . . subjecting himself to a public lawful external coercion; in other words, he must enter a condition of society in which what is to be recognized as belonging to him must be established lawfully and secured to him by an effective power that is not his own, but an outside power. That is, before anything else, he ought to enter a civil society.³⁰

A general misconception held by some Marxist scholars of Kant's political philosophy is that the justification of the state is grounded solely or essentially on the protection and promotion of the right to private property.³¹ This is simply false. Kant, like Locke, argues that the institution of the state is justified because it protects and promotes all rights, innate or acquired, among which the right to private property plays an important role. But for Kant, as for Locke, the right to liberty is the most important of all rights. The importance of the right to own property is proportional to the extent to which it helps protect and promote freedom.

Yet it is true, as Galvano della Volpe indicates, that there is a great practical inconsistency in Kant's political philosophy. On the one hand, Kant argues that "fitness for voting is a prerequisite of being a citizen"; on the other hand, he maintains a distinction between passive and active citizens, such that only the latter are allowed to vote. The class of passive citizens includes the following:

An apprentice of a merchant or artisan; a servant; a minor; all women . . . the woodcutter . . . , the private tutor, the sharecropper . . . , all are mere underlings of the commonwealth, because they must be under the orders or protection of other individuals. Consequently, they do not possess any civil independence.

He proceeds to argue:

This kind of dependence on the Will of others and the inequality that it involves are by no means incompatible with the freedom and equality that men possess as human beings.

He goes on:

From the fact that, as passive parts of the state, they can still demand that they be treated by others in accordance with the laws of natural freedom and equality it does not follow that they have the right as active members to guide the state, to organize, and to work for the introduction of particular laws; it follows only that, whatever might be the kind of laws

to which the citizens agree, these laws must not be incompatible with the natural laws of freedom and with the equality that accords with this freedom, namely, that everyone be able to work up from this passive status to an active status.³²

Kant's distinction between active and passive citizens, I maintain, is incompatible with the innate right to liberty and with Kant's own defense of legal egalitarianism. If we possess this innate right by virtue of being human and hence rational, then any rational person would possess this right regardless of his or her station in civil society. According to Kant, this right amounts to (1) being independent from the will of others, (2) having the equal right to the reciprocal use of coercion, and (3) possessing positive liberty or the ability to act freely provided one does not infringe other people's rights.

But how can passive citizens be politically free (independent from the will of others) if they are not allowed to participate in the public life of the state and to vote? They cannot be! Because passive citizens have the potential of acquiring private property and thereby the right to vote, it does not follow that they actually possess this right. Della Volpe shows this Kantian inconsistency when he states:

In short, the citizen-labourer, in Kantian terms, is recognized as a citizen with all the rights, *all the human prerogatives of the situation*. He has, too, the independence and dignity and being-an-end-in-onself and possession *also of civil personality*—but only *potentially*, through his chance of "*promotion*" from labourer to bourgeois.

He proceeds:

the labourer-citizen is a chrysalis of a man who develops fully, when he does develop, in the training-ground of class enterprise, that of bourgeois, civil society. . . .³³

This is the case because the possession of private property is, in Kant's view, a necessary condition for being an active citizen and hence politically free. Passive citizens are morally free. They are responsible moral agents who can act according to self-prescribed moral rules regardless of whether they possess property. They are also equal to active citizens as subject to the same sovereign. But this formal equality does not guarantee political equality.

The subject of political equality is a fundamental point of disagreement between Kant and Rousseau. For Rousseau, unlike Kant, all

normal male adult members of a commonwealth are not only equal before the law but also equal in enacting the laws. So they are not only equal as subjects but as citizens as well. All citizens of Rousseau's commonwealth have the right to vote in order to safeguard their political freedom and equality. Therefore, for Rousseau there is only one kind of citizen—the active citizen—regardless of the lack or possession of property. For Rousseau, the right to property is justified by virtue of its beneficial contribution to the stability and well being of society.

From all these considerations it follows that, even though Kant is operating with the concept of the social contract, his formulation of it differs radically from those of Hobbes, Locke, and Rousseau. One important reason is that Kant's concept of the "original" social contract is vitiated by his distinction between *active* and *passive* citizens. He writes, "the legislative authority can be attributed only to the united will of the people,"³⁴ and simultaneously maintains that there is a distinction between active citizens (who participate in the making of laws) and passive citizens (who do not participate in making them but must obey them). He is inconsistent because what he considers the united will of the people amounts in reality to the united will of *some* people, namely the will of active citizens imposed on passive citizens. Moreover, if it is indeed the case, as Kant argues, that "only the united and consenting Will of all—that is, a general united Will of the people by which each decides the same for all and all decide the same for each—can legislate,"³⁵ then he must either give up the dichotomy of active and passive citizens or the idea of a general will. He cannot have both, since the will of which he speaks is not general but particular. For if the general will is a necessary condition for the moral and political justification of laws, then passive citizens need not obey laws enacted by active citizens, since they do not participate in the making of those laws. Kant's legal egalitarianism is only partial because, although everyone is morally and politically bound to obey laws, only active citizens have the right to enact them.

Kant maintains that "this kind of dependence on the Will of others and the inequality that it involves are by no means incompatible with the freedom and equality that men possess as human beings."³⁶ He is referring here to moral freedom and equality, not political freedom and equality, for the kind of dependence that Kant sanctions is contrary to political freedom and equality.

Rousseau's ideas are contrary to Kant's—that everyone must be equally free "to work up from this passive status to an active

status"³⁷—because this kind of freedom and equality confers only a potential right to be an active citizen, and a potential right does not have the force of an actual right. Thus because X has a potential right to be an active citizen, it does not follow that X will become one. It only follows that, given the proper conditions, X might become an active citizen. In Kant's ideal *kingdom of ends*, the dichotomy of active and passive citizens would not exist. In the actual world, however, this dichotomy is a reality, so that Kant's legal or political egalitarianism is only apparent and not real. Consequently, Kant's position cannot be reconciled with Rousseau's political egalitarianism, which recognizes the equality of people not only in obeying but also in enacting laws, regardless of whether they possess property.

Another important difference between Kant's concept of the "original" social contract and those of Hobbes, Locke, and Rousseau is that, for the latter three, the contract is primarily grounded on prudential considerations. People in the state of nature freely choose to enter into a contract in order to protect their rights and possessions. But for Kant, the contract is primarily an *a priori* Idea of pure practical reason. Reason grasps the need to form a state in order to actualize the *universal principle of right* and to help develop people's moral capacities. Kant writes:

The act by means of which the people constitute themselves a state is the original contract. More properly, it is the Idea of that act that alone enables us to conceive of the legitimacy of state. According to the original contract all the people give up their external freedom in order to take it back again immediately as members of a commonwealth, that is, the people regarded as the state. Accordingly, we cannot say that a man has sacrificed in the state a part of his inborn external freedom for some particular purpose; rather, we must say that he has completely abandoned his wild, lawless freedom in order to find his whole freedom again undiminished in a lawful dependency, that is, in a juridical state of society.³⁸

This is similar to Rousseau's position in *The Social Contract*. Rousseau maintains that what an individual loses by entering civil society is "natural liberty and an unlimited right to anything which tempts him . . . what he gains is civil liberty and property" and also "moral freedom, . . . which alone renders man truly master of himself; for the impulse of mere appetite is slavery; while obedience to a self-prescribed law is liberty."³⁹ This is why he argues that "he [man] ought to

be without ceasing the happy moment that released him from it [the state of nature] forever, and transformed him from a stupid and ignorant animal into an intelligent being and a man."³⁹ Thus Howard Williams, in his book *Kant's Political Philosophy*, is misguided when he says:

Kant cannot agree with Rousseau's romantic view of natural man. In marked contrast to Rousseau, he stresses that only when men emerge from their natural or primitive state are they on the path to liberty.⁴⁰

This is precisely what Rousseau maintains. Kant's and Rousseau's position are indeed very similar. Yet it seems that even today some political theorists keep making the same old mistake of identifying Rousseau's political philosophy with a yearning for primitive or natural freedom.

Kant emphatically denies that the contract should be understood as a historical fact. In his essay, "On the Proverb: That May Be True in Theory, But Is of No Practical Use," he explicitly states that the contract should not be "assumed as a fact," but as "a mere idea of reason, one, however, that has indubitable (practical) reality."⁴¹ Thus it is clear that Kant's contract ought to be understood as a hypothetical logical device for the justification of the state. For this reason the contract is a standard by which to judge the nature of states and their laws. David G. Ritchie puts it succinctly when he says, "the conception of contract is a standard by which to judge institutions, not an account of the manner in which they come into existence."⁴²

The citizens of any commonwealth ought to act, according to Kant, "as if" they have consented to abide by such a hypothetical contract. Yet a hypothetical contract is not a real contract, and in reality nothing follows from it. The same can be said of a hypothetical general will and hypothetical consent. The first is not a concrete and real general will, and the latter is not consent at all. From the fact that ideal citizens in an ideal commonwealth (*kingdom of ends*) would consent to certain laws, it does not follow that in reality they would do so. I agree with J. W. Gough when he says:

If the contract has only a pragmatic reality, and is merely a supposition to explain the obligations of citizens and rulers, who are to behave "as if" it were real, we may well wonder whether it is anything but a useless fiction.⁴³

A hypothetical contract would only justify hypothetical obligations, but these are not real obligations. Put another way, real and concrete

obligations cannot be derived from the notion of a hypothetical contract. This would be an unjustified shift from the ideal to the real. Kant, however, does not need to make this move to justify political obligation. He could have grounded it on our moral duties to humanity in general.

Moreover, according to Kant, we have an unconditional duty to enter political society and to obey the sovereign. This is grounded on the claim that the exercise and protection of our innate right to liberty and our rights in general are only possible in a political society where there is a recognized sovereign to adjudicate disputes. The protection of this right is a necessary condition for fulfilling ourselves as responsible moral agents. Otherwise, we would always be under a potential threat of violence, in which case all of our rights, including our innate right to liberty, would be undermined by the preponderance of the right of the stronger. We also have an unconditional duty to obey the sovereign. According to Kant, *tyranny* is preferable to *anarchy* because even under a tyrannical government some common legal rules are recognized. Hence, ideally speaking, we would be able to appeal to these rules to solve our disputes without resorting to violence, whereas under an anarchical state of affairs the actual threat of violence would undermine the development of an ethical and legal community, and consequently the development of our moral capacities. Thus, according to Kant, political obligation is not actually grounded on consent. For him, as well as for Hobbes, the idea of consent is irrelevant to the justification of political obligation. We have an unconditional moral duty (political obligation) to obey the law because we have moral duties to others which can be fulfilled only under a coercive legal system. Hence, we ought to obey the law because any act of disobedience on our part would undermine the legal order and hence the moral order as well. And this, according to Kant, is categorically forbidden.

Kant maintains:

The legislative authority can be attributed only to the united will of the people. . . . Hence, only the united and consenting Will of all—that is, a general united Will of the people by which each decides the same for all and all decide the same for each—can legislate.⁴

Here he is referring to the concepts of the general will and consent as Ideas of pure practical reason, that is, as hypothetical concepts. But, according to him, we should understand the law “*as if*” we had all

consented to it. In reality we must obey the powers that be. This is why he says:

The origin of the supreme authority is, from the practical point of view, not open to scrutiny by the people who are subject to it; that is, the subject should not be overly curious about its origin as though the right of obedience due it were open to doubt.

Moreover, he continues:

that is the meaning of the statement, “All ruling power comes from God,” which is . . . an Idea that expresses the practical principle of reason that one ought to obey the legislative authority that now exists, regardless of its origin.

From this he concludes that “the sovereign in the state has many rights with respect to the subject but no (coercive) duties.” If so, then “there can therefore be no legitimate resistance of the people to the legislative chief of the state.”⁴⁵ Consequently, no matter how tyrannical and unjust a government might be, according to Kant, we never have a moral right to resist it and, least of all, to attempt violently to change it.

Kant, like Hobbes, believes that the concept of the right of rebellion would be a self-contradictory concept. All rights can be exercised, according to him, only within political society or the state, and the supreme authority of the state is the sovereign. If sovereigns were to recognize a right of rebellion on the part of the people, they would be contradicting the nature of their station in society. If somebody other than the sovereign can judge and act against the sovereign, then the latter would not be the ultimate authority in society. Therefore, for Kant, the concept of sovereignty is all-or-nothing; whoever possesses it has the ultimate unchallengeable authority in the state.

Kant rejects Locke’s and Rousseau’s concept of *popular sovereignty*. He agrees with both that sovereignty resides originally with the people, but once it is alienated, it can never return to its origin, namely, the people. He rejects Locke’s notion that government is a “trust” and that whenever the government violates that trust, the people have a right to rebel against it. He also rejects Rousseau’s notion that since sovereignty always resides with the people, and is thus inalienable, the people always have a right to break the social contract provided that all agree. His reason for rejecting both of these positions is that once

we understand sovereignty as an alienable power or authority that a number of people can confer on others, it can never return to the people. If it could the authority of the sovereign would be limited, and by definition this cannot be.

Thus Kant's political philosophy is significantly similar to Hobbes's. One can appreciate this similarity by comparing, as Humberto Cerroni does in his article "La Crisis de la Democracia y El Estado Moderno,"⁴⁶ the four theories Hobbes criticizes in the preface of *De Cive* with Kant's ideas. Hobbes condemns and tries to refute the following theories: (1) "that a tyrant king might lawfully be put to death"; (2) "that a prince for some causes may by some certain men be deposed"; (3) "that kings are not superior to, but administrators for the multitude"; and (4) "that the knowledge whether the commands of kings be just or unjust, belongs to private men; and that before they yield obedience, they not only may, but ought to dispute them!"⁴⁷ Similarly, Kant maintains that: there is no right "to lay hands on or take the life of the chief of state"; that "there is no right to sedition, much less revolution"; that "there can therefore be no legitimate resistance of the people to the legislative chief of the state"; and finally, that "it is the people's duty to endure even the most intolerable abuse of supreme authority."⁴⁸

We must recognize, however, that even though Kant agrees on these points with Hobbes, he disagrees with him on many others. For example, unlike Hobbes, he is a staunch defender of the separation of the powers of government. From this he argues for republican (hence representative) government as the only form of government which corresponds to the Idea of pure practical reason. Moreover, he distinguishes between two kinds of government: "despotic" and "patriotic." In the first there is no separation of powers among the executive, the legislative, and the judiciary. In this government the executive usurps the legislative function. In a patriotic government, on the other hand, the division of powers is strictly enforced and the innate right to freedom is respected.

But a patriotic government must not be confused, Kant says, with a "paternal government"⁴⁹ in which the welfare of the people takes precedence over the citizens' right to freedom. A paternal government is "the most despotic of all, for it treats its citizens as children."⁵⁰ For Kant, a legitimate government is not one which has as its primary goal the welfare of the people, but one which protects and promotes their moral rights and, above all, the innate right to freedom. For this reason he proposes the following principle:

No one can compel me . . . to be happy after his fashion; instead, every person may seek happiness in the way that seems best to him, if only he does not violate the freedom of others to strive toward such similar ends as are compatible with everyone's freedom under a possible universal law.⁵¹

From this Kant concludes that since every person has a conception of the good life, no one may impose a particular conception of the good life on others. This would limit the freedom to pursue one's own concept of a good life and would constitute unjustified coercion.

Rights and justice take precedence over any particular conception of the good, whether defined in terms of pleasure, happiness, or general welfare. Kant implies this in his *Critique of Practical Reason* when he says that "the concept of good and evil must not be determined before the moral law . . . but only after it and by means of it."⁵² The distinction between the *right* and the *good* is, however, problematic for Kant's theory of right because this theory presupposes a particular form of life and hence an implicit theory of the good. For him, the good life is a life of freedom (independence from the will of others); it is an *autonomous* life. It is a life in which people can exercise their natural or innate right to freedom protected by the law. According to Kant, then, it follows that freedom is the highest goal. If this is the case, then the concepts of good and evil cannot be separated from the concept of right or justice. Kant's theory of justice presupposes those concepts because, even though justice can be considered an end in itself, as Kant wants to maintain, it is not the only end. Justice, among other values, is good because it promotes freedom which is, in Kant's view, the highest good.

Moreover, even though Kant wants to draw a radical distinction between his theory of justice and a theory of value, he does not, I believe, succeed because, as I have indicated, his theory of justice precommits him to a theory of value. The good life is an autonomous life in which individuals can enjoy the privileges of private property and the development of a market society. Freedom as autonomy is the highest good in society. Kant is committed to the view that even a miserable, unhappy autonomous life would be preferable to a happy and abundant nonautonomous life. However, it seems perfectly reasonable that people might choose, under certain circumstances, a nonautonomous secure life. Kant has not argued his case convincingly because he has all along assumed, rather than proved, that an autonomous life is preferable to a nonautonomous life.

Kant's claim that an autonomous life is preferable also seems to contradict his other claim that we must unconditionally obey the powers that be. If this is so, then Kant's concept of autonomy is limited to the moral realm. Autonomy, according to him, is a subjective rather than an objective condition. For, as we have seen, he does not sanction political disobedience under any circumstances. But can we really live an autonomous life under a tyrannical and despotic government? Kant seems to believe so, but then his concept of autonomy is trivial and even dangerous with respect to politics. He is committed to the view that even though people living under a tyrannical and despotic government are not politically free, they can still be morally free or autonomous. His claim that *politics must pay homage to morality* thus becomes vacuous.

It is important to distinguish between moral and political autonomy. People are morally free or autonomous, according to Kant, only when they act compatibly with the moral law. On the other hand, people are politically free or autonomous, in Rousseau's sense, only when they are independent of the will of others. A person can be morally free without necessarily being politically free, and vice versa. The members of a society are politically autonomous insofar as they are free from subjection to the will of others, and they are not free insofar as they are subject to the latter. Thus we can conceive of a perfectly tyrannical society in which everyone would enjoy *moral autonomy* but would not be *politically* free. We can argue, in the spirit of Rousseau, that such a society is unjust to the extent that it prevents its members from exercising their political autonomy. However, according to Kant, this is not the case because he subordinates political autonomy to moral autonomy. In doing so, he opens the door for the justification of *tyranny*.

Chapter 6

RAWLS

John Rawls developed his political philosophy in his seminal work, *A Theory of Justice* (1971). However, he expounded and defended some of his original views in five important articles: (1) "Fairness to Goodness" (1975); (2) "A Well-Ordered Society" (1979); (3) "Kantian Constructivism in Moral Theory" (1980); (4) "Justice as Fairness: Political not Metaphysical" (1985); and more recently, (5) "The Priority of Right and Ideas of the Good" (1988). I will refer to all of these works to the extent they shed light on his views in *A Theory of Justice*.

Rawls is the last major contractarian to present an alternative to utilitarian political philosophies. Rawls contends that his aim is "to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found . . . in Locke, Rousseau and Kant."¹ Unlike Locke, Rousseau, and Kant, Rawls uses the concept of *the original position* rather than the concept of *the state of nature* to develop his political theory. He uses the idea of the original position to justify the adoption of egalitarian and nonperfectionist principles of justice that would be accepted by "free and rational persons concerned to further their own interests . . . in an initial position of equality."² Rawls calls this *justice as fairness*.

According to Rawls, the original position is a hypothetical situation in which individuals located in a particular society would be required to take the position of an *ideal impartial contractor* in order to choose the ideal principles of justice that ought to apply to them. To prevent these impartial contractors from contaminating their original position

with their own selfish considerations (a potential source of conflict among them), Rawls proposes that "the parties are situated behind a veil of ignorance."³

Rawls uses the terminology of the original position rather than the state of nature because he wants, among other things, to avoid the presence of individual interests in order to ensure that the principles chosen in the original position would be just or fair. But the absence of individual interests is not sufficient to guarantee that the principles chosen in such a position would be fair. The fairness of these principles would depend on something else, and whether Rawls presents good reasons for this remains to be seen.

The concept of the *veil of ignorance* is used by Rawls to guarantee that the principles chosen in the original position would be fair and hence valid for everyone situated in this position. To make this outcome possible, Rawls makes certain substantive assumptions: among them that the persons involved do not know their position in society, their natural talents, or their conception of the good. They do not know their particular psychological conditions or the stage of development of their society. But they do know certain general features about their society: they understand politics, principles of economics, and social and psychological principles.⁴ Rawls also assumes that the parties in the original position are rational self-interested individuals who are nonenvious and nonaltruistic.⁵ Whether ignorance of one's personal talents and position in society would in fact provide sufficient grounds for choosing rational principles of justice (principles that would be chosen by any moral agent situated in the same original position behind the same veil of ignorance) is debatable. This would ultimately depend on how Rawls characterizes his concept of *rationality* and whether his characterization is acceptable.

It should be kept in mind that the relationship between Rawls's "veil of ignorance" and his principles of justice is deductive. According to him, "we should strive for a kind of moral geometry."⁶ This, of course, does not mean that we will be able to achieve such precision; it is simply an ideal. Rawls is aware of these limitations and thus appeals to our intuitions to derive his principles of justice. He recognizes that there are a multiplicity of possible interpretations of the original position and that each of them will lead to a different set of principles. Nonetheless, Rawls is confident that by a process of "reflective equilibrium"⁷ (designing the original position so that it would be congruent with our common moral principles), we could arrive at his two principles of justice or something very similar to them. These

principles are used to judge the nature of basic political, economic, and social institutions in society rather than particular actions or policies. "The primary subject of justice is the basic structure of society, or more exactly, the way in which major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation."⁸

The essential question in Rawls's political theory is: Which principles of justice would ideal contractors choose behind the veil of ignorance to govern the basic institutions of society? According to Rawls, they would choose these two principles:

First Principle: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle: Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, [the difference principle] consistent with the just savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity.⁹

He contends that his principles of justice should be arranged in "lexical order." Rawls, echoing Kant, argues for "the Priority of Liberty . . . liberty can be restricted only for the sake of liberty."¹⁰ Consequently, the first principle takes precedence over the second (provided that a certain degree of economic development has been achieved). Moreover, the second part of the second principle takes precedence over the first part. The lexical order of these principles constitutes, Rawls argues, an advantage over pure intuitionism (which maintains that in dealing with substantive issues no general priority rules apply to the diversity of concrete human situations). It also constitutes an advantage over utilitarianism because the basic rights and liberties of individuals cannot be overridden by considerations of social utility.

The two principles of justice are supported by one of Rawls's basic intuitions. This he calls the "General Conception" of justice:

All social primary goods—liberty and opportunity, income and wealth and the basis of self-respect—are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored.¹¹

This general conception of justice might appear deficient because it fails to recognize the lexical order of the first and second principles of justice, and gives the impression that Rawls would be willing to trade off basic liberties for the social and economic improvement of the disadvantaged members of society. This, however, is not the case. According to Rawls, basic liberties can be curtailed only to expand the total system of equal liberties shared by all.¹² The general conception of justice is to be used only when a particular society has not reached a certain degree of social and economic development.

In order to understand how the two principles of justice are related to one another, and why the first principle takes precedence over the second, we need to understand Rawls's theory of primary goods and his *thin theory* of the good. He writes:

"Primary goods . . . are things which it is supposed a rational man wants whatever else he wants. Regardless of what an individual's rational plans are in detail, it is assumed that there are various things which he would prefer more of rather than less."¹³

He divides primary goods into: (1) primary social goods such as rights and liberties, opportunities and powers, income and wealth, and, above all, self-respect;¹⁴ and (2) natural primary goods such as health, vigor, and intelligence. The latter, unlike the former, are not subject to the regulations of the two principles of justice. It is assumed that the people in the original position want to acquire and preserve as much of the primary goods as possible, since these are necessary conditions for fulfilling their different wants and goals in society. The problem, as Brian Barry contends, is that the people in the original position "do not know what it is in particular that they want."¹⁵ In order to solve this puzzle, Rawls proposes what he calls the *thin theory* of the good. This is a thin theory rather than a substantive theory of the good because, like Kant, he wants to make a distinction between *the right* and *the good*. In his later works, however, he admits that such concepts are complementary.¹⁶ Furthermore, Rawls wants to show that the right takes precedence over the good. Rawls also makes the parties in the original position ignorant of their particular conception of the good in order to avoid conflicts of interest leading to perfectionism: the ranking of values according to a criterion or a set of criteria which would prefer and promote some values over others. Whether he can indeed circumvent perfectionism is doubtful.

Rawls, to avoid perfectionist considerations, posits that the parties in the original position are assumed to be rational. As he puts it:

a rational person is thought to have a coherent set of preferences between the options open to him. He ranks these options according to how well they further his purposes; he follows the plan which will satisfy more of his desires rather than less, and which has the greater chance of being successfully executed.¹⁷

Moreover, a person's good "is determined by the plan of life that he [or she] would adopt with full deliberative rationality."¹⁸ By "deliberative rationality," Rawls means the ability to balance the pros and cons of a particular life-plan in the light of relevant facts.¹⁹ So a person's good consists in "the successful execution of a rational plan."²⁰ It is important to notice that "goodness as rationality" does not tell us anything about the ends or goals that different individuals may pursue. One of the advantages of Rawls's theory is precisely that people are free to pursue any preferred way of life so long as they do not violate the principles of justice.

As I have indicated, a person's good, according to Rawls, consists in "the successful execution of a rational plan of life." But, as Brian Barry rightly points out, this amounts to the claim that a person's good consists in the maximum satisfaction of his wants.²¹ Yet the ideal contractors in Rawls's original position do not know anything about their particular wants or goals. Consequently, they also do not know the means to achieve them. These ideal contractors have different wants. What is common among all of them is that they are operating with the concept of "goodness as rationality." Thus rationality, as understood by Rawls, is going to provide the common denominator to help them satisfy their different wants. But Rawls's concept of rationality is sufficient neither to differentiate among the items of his list of primary goods nor to rank them.

Rawls tries to circumvent the problem of ranking primary goods by assuming rather than justifying the lexical order of his two principles of justice. His first principle emphasizes the priority of liberty over social and economic considerations. Rawls does not specify the "system of equal basic liberties" precisely, but he indicates that it includes "political liberty (the right to vote and to be eligible for public office), together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law."²² The people in the original position choose these basic liberties equally for all, and they also agree not to sacrifice these liberties for any gain in income, wealth, or power.

What is "distinctive" about Rawls, as Brian Barry indicates, is that he "plays down" the importance of "wealth" and "power" in favor of civil and political rights.²³ Apparently, Rawls disregards the pervasive connection of the primary goods of wealth and power with the primary good of *self-respect*. That the excessive accumulation of wealth and power could actually undermine self-respect among individuals and promote inequality of opportunities in society is something that Rawls does not consider in depth. But he does argue that social and economic inequalities are acceptable only if they benefit the least advantaged members of society and are compatible with the first principle of justice. This seems to be one of the reasons Rawls defends the view that formal or pure procedural justice would result by adopting his two principles of justice. He is confident that this would promote equal self-respect among the members of society.

But this is a dubious assumption, to say the least. Can we accomplish, as Rawls claims to have done, a harmonious lexical ordering of the first and second principles of justice without having to trade off civil and political liberties for other important values? To put it differently, given a certain level of economic development in society, is it really the case that by strictly observing the lexical order of both principles of justice we are going to achieve and promote equal self-respect among the members of society?

According to Rawls, self-respect is "perhaps the most important primary good."²⁴ He defines "self-respect" as the sense that a person's plan is "worth carrying out" and the recognition as such by the other members of society.²⁵ In order to answer the previous question, one needs to be clear about Rawls's concept of self-respect. If freedom is the absence of external constraints, then freedom is necessary although not sufficient for achieving self-respect. Rawls is aware of the necessary connection between freedom and self-respect, and analyzes the former as a three-part relation.²⁶ In this view, "this or that person (or persons) is free (or not free) from this or that constraint (or set of constraints) to do (or not to do) so and so."²⁷ Moreover, even though Rawls recognizes that there are many different types of constraints and constraining circumstances, he is more concerned with defining liberty in terms of legal and constitutional restrictions.²⁸ According to Rawls, "[l]iberty is a certain structure of institutions, a certain system of public rules defining rights and duties."²⁹ Once we accept that the concept of freedom is necessarily related to different types of constraints, we cannot avoid questions pertaining to economic and social

structures which condition our freedom by expanding or contracting the realm of our possible actions in society.³⁰

Rawls is aware of the tension that exists between formal or "negative freedom" (freedom from) and social or "positive freedom" (freedom to), and wants to circumvent this tension by introducing a distinction between *liberty* and *the worth of liberty* which is similar to Berlin's distinction between "liberty" and the "conditions of liberty."³¹ Rawls contends:

Freedom as equal liberty is the same for all; the question of compensating for a lesser than equal liberty does not arise. But the worth of liberty is not the same for everyone. Some have greater authority and wealth, and therefore greater means to achieve their aims.³²

Nonetheless, inequalities in the worth of liberty are justified by the *difference principle*—if "the capacity of the less fortunate members of society to achieve their aims would be even less were they not to accept [them]."³³

We know that there is a causal connection between being wealthy and being able to satisfy a diversity of wants, being in a position of power and being able to get other people to do what one wants. Yet more important is the causal connection between wealth and power. Given certain conditions, inequalities of wealth can definitely contribute to great unjustified inequalities of power. Thus it would be irrational (rationality understood in the Rawlsian spirit as the maximization of wants or accomplishment of goals through the most effective means) to achieve them) for the people in the *original position* to accept Rawls's distinction between liberty and the worth of liberty, and to choose the formal protection of the former at the expense of the latter. As Norman Daniels puts it, "equal liberty without equal worth of liberty is a worthless abstraction."³⁴ In short, what good would abstract equal liberty be if the capacities that are needed and the necessary material conditions to exercise it are absent, or if they differ proportionally with the possession of wealth and power?

Rawls thinks that if civil and political liberties were equally recognized, and offices and positions equally available on fair grounds to all, the resulting state would contribute to an equal recognition of self-respect among the parties in the original position. Even though we are entitled to the same civil and political liberties and the exercise of them, the accomplishment of important goals in life would depend largely on other factors, among which, for example, wealth and power

play essential roles. Moreover, since our self-respect would be conditioned in large measure by our abilities and capacities to accomplish important goals in life, and since the possession or absence of wealth and power can make a positive or negative contribution in accomplishing such goals, it follows that our self-respect would be proportionally affected by the amount of wealth and power that we possess in society. Consequently, if one values self-respect, the tension between Rawls's first and second principles of justice cannot be easily circumvented by appealing to the distinction between *liberty* and the *worth of liberty*. One may, however, choose to argue, as Rawls seems willing to do, that once we reach a certain level of economic development, then civil and political rights are not only necessary conditions for achieving important goals in life but the main vehicle for achieving such goals.

The important question Rawls is faced with is: Why choose liberty over other important values? In order to understand the priority of liberty in Rawls's political theory, we need also to understand his "Kantian Interpretation" and its relationship to his concept of a well-ordered society. In "A Well-Ordered Society," Rawls claims that a society is well-ordered, if

- (1) it is regulated by a public conception of justice
- (2) social institutions satisfy the principles of justice
- (3) these principles are reasonable
- (4) the members of this society view themselves as free and equal moral persons
- (5) it is assumed that they have a right to equal respect and consideration
- (6) they make claims on each other in order to realize their different concepts of the good
- (7) they can revise their conception of the good
- (8) this is a stable society relative to its conception of justice.³⁵

It is interesting to note that Rawls's portrait of a well-ordered society already commits him to a substantive theory of the good, where the priority of liberty and the right to equal respect and consideration play important and necessary roles.

Rawls defends the priority of liberty partially on the ground that different liberties provide the necessary conditions for achieving important goals and also help to protect important interests.

In regard to liberty, recall that people in a well-ordered society view themselves as having fundamental aims and interests which they must protect, if this is possible.³⁶

These interests include "religious interests, the interest in the integrity of the person, freedom from psychological oppression and from physical assault and dismemberment."³⁷ The priority of liberty is tied to the concept of a well-ordered society in the sense that the latter is "an extension of religious toleration."³⁸ In short, the first principle provides the basis for choosing or adopting any particular religious view so long as such a view is compatible with religious toleration. This being the case, *intolerant* religious views are not allowed to flourish. One more reason for accepting the first principle is that persons "do not think of themselves as unavoidably tied to any particular array of fundamental interests; instead they view themselves as capable of revising and changing these final ends."³⁹ Rawls thinks that since we do not have an unalterably fixed set of goals and interests, we ought to be free to change and revise them whenever we choose to do so, so long as such goals and interests are compatible with his two principles of justice and with the concept of a well-ordered society.

This attitude could undermine the nonconditional character of Rawls's principles of justice. If people in the original position believe that they might revise and probably even change their beliefs, interests, goals, and values in life, it would be unreasonable for them unambiguously and unconditionally to accept Rawls's principles of justice. The most that could be expected from the people in the *original position* would be that they would accept these principles provided that Rawls's assumptions about a well-ordered society would remain the same. Once any of Rawls's basic assumptions are challenged, it seems the Rawlsian edifice will inevitably collapse.

According to Rawls, one should consider the concept of a well-ordered society "as an interpretation of the idea of the kingdom of ends thought of as a human society under circumstances of justice."⁴⁰ The idea of justice adequate for a well-ordered society is "one that would be agreed to in a hypothetical situation that is fair between individuals conceived as free and equal moral persons."⁴¹ Rawls thinks that "fairness of the circumstances under which agreement is reached transfers to the fairness of the principles agreed to."⁴² This is only a hope, I contend, because from the fact that we are situated in a position that can be characterized as fair, it does not follow that the principles we agree to in such a position would necessarily be fair. The connection between the fairness of the original position and the fairness of the principles of justice chosen is contingent rather than necessary. And to argue, as Rawls does, that no moral facts exist prior

to the adoption of his principles of justice⁴³ is simply to beg the question.

Rawls contends that the veil of ignorance in the original position provides the ground for a Kantian interpretation of negative freedom. For Kant, negative freedom means "independence from determination by sensible impulses."⁴⁴ The parties situated in the original position are free in this negative Kantian sense, since, because they choose the principles of justice behind a veil of ignorance, the principles are chosen on rational considerations rather than on empirical information. The act of choosing the principles of justice would constitute what Kant considered to be positive freedom, "the capacity of pure reason to be of itself practical,"⁴⁵ or the capacity to act according to universal moral laws. In Kant's case this amounts to the capacity of a moral agent to act according to the categorical imperative: "Act only according to that maxim by which you can at the same time will that it should become a universal law."⁴⁶ According to Rawls, his two principles of justice should be interpreted as Kantian categorical imperatives. Leaving aside whether this is a fair interpretation of Kant, and I think it is not (as Thomas Nagel has indicated),⁴⁷ I want to argue that once Rawls accepts Kant's concept of negative freedom he is also committed, although Rawls denies it,⁴⁸ to Kant's controversial dichotomy of the person as both a *noumenal* and a *phenomenal* self. According to Kant, we as human beings (phenomenal beings) are not free because we are subject to the laws of nature; thus our actions are conditioned by our desires. However, as rational beings (noumenal beings), we are essentially free (in the negative as well as in the positive Kantian sense) because our actions ought to be determined by reason alone. This is why Kant makes a distinction between freedom of choice [*Willkur*] and practical reason [*Wille*]; or what I call the empirical concept of freedom—the ability to choose this rather than that; and the pure concept of freedom—the ability to act according to self-prescribed laws. Moreover, this distinction presupposes a more generic distinction between two different concepts of reason: the Humean concept of reason, or reason as "the slave of the passions"⁴⁹ (passive reason), and the pure concept of reason, or reason as the perception of order (practical reason).

If this is correct, then Rawls's political philosophy suffers from a Kantian formalism.⁵⁰ From the fact that we as noumenal selves (situated behind a veil of ignorance) would choose Rawls's principles of justice, it does not follow that we as phenomenal selves, as actual human beings, would choose these principles. The formalism that one

finds in Kant's ethics and politics surfaces again in Rawls's political philosophy. In this pejorative sense Rawls's theory is undeniably Kantian, but I agree with Rawls that his theory is also Kantian in a positive sense: Rawls, like Kant, recognizes the priority of liberty and a right to equal respect and consideration. This is found in the second formulation of Kant's categorical imperative, "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only."⁵¹

However, Rawls is not Kantian in his theory of political obligation. He grounds political obligation on his principles of justice. According to him, people are obliged to obey X (a particular government) only if and so long as X's structures are just. According to Kant, however, we are unconditionally obliged to obey the powers that be; so that for him, as for Hobbes, tyranny is preferable to anarchy.⁵² This is so, he argues, because under a tyrannical government, we can at least still act according to some moral principles, whereas in an anarchical state of affairs all moral rules cease.

Besides considering the principles of justice that apply only to the basic structure of society, Rawls, in order to develop a general theory of political obligation, also considers principles that apply to individuals. People in the original position choose first the general principles of justice that are going to govern the basic structures of society and then proceed to choose the principles that apply to individuals. One of the reasons for following this sequence, Rawls argues, is that individual principles of obligation presupposes "principles for social forms."⁵³ Thus, when needed, we can appeal to these principles in order to settle individual cases.

Rawls presents two arguments to develop his general theory of obligation. First, he uses "the principle of fairness" to account for obligations in general. These obligations, contrary to *natural duties*, are derived from the voluntary acts of particular individuals. This principle holds that

a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests. The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these

restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission. We are not to gain from the cooperative labors of others without doing our fair share.⁵⁴

The concept of "fair share" will be defined, according to Rawls, by the two principles of justice.

There are three important conditions involved in Rawls's general account of obligation. In a rule-governed institution or enterprise a person is morally obliged to do X (his or her fair share) if and only if (1) the institution or enterprise is just (compatible with his two principles of justice), (2) the person voluntarily accepts it, and (3) the person has benefited from it. Obligations, according to Rawls, differ from other moral requirements in several respects: (1) they arise as a result of a voluntary activity, such as promises, agreements, and acceptance of benefits; (2) they are specific; and (3) they are owed to specific individuals. A good example is being the president of the United States. To hold this public office is to have certain official duties. Consequently, the person who holds this office has an obligation to fulfill such official duties, provided that the three conditions are met. This is a good example of an acquired obligation by the principle of fair play.

Yet Rawls is well aware that there are two types of obligations that are difficult to handle, namely *political obligation* and *obligation to keep promises*. Of these two, the first is the more important for a general theory of political obligation. However, according to Rawls, there is no such thing: "There is, I believe, no political obligation, strictly speaking, for citizens generally."⁵⁵

The reason for accepting the above conclusion is that very few people would be bound by the principle of fair play, since for this principle to have moral force people, when involved in particular enterprises, must intentionally and voluntarily accept their benefits. Rawls contends:

Citizens would not be bound to even a just constitution unless they have accepted and intend to continue to accept its benefits. Moreover this acceptance must be in some appropriate sense voluntary. But what is this sense? It is difficult to find a plausible account in the case of the political system into which we are born and begin our lives.⁵⁶

Although Rawls maintains that there is no general political obligation *per se*, he also recognizes that there are various *natural duties*, for

example, the positive natural duty of beneficence and the negative duty not to harm others. There is nothing voluntary about these duties. They are called natural precisely because they apply to us regardless of our voluntary acts.⁵⁷ They also apply to persons as persons rather than as individuals who occupy a particular station in society. Natural duties, unlike obligations, are owed to all persons.⁵⁸

At this point Rawls is faced with a dilemma. He must either agree that, as citizens, we do not have any general political obligation and hence are at liberty to obey or disobey the laws and rules promulgated by the government and its institutions, or he must appeal to one or more basic natural duties to legitimize the government and its respective institutions, thereby recognizing moral bonds between the citizens and these institutions.

Rawls makes his choice. In order to justify obedience to the state and its institutions, Rawls appeals to the *natural duty of justice*. This duty binds everyone involved in a political society to support and enhance just institutions. This duty, he argues, has two parts:

first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves. It follows that if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do what is required of him. Each is bound irrespective of his voluntary acts, performative or otherwise.⁵⁹

Consequently, when a society is just or nearly just, there is a *natural duty* of all citizens to support it. Moreover, if there is an absence of just institutions, all citizens ought to try to promote them. I understand this to assume that some sort of democracy exists so that the members of society can shape, to a certain extent, these institutions.

Two immediate objections come to mind. Does it follow from this general account of natural duty that one ought to comply with whatever rule or law the just political institution prescribes? The answer is clear. From the fact that an institution is just, it does not follow that all rules emanating from it would also be just. We, as persons, have a weightier obligation of conscience (what I call a natural obligation of conscience) to try always to do what is right. Thus it is not clear that when the natural duty of justice conflicts with other natural duties or obligations, the former would always prevail over the latter.

There are at least two ways in which obedience can be *morally*

justified rather than being imposed by brute force. One is by appealing to utilitarian considerations; that is, by always acting according to the natural duty of justice we would in the long run actually promote a greater balance of good over evil. This alternative, however, is not open to Rawls because he emphatically rejects utilitarianism. In fact, even a utilitarian would have a hard time trying to justify the principle of utility. But Rawls can argue, in a Kantian spirit, that the duty of justice is more important than other natural duties and obligations, since without the former the citizens may return to a state of nature or anarchy in which concepts of justice would be useless. On the other hand, concepts of justice might not be as important as Rawls wants to argue. Even if we have a natural duty to promote just institutions, it does not follow that this is our weightiest obligation. Conflicts of duties and obligations are unavoidable, and it is not clear which would prevail.

In "The Priority of Right and Ideas of the Good," Rawls tries to answer some of his critics. He makes a distinction between *political liberalism*, on the one hand, and *comprehensive liberalism*, on the other. The main reason for such a distinction is to make sure that his theory of *justice as fairness* is interpreted as a purely political theory rather than as a general moral theory. By political liberalism Rawls means:

the view that under the reasonably favorable conditions that make constitutional democracy possible, political institutions satisfying the principles of a liberal conception of justice realize political values and ideals that normally outweigh whatever other values oppose them.⁶⁰

Justice as fairness designates a species of political liberalism. On the other hand, *comprehensive liberalism* may be understood as broader in scope than *political liberalism*, since it does not make a distinction, as political liberalism attempts to do, between the political realm and the moral realm. Thus the main distinction between the two species of liberalism is that political liberalism is narrowly conceived to be concerned only with so-called political values, and how such values interact in the political realm. On the other hand, comprehensive liberalism is not simply concerned with political values but with general moral values as well. The difference between the two species of liberalism, moreover, is not only in scope but also in kind. These two forms of liberalism do not depend upon each other. Thus you may accept one form without necessarily accepting the other.

Rawls is trying to overcome two main objections: (1) that the priority

of right implies that "a liberal political conception of justice cannot use any ideas of the good except those that are purely instrumental"; and (2) "that if it uses noninstrumental ideas of the good, they must be viewed as a matter of individual choice, in which case the political conception as a whole is arbitrarily biased in favor of individualism."⁶¹

Rawls specifies what the priority of right means by presenting five ideas of the good that are present in *justice as fairness*:

- (1) the idea of goodness as rationality,
- (2) the idea of primary goods,
- (3) the idea of permissible comprehensive conceptions of the good,
- (4) the idea of the political virtues, and
- (5) the idea of the good of a well-ordered (political) society.⁶²

The priority of right "implies that the principles of (political) justice set limits to permissible ways of life."⁶³ If this is so, then ways of life that are in conflict with Rawls's principles of justice are impermissible. In this sense the *right* and the *good* are "complementary," so that "justice draws the limit, the good shows the point."⁶⁴

Rawls is operating with a generic distinction between a "political conception of justice" and a "comprehensive, religious, philosophical, or moral doctrine." What distinguishes one from the other, he contends, is that a political conception is:

first, a moral conception worked out for . . . the basic structure of a constitutional democratic regime; second, that accepting the political conception does not presuppose accepting any particular comprehensive religious, philosophical, or moral doctrine . . . ; and third, that it is formulated not in terms of any comprehensive doctrine but in terms of certain fundamental intuitive ideas viewed as latent in the political culture of a democratic society.⁶⁵

On the other hand, a "comprehensive" conception applies not only to the political realm but to other realms as well, such as religious, philosophical, or moral realms. Thus Rawls is committed to the view that there are degrees of *comprehensiveness*. "A doctrine is fully comprehensive when it covers all recognized values and virtues." But a doctrine is also "partially comprehensive when it comprises certain (but not all) nonpolitical values and virtues."⁶⁶

Political liberalism, Rawls contends, "must" draw from various ideas of the good. Otherwise his liberalism would have no bite and thereby would be purely formal. Any substantive political theory must

always appeal to some idea(s) of the good (e.g., liberty, equality, fairness, toleration, desert, self-realization, etc.) in order to present practical guidelines to those who espouse it. Rawls is well aware of this; hence his emphasis that the "right and the good are complementary." However, political liberalism restricts the realm of what is conceived as the politically good by espousing only political ideas or values rather than general religious, philosophical, or moral values. These political values are "(1) shared by citizens regarded as free and equal; and (2) they do not presuppose any particular fully (or partially) comprehensive doctrine."⁶⁷

Rawls's second restriction is problematic, since it is grounded on a controversial assumption. He assumes rather than proves that there is a clear boundary between *politics* and *morality*, so that the former is (or can be made to be) independent of the latter. Accordingly, Rawls argues that the priority of right means that "admissible ideas of the good must respect the limits of, and serve a role within, the political conception."⁶⁸ From this it follows that in Rawls's political theory, one accepts only those ideas of the good that are compatible with and contribute to the realization of his two principles of justice.

I find two major problems with Rawls's newly reformulated political liberalism. First, he clearly states that such liberalism is concerned solely with political values rather than with general religious, philosophical, or moral values. The problem with this position is precisely that the concept of "political values" itself is a contestable concept. Who or what is going to determine the boundary of the political realm? Would such a realm be determined, as Rawls seems to suggest, by the interaction between moral agents and the way that basic social institutions distribute fundamental rights and duties? This, to say the least, seems to be a narrow understanding of both political values and political justice. How, assuming Rawls's conception of political justice, can one deal with pressing *political* problems, such as those affecting the environment? Or the moral but also political problems presented by the animal liberation movement? Are we prepared to ascribe fundamental moral and legal rights to all animals? Indeed, this is not only a moral question well within the boundaries of a "comprehensive" moral theory, but also an important political question. The same thing can be said about the environmental rights of indigenous populations or of political relations among nations.

Since one's political theory cannot be expected to solve all possible political conflicts, I do not want to press the above objection too hard on Rawls. He is aware of these limitations when, in "Kantian Con-

structivism in Moral Theory," he states that he is "leaving aside two important matters: questions of justice between societies (the law of nations), and our relations to the order of nature and to other living things."⁶⁹ Yet when philosophers try to circumvent major objections by restricting the scope of their theory, the burden of proof is on their shoulders to explain why one should adopt their approach rather than a more comprehensive view of political justice—one that would apply not only to the relationship among persons and the basic structures of society but to their relationship with the environment and other nations as well.

My second objection, although related to the first, is more important. Rawls argues that political liberalism does not "presuppose any particular fully (or partially) comprehensive doctrine." Nonetheless, I contend that even though his liberalism does not necessarily commit him to a "fully" comprehensive moral doctrine, it does commit him to a "partially" comprehensive one that includes some important nonpolitical values. It is interesting to observe that in "Kantian Constructivism in Moral Theory" Rawls, while arguing that his theory is basically Kantian, defends an essentially Hobbesian position. In the spirit of Hobbes, he contends that before the adoption of his principles of justice, there are no moral facts, so that moral concepts are useless prior to the unanimous agreement to abide by such principles. As he puts it:

Apart from the procedure of constructing the principles of justice, there are no moral facts. Whether certain facts are to be recognized as reasons of right and justice, or how much they are to count, can be ascertained only from within the constructive procedure, that is, from the undertakings of rational agents of construction when suitably represented as free and equal moral persons.⁷⁰

My argument against such a Hobbesian view is that any substantive political theory is parasitic upon an explicit or implicit moral theory, so that the latter justifies the former rather than the opposite. We can see this when we reformulate the old Socratic question, *Is political justice desirable because it is morally right, or is it morally right because it is desirable?* The answer is clear. We should accept the first horn of this dilemma because what justifies the adoption of a political theory is the moral values it promotes. Unlike Rawls, once we accept that political and moral values are necessarily related, so that what justifies their adoption as political values is their desirability as moral

values, then we can proceed to argue that their desirability as moral values is contingent upon their contribution to our fulfillment as persons or moral agents.

Rawls insists that by positing his idea of "goodness as rationality" together with his "thin theory of the good," which I have already argued is not so thin, he is able to circumvent perfectionism. If that is so, then he believes he can present a "neutral" political conception of justice as fairness. But justice as fairness is neutral only relative to comprehensive doctrines that are compatible with it. Rawls argues that a political conception of justice (justice as fairness) presupposes "goodness as rationality." Moreover, such a conception must count human life and the fulfillment of basic needs as primary goods (important political values). A democratic pluralistic political theory, like Rawls's, assumes that citizens of a democratic society want more rather than less of such political values. If the state, Rawls argues, were to advance anyone "comprehensive" religious, philosophical, or moral view over others, it would acquire a "sectarian character." Consequently, those who disagree with such a particular comprehensive view would also disagree with the state and therefore would not be loyal to it. Thus political liberalism, according to Rawls, achieves an ideal overlapping consensus among ideal contractors in a hypothetical situation by accepting only those political values that are congruent with a democratic pluralistic state.

Political liberalism, Rawls maintains, "looks for an idea of rational advantage within a political conception that is independent of any particular comprehensive doctrine and hence may be the focus of an overlapping consensus."⁷¹ One can agree with Rawls that a person who accepts his fundamental assumptions about justice as fairness would also accept his political liberalism. But once we see, as I have tried to point out, that Rawls's political liberalism is only *partially* comprehensive, the fundamental question is: How can we, assuming a partially comprehensive theory, in which the priority of certain political values takes precedence over other values, achieve an "overlapping consensus" about the recognition and ranking of such values? Rawls acknowledges that if a political theory is *fully* or *partially* comprehensive, then it would "defeat the aim of achieving an overlapping consensus given the fact of pluralism."⁷²

Rawls argues that part of the desirability (and thus justification) of his political liberalism is precisely that it avoids appealing to nonpolitical values to explain his concept of "rational advantage." Assuming the desirability of pluralism, this would allow for an overlapping

consensus on matters political. Thus Rawls's liberalism is neutral in regard to different comprehensive doctrines so long as the latter are compatible with his principles of justice as fairness. Yet he acknowledges that such neutrality is not impartial among different comprehensive views. Rawls's theory is neutral because "it seeks common ground . . . given the fact of pluralism."⁷³ Such "neutral ground" is the assumption of an overlapping consensus among free and equal persons who agree with Rawls's principles of justice.

Rawls distinguishes between three different types of neutrality: (1) *procedural neutrality*, (2) *neutrality of aim*, and (3) *neutrality of effect*:

- (1) that the state is to ensure for all citizens equal opportunity to advance any conception of the good they freely affirm;
- (2) that the state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another . . . ;
- (3) that the state is not to do anything that makes it more likely that individuals will accept any particular conception rather than another.⁷⁴

According to him, (1) procedural neutrality can be integrated into his liberalism by modifying it so that it would include only those comprehensive doctrines that are in fact compatible with his principles of justice. In this sense Rawls's political theory is fair to different individuals upholding competing comprehensive doctrines, since it does not favor any one of these doctrines in particular. Next, (2) neutrality of aim is satisfied as a matter of definition. Nonetheless, something important is missing here. Rawls argues that his democratic pluralistic state should not promote any comprehensive doctrine, but what about "partially" comprehensive doctrines? If he is indeed leaving out of consideration *all* comprehensive doctrines, then he is undermining his own position, since, as I have argued, his is partially comprehensive.

Rawls's liberalism does not need to satisfy (3) neutrality of effect because even in a democratic pluralistic state, if it is a real rather than an ideal democracy, some political virtues—such as "civility and tolerance, reasonableness and the sense of fairness"⁷⁵—should be promoted over others. By admitting these so-called political virtues in his political theory, I maintain that Rawls is introducing perfectionism through the back door. He does this because these political virtues are primarily *moral* virtues and therefore grounded on at least a "partially" comprehensive moral theory. Otherwise, such virtues could not be morally justified. If, on the other hand, one prefers to argue, as

Rawls seems to do, that their political desirability is independent of their moral desirability, then their value would be purely instrumental (as the most effective way to bring about Rawls's liberalism). But this would have to be proved rather than assumed. Moreover, the fact that one prefers these political virtues over other values makes Rawls's theory perfectionist, since it is promoting political "autonomy" over other political and moral values. To say, as Rawls maintains, that his liberalism is preferable to that of Kant and John Stuart Mill because his, unlike theirs, does not promote "autonomy" and "individuality" in society at large is not sufficient to avoid perfectionism. To do so Rawls would have to establish that individuals in the hypothetical original position would achieve an overlapping consensus in adopting not only his list of primary goods but his list of political virtues as well. This move is highly suspect, since Rawls's so-called political virtues and his list of primary goods already commit him to a "partially" comprehensive moral view in which political "autonomy" plays a leading role. However, he has already admitted that if a theory is "partially" comprehensive, then an overlapping consensus is ruled out. But, as I have argued, his theory is in fact "partially" comprehensive. Therefore, an overlapping consensus is improbable to say the least.

Let us assume, for the sake of argument, that people who espouse different comprehensive moral views but who, nonetheless, value political autonomy highly, as Rawls does, agree that among them the most reasonable conception of justice is Rawls's conception (justice as fairness). Even assuming that the problem of a unanimous agreement in the original position is solved (and this is a substantive assumption), one still faces another major objection, namely, that the justification of such a choice is circular. Rawls's argument is as follows: A political conception of justice (justice as fairness) presupposes "goodness as rationality" (the most effective means to achieve one's particular aims or goals). Such a conception must count human life and the fulfillment of primary goods as desirable. Justice as fairness is desirable or reasonable because, given our different sets of comprehensive values, such a conception is fair (neutral) between persons upholding those values. Political liberalism (democratic pluralism) is desirable or reasonable, Rawls continues, because it is compatible with justice as fairness. If political liberalism were to promote anyone comprehensive religious, philosophical, or moral values over others, it would give a "sectarian character" to the state. If that were to happen, then, the argument proceeds, it would be unreasonable for those who do not

accept the comprehensive view to accept such a state of affairs. Therefore, political liberalism achieves an "overlapping consensus" among ideal contractors by accepting only those political, religious, and moral values that are congruent with justice as fairness.

In short, political liberalism is desirable or reasonable since it is neutral among different conceptions of the good and therefore fair to persons upholding them, as long as such conceptions are compatible with political liberalism. Thus we have come full circle. The desirability of political liberalism is contingent upon its so-called *neutrality* and, similarly, such neutrality is contingent upon the desirability and compatibility of comprehensive values with political liberalism.

One of the problems with Rawls's political philosophy is precisely that, by espousing his so-called political liberalism, he is already committed to what needs to be proved in the first place. By appealing to the internal coherence of his political theory, Rawls is ignoring the justification of his own position. Why should one adopt Rawls's political liberalism in the first place? Why choose his liberalism rather than other kinds of liberalism, say Mill's or Kant's? But more importantly, why choose liberalism at all over other comprehensive political theories, such as communism, fascism, anarchism or any other anti-liberal doctrine?

There are at least three main problems with Rawls's political philosophy. The first is that he, like Kant, makes a distinction between *the right* (justice) and *the good*. Rawls argues that *justice as fairness* is not committed to any substantive theory of the good. For this reason he proposes his *thin theory* of the good. Rawls assumes that people in the original position want to acquire and preserve as much of the *primary goods* as possible. He also uses the original position, together with the veil of ignorance, to avoid perfectionist principles and hence to argue for the fairness of this position. However, fairness in this context means that principles of justice would not be chosen on the basis of any *comprehensive* idea of the good. Accordingly, he contends, the principles of justice chosen in the original position would be neutral with respect to different *comprehensive* conceptions of the good. This is simply false. In the description of the hypothetical situation, Rawls is already committed, as Thomas Nagel convincingly argues, to a particular substantive and thus *comprehensive* idea of the good. Nagel writes:

The construction [of the original position] does not, I think, accomplish this [neutrality], and there are reasons to believe that it cannot be

successfully carried out. Any hypothetical choice situation which requires agreement among the parties will have to impose strong restrictions on the grounds of choice, and these restrictions can be justified only in terms of a conception of the good. It is one of those cases in which there is no neutrality to be had, because neutrality needs as much justification as any other position.

Rawls's minimal conception of the good does not amount to a weak assumption: it depends on a strong assumption of the sufficiency of that reduced conception for the purposes of justice.⁷⁶

Rawls's hypothetical situation might be neutral with respect to different comprehensive conceptions of the good that value his primary goods in a similar way, but may differ about other values. Yet the hypothetical situation is not neutral about other conceptions of the good that do not recognize all or some of Rawls's primary goods, or that simply consider them less valuable. Nagel makes this explicit:

The original position seems to presuppose not just a neutral theory of the good, but a liberal individualistic conception according to which the best that can be wished for someone is the unimpeded pursuit of his own path, provided it does not interfere with the rights of others.

Among different life plans of this general type the construction is neutral. But given that many conceptions of the good do not fit into the individualistic pattern, how can this be described as a fair choice situation for principles of justice?⁷⁷

Moreover, once Rawls's primary goods are accepted and his two principles of justice are chosen, it follows that liberal individualist conceptions of the good (those that value autonomy over other values) will have a better opportunity to be implemented than other conceptions of the good: for example, theories that place greater value on the well-being of the community rather than on the well-being of single individuals; or theories that define the good in terms of a hierarchical meritocracy; or even individualist theories that define the good in terms of some specific quality, e.g., knowledge, wealth, or power.

Yet it is true, as Rawls argues, that one should not talk about fairness to conceptions of the good; instead, one should talk about fairness to persons.⁷⁸ Rawls, however, is simply missing the point of Nagel's objection. Nagel's point is that by accepting Rawls's concept of the original position, together with his list of primary goods, one is already committed to a substantive (comprehensive) theory of the good. In such a situation, Rawls's liberal individualism has a better opportunity

to succeed than any other communitarian or antiliberal idea of the good. If this is so, then Rawls's so-called *neutrality* in the original position is suspect. Consequently, the objection continues, once we accept Rawls's assumptions about the original position, we cannot be fair to all those persons upholding different *comprehensive* theories of the good.

This is precisely the crux of the problem with Rawls's political philosophy. His conception of primary goods together with his two principles of justice are not in fact neutral regarding different comprehensive conceptions of the good. If this is what he is attempting to do with the concept of the original position, he fails. Rawls cannot bypass perfectionist considerations simply by placing a greater value on individual autonomy than on other values. To do so is to make a substantive assumption. Perhaps Rawls's concept of the original position is simply an attempt to approximate, as much as possible, perfect or ideal neutrality. If so, then he cannot be faulted for failing to reach the unreachable. But, even if we accept this as the explanation for the justification of the original position, the objection remains valid. Rawls's theory of primary goods is a substantive (comprehensive) rather than a *thin* theory of the good and, as such, it must be defended. Rawls is forced to appeal to perfectionist considerations if he wants to defend his greater emphasis on autonomy over other values.

The second main problem with Rawls's political philosophy is the abstract nature of his theory. Suppose we grant Rawls that if we were situated in a position similar to the original position, we would in fact choose his two principles of justice. But, we know for sure that we are not in such a situation, and we have reason to believe that it is highly improbable that we could ever be in a similar situation. What follows from the previous supposition? Nothing! A hypothetical agreement is just that—hypothetical. We are bound by an agreement only if we are participants in it. But in this case we are not. Consequently, we cannot be bound by it. As Ronald Dworkin puts it:

Rawls does not suppose that any group ever entered into a social contract of the sort he describes. He argues only that if a group of rational men did find themselves in the predicament of the original position, they would contract for the two principles. His contract is hypothetical, and hypothetical contracts do not supply an independent argument for the fairness of enforcing their terms. A hypothetical contract is not simply a pale form of an actual contract; it is no contract at all.⁷⁹

Even if we agree that the original position is simply a heuristic tool to try to avoid unfair considerations, and even if we also agree that under those circumstances we would choose Rawls's principles of justice, it does not follow that we should abide by these principles. The most that we can say is that Rawls's principles of justice might be practical guidelines for some particular situations.

The third objection against Rawls's theory is that he is operating with a defective concept of rationality. If so, this vitiates his whole political theory. Rawls understands rationality in a narrow sense. A person is rational if he or she uses the best available means to achieve a particular end. Although this might be a necessary condition for ascribing rationality to a person, it is certainly not a sufficient condition for doing so. Our understanding of this concept is richer than Rawls's interpretation of it. Our concept of rationality, which is broader, involves not only the effectiveness of the means to achieve a definite goal, but, more important, the assessment of goals themselves. For example, if two persons (A and B) have the same opportunities for personal growth and A chooses to become a sadistic vivisectionist (who enjoys dissecting living animals not for the sake of knowledge, but for the sake of inflicting suffering upon them), whereas B chooses to become a poet, I would argue that B is more rational than A, even though A is extremely successful in inflicting suffering on others and B is just a mediocre poet. The reason for passing this judgment is that B's way of life is congruent with our nature as self-evaluative agents who find more value (and hence a greater contribution to personal growth) in writing poetry than in the practice of inflicting unmerited useless suffering on other living beings.

It seems to me that rationality is better understood in virtue of our capacity to rank different values according to how effective they are in contributing to our self-realization as moral agents within a particular moral community. This, of course, is what Rawls wants to avoid; for by offering us a seemingly neutral concept of rationality, he bypasses perfectionist ideas. But since Rawls's concept of rationality is also value-laden, he cannot bypass perfectionist considerations. When we conjoin Rawls's concept of rationality with his *thin theory* of the good, we get a characterization of human beings as self-interested maximizers of wants. In a Rawlsian universe, people ought to be free to maximize their wants so long as they do not violate the principles of justice—the life of a sadistic vivisectionist is as good and as rational as the life of a poet. The implicit assumption in this Rawlsian universe is that the good and rational life consists in the possibility of realizing as

many of one's desires as possible, regardless of their qualitative differences. This is a dubious assumption, and it is not sufficient to argue, as Rawls does, that people in a hypothetical situation would choose principles of justice that would promote a life of unqualified wants. If we want to argue for a pluralistic society, we must appeal to our concrete situation in society rather than to an ideal realm. Our reasons for accepting a political philosophy, even assuming Rawls's concept of rationality, should be concrete rather than hypothetical.

**CRITICS OF
CONTRACTARIANISM**

Chapter 7

HUME, HEGEL, AND GREEN

In the following pages I present a detailed exposition of some major anticontractarian arguments, namely those advanced by Hume, Hegel, and T. H. Green. I chose these philosophers because of their balanced treatment of such arguments. Conservatives, such as Hume and Hegel, and a liberal, such as Green, all agree that the contractarian tradition is inadequate.

HUME

Two important considerations should be noted before proceeding to Hume's ideas. First, the social contract theorists try to present arguments to justify political authority; they argue that political obligation is a kind of moral obligation. Second, they argue that if political authority is morally justified, it follows that people have a general obligation (*prima facie* obligation) to obey this authority. In short, the social contract theorists are addressing at least two major questions: Whom should we obey? And why? These are normative rather than empirical questions. They are not concerned with the question of who or what particular body has the power to force us to obey. They are rather concerned with the moral justification of authority and the moral grounds for obeying it.

In order to understand Hume's arguments against the social contract tradition, it is helpful to start with his distinction between "natural" and "artificial" virtues. It should be kept in mind that Hume is

operating with a concept of what can be called "passive rationality." According to Hume, "Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them."¹ For Hume all knowledge is inert; it does not motivate anyone to act or refrain from acting in any specific way. It is our feelings and emotions that move us to do something. For him moral distinctions are not derived from reason but from a feeling of "sympathy," "humanity," or "fellow-feeling." Yet by "sympathy," Hume does not mean simply compassion or pity but our susceptibility to be affected by the happiness and suffering of others, to feel joy when they are happy and grief when they suffer.²

This feeling of sympathy is what makes us pass moral judgments. These moral judgments, on their part, are conducive to actions. However, since reason alone cannot move anyone to action, morality, according to Hume, cannot be a matter of reason.³ For Hume moral judgments are concerned with virtues and vices. He reduces virtue and vice to pleasure and pain.

Whatever mental quality in ourselves or others gives us a satisfaction, by the survey or reflexion, is of course virtuous; as everything of this nature, that gives uneasiness, is vicious.⁴

Hume distinguishes between "natural" and "artificial" virtues. Natural virtues are those that human beings are generally inclined to approve, regardless of whether or not they live in society. Artificial virtues, on the other hand, are those that human beings are generally inclined to approve, but they presuppose the previous existence of rules and conventions. According to Hume, we approve of both natural as well as artificial virtues "because of their tendency to the good of mankind."⁵ An example of a natural virtue is benevolence, of an artificial virtue justice—the rules or laws that determine the acquisition, transfer, and possession of property. We need to be careful with Hume's distinction between natural and artificial virtues because sometimes he refers to the latter as also being natural. They are both natural, for example, in the sense that human beings are naturally endowed with a capacity to see that by promoting both kinds of virtues they are promoting a greater balance of good over evil in society.

There seems to be a correlation in Hume's distinction between natural and artificial virtues and his distinction between the two kinds of moral duties. He writes:

The first are those to which men are impelled by a natural instinct or immediate propensity which operates on them, independent of all ideas of obligation and of all views either to public or private utility.⁶

Some examples of these are "love of children," "gratitude to benefactors," and "pity to the unfortunate."⁷ These are moral duties in the sense that one recognizes that by promoting these acts one is increasing the general well-being of society. These moral duties can be called "duties of beneficence," and they are compatible with the "natural virtues." The second kind of moral duties are called by Hume "natural duties":

[They] are not supported by any original instinct of nature, but are performed entirely from a sense of obligation, when we consider the necessities of human society and the impossibility of supporting it if these duties are neglected.⁸

Some examples of these are the "duty of justice," "a regard to the property of others," the "duty of fidelity" or "the observance of promise," and the "duty of allegiance"⁹ or respect for sovereign (political) authority. These duties, like the artificial virtues, are natural in the sense that human beings are naturally endowed with a capacity to see that, by acting according to these duties, they are bringing about a greater balance of good over evil in society.

With this moral framework in mind, Hume presents at least three basic arguments against the social contract. First, like Hobbes, he argues that people are alike in their physical and mental abilities. From this natural equality it follows that no single individual has the power to impose his or her will on the majority. In order for an individual to do this, the majority has first to consent or acquiesce. If this is what is meant by the "original contract," Hume then agrees with the contractarian tradition that "all government is, at first, founded on a contract."¹⁰ However, this is not a real contract, since the concept of a contract or agreement is "beyond the comprehension of savages."¹¹ Hume also argues that by acquiescing to particular commands, people develop a habit of obedience and realize that it is advantageous to do so in order to preserve peace and stability.

Hume contends that even if we assume that political authority originated with the consent or acquiescence of our ancestors, it does not follow that subsequent generations are bound by that original commitment. Consent by a previous generation is neither necessary

nor sufficient to justify our actual political obligations if we indeed have any. No one can consent for anyone else without his or her previous authorization. Consequently, the consent of the previous generation has no significant moral weight for the present generation. To those who argue in the spirit of Locke—that to live under the jurisdiction of a particular government implies "*tacit consent*"—providing the person is free to depart from it when he or she so desires—Hume responds that "such an implied consent can only have place where a man imagines that the matter depends on his choice."¹² But when this choice is not real, as in the case of a "poor peasant" or "artisan,"¹³ the concept of "*tacit consent*" is not consent at all; it is simply a useless concept. This, he says, is like arguing "that a man, by remaining in a vessel, freely consents to the dominion of the master, though he was carried on board while asleep, and must leap into the ocean and perish the moment he leaves her."¹⁴

The next objection to the social contract is that we do not have any evidence past or present to support the view that government originated in a contract. Hume explains:

On the contrary, we find everywhere princes who claim their subjects as their property, and assert their independent right of sovereignty from conquest or succession. We find also everywhere subjects who acknowledge this right in their prince, and suppose themselves born under obligations of obedience to a certain sovereign. . . . These connexions are always conceived to be equally independent of our consent.¹⁵

Hume contends that "obedience or subjection becomes so familiar that most men never make any inquiry about its origin or cause, more than about the principle of gravity."¹⁶ Consequently, he argues, like Hobbes, that since historical evidence indicates that most governments originated by "*conquest*" or "*usurpation*" it follows that the social contract is not historical.

The last, and what Hume considers his most damaging argument against the contractarian tradition is that we have two kinds of duties: "*duties of beneficence*" and "*natural duties*," such as justice, fidelity, and allegiance. The reason for recognizing these natural duties is that without them civil or political society would disintegrate. If there is not a generally accepted authority (sovereign) in society which most people will obey, even if the sovereign's commands are sometimes controversial, then political society will be impossible. A necessary condition for the existence of a political society is that most people be

willing and, indeed, *do* obey the commands of the sovereign, even when a particular law is not conducive to their best interests. Most individuals recognize that the institution of government or sovereignty is necessary to protect and promote their individual well-being as well as the general well-being of society. Therefore, most individuals recognize a "*duty of allegiance*" grounded on utilitarian considerations.

Thus, according to Hume, it is simply useless to try to ground the duty of allegiance on the duty of fidelity. To the question, why ought we to obey the government? Hume responds, "*because society could not otherwise subsist.*"¹⁷ The contractarians, on the other hand, would respond, "*because we should keep our word.*"¹⁸ The problem is that once we inquire why we should keep our promises, the contractarians do not have a satisfactory answer. They are faced with a dilemma. If they justify the duty of fidelity on utilitarian grounds, then why bother to postulate this duty to justify the duty of allegiance? Why bother, that is, if we can account for the latter by appealing directly to utilitarian considerations regardless of whether we have promised? On the other hand, if the contractarians argue that we ought to keep our promises because this is right, that too is false because we know that this is not always the case. Sometimes utilitarian considerations override our promises. In consequence, Hume thinks he has a better explanation than the contractarians; namely, we ought to obey the government because it is in our general interest to do so.

Hume is aware that there are difficulties in trying to establish to whom allegiance is due. He compares this issue with that of the nature of private property. Here he agrees with Rousseau on two basic points: first, he agrees that private property was at some point "founded on fraud and injustice"¹⁹; and second, that private property is a necessary condition for the emergence of government or political society. In Hume's words:

Were all men possessed of so inflexible a regard to justice that of themselves they would totally abstain from the properties of others, they had for ever remained in a state of absolute liberty, without subjection to any magistrate or political society. But this is a state of perfection of which human nature is justly deemed incapable.²⁰

Both issues, allegiance and private property, are such that no matter how deeply we look into them we cannot make "an accurate inquiry."²¹ Thus, in order to avoid chaos and confusion, "present possession has considerable authority in these cases [actual possession

of political authority], and greater than in private property, because of the disorders which attend all revolutions and changes of government."²² For Hume we have a general obligation to obey the government under whose jurisdiction we are living, since it is in our general interest to do so. Yet if this government becomes oppressive and intolerable "we are no longer bound to submit to it."²³ It follows that, according to Hume's political theory, we do not need to ground the right of resistance on the notion of a contract or of consent; we have this right on the same ground that we have a duty of allegiance, namely, general utility.

To summarize: Hume argues first that the social contract is nonhistorical; second, that the social contract thereby is incoherent, since past consent does not guarantee future consent and "tacit consent" is no consent at all; and third, that we should not reduce the duty of allegiance to the duty of fidelity, since they are both grounded on utility. The reason why we ought to obey the government is that it is in our general interest to do so.

HEGEL

In discussing Hegel's position with respect to the problem of political obligation I intend to use Norberto Bobbio's distinction²⁴ between *private right*, or what corresponds to Hegel's *abstract right* and *morality*, and *public right*, or what corresponds to positive law as it is expressed in the constitution of the state. Bobbio calls this distinction the *great dichotomy* of jurisprudence.²⁵ I think that by adopting this paradigm we can do justice not only to Hegel's theory of political obligation, but also to his political philosophy in general.

Hegel's political philosophy can be understood as a reaction against the voluntarism of the social contract theorists who emphasize the power of choice of the individual and, to that extent, undermine the importance of the state and its constitution. Hegel, although recognizing the importance of the *will* or power of choice of the individual, sees the individual as an integral part of an organic unit or social whole, namely the state.

Hegel tries to overcome the tension that exists between the Platonic and Aristotelian tradition of political philosophy, in which the individual finds meaning and dignity in life as a citizen and member of the state, and the contractarian tradition, in which the purpose of the state is partly reduced to the protection of individual interests. In short,

Hegel is struggling to overcome the tension that exists between the state as a liberator (or the actual embodiment of freedom) and the state as a necessary evil.

Hegel makes a radical distinction between the private and the public realm, which can be understood as a distinction between civil society and the state. What distinguishes the first from the latter is that individuals as members of civil society are concerned with their private interests. Hegel argues:

The concrete person, who is himself the object of his particular aims, is, as a totality of wants and a mixture of caprice and physical necessity, one principle of civil society. But the particular person is essentially so related to other particular persons that each establishes himself and finds satisfaction by means of the others. . . .

In the course of the actual attainment of selfish ends . . . there is formed a system of complete interdependence, wherein the livelihood, happiness, and legal status of one man is interwoven with the livelihood, happiness, and rights of all.²⁶

The state, on the other hand, embodies the common good or general welfare of all of its members by promoting and protecting their freedom.

The state is absolutely rational inasmuch as it is the actuality of the substantial will which it possesses in the particular self-consciousness once that consciousness has been raised to consciousness of its universality. This substantial unity is an absolute unmovable end in itself, in which freedom comes into its supreme right. On the other hand this final end has supreme right against the individual, whose supreme duty is to be a member of the state.²⁷

Before considering Hegel's objections to the social contract tradition, I will present his positive view of the state and its relationship to his views of *Sittlichkeit* or *ethical life*. I do this to dispel a mistaken view of Hegel's political philosophy that results when some contemporary political theorists interpret it as being within the contractarian tradition. I believe this is a radical misinterpretation of Hegel's views. Hegel does at least three things in the development of his ethical and political views: (1) he develops a *social ethics* in order to present the necessary and sufficient conditions for being objectively free (socially and politically free) in society; (2) he criticizes, in the process of presenting his views, Kantian morality as being abstract and hence

contentless; and (3) he attacks the contractarian tradition for being simplistic and artificial in its conception of the state and hence in its conception of freedom in general.

Hegel, in the preface to *Philosophy of Right*, tries to explain what he intends to do; he wants to analyze the nature, essence, concept or Idea²⁸ of the state. He writes:

*What is rational is actual and what is actual is rational. . . . For since rationality (which is synonymous with the Idea) enters upon external existence simultaneously with its actualization, it emerges with an infinite wealth of forms, shapes, and appearances.*²⁹

The Idea of the state is not an ideal of how the state "ought to be"; it is instead a description of the nature of the state. This description, however, is appropriate to the extent that it takes into consideration the concrete existence of particular states. Hegel argues:

This book, then, containing as it does the science of the state, is to be nothing other than the endeavor to apprehend and portray the state as something inherently rational. As a work of philosophy, it must be poles apart from an attempt to construct a state as it ought to be. The instruction which it may contain cannot consist in teaching the state what it ought to be; it can only show how the state, the ethical universe, is to be understood.³⁰

In fact, for Hegel the *task of philosophy* is to comprehend how reason apprehends reality,³¹ including what is actually happening in the present. For him, "every individual is a child of his time."³²

It is just as absurd to fancy that a philosophy can transcend its contemporary world as it is to fancy that an individual can overleap his own age, jump over Rhodes.³³

This, however, does not mean that one should be complacent and accept whatever is happening now. In this respect, Marx's criticism of Hegel and philosophy in general is off the mark. Marx complains that "the philosophers have only *interpreted* the world in various ways; the point is to *change* it."³⁴ Marx does not realize that by understanding the present one is contributing to shaping the future. Moreover, Hegel does not say that we should not have ideals to struggle for; what he says is that our ideals will be realized only if we are able to understand the present, for only then can we see what is possible in the future.

That is to say, according to Hegel, an event can occur only if there exist the necessary and sufficient conditions for it to take place. Thus, if we want to bring about a particular event, Hegel recommends that we should keep a *robust sense of reality*, to borrow an expression from Bertrand Russell. Otherwise our ideals will be simply that—ideals, devoid of any real content and of any possibility of realization.

Hegel's detractors often do not want to accept the kernel of truth in his political philosophy—that the world is the way it is, and to be different, its objective conditions must be different. Sometimes we, as individuals, have the power to alter those conditions, but sometimes not. This is why Hegel writes, "to recognize reason as the rose in the cross of the present and thereby to enjoy the present, this is the rational insight which reconciles us to the actual."³⁵ Philosophy, Hegel argues, cannot give us advice about what ought to be because it "always comes on the scene too late to give it." From this it follows that "the owl of Minerva spreads its wings only with the falling of the dusk."³⁶

Returning to Bobbio's dichotomy between *private right*, which encompasses Hegel's concepts of *abstract right* and *morality*, and *public right*, which encompasses positive law and *ethical life* in general as it is expressed in the constitution of the state, one can see why the sphere of *private right*, which deals with subjective freedom, or the ability of a particular person to choose and acquire property, constitutes a negative moment in the development of Hegel's political philosophy. On the other hand, *public right*, which deals with the sphere of objective freedom, or the realization of one's potentialities as a member of a moral community (the state), constitutes a positive moment in this process. It is only through the state, according to Hegel, that the objective freedom of all of its members is realized, since "the state is the actuality of concrete freedom."³⁷

For Hegel, a philosophy of right should deal with "the Idea of right" which is constituted by "the concept of right together with the actualization of that concept."³⁸ The concept of right applies to both the private and the public realms. Right, Hegel contends, has a *positive* characteristic when it is embodied in the public laws of a given state so that we can determine what is right or wrong by appealing to these laws.³⁹ Hegel argues that we ascribe rights to individuals because they have free will; consequently, "freedom is both the substance of right and its goal."⁴⁰ Therefore, "right . . . is by definition freedom as Idea."⁴¹ Yet freedom as Idea is dialectical: it has a form and a content. Form corresponds to the abstract universality of the will as our ability

to choose. Content can be private, when it is concerned with the interests of particular persons, or public, when it is concerned with the common good. Accordingly, when there is a conflict or *collision* of rights, as Hegel puts it, the realm of the public, the right of the state, overrides the private realm, the abstract rights of persons.⁴²

For Hegel *abstract rights* are similar to natural rights. These are rights we possess as persons. We are bearers of rights because we have the ability to choose to impose our will on external things. Thus, for Hegel, the right to acquire private property has an ethical dimension. We recognize each other as different individuals or persons through the acquisition and exchange of property.⁴³ *Property* and *contract*, then are two aspects of the realm of private right. This realm also encompasses the realm of the moral. Morality, as Hegel understands it, is essentially subjective. At this level, what is morally right or wrong is determined by the person's intentions alone: "the general characteristics of morality and immorality alike rest on the subjectivity of the will."⁴⁴ This, however, is not sufficient, because at the level of morality or subjectivity persons can always excuse themselves for doing something wrong by pretending they intended to do what they thought was right. This is part of the reason Hegel attacks Kantian morality. He regards it as essentially abstract and hence contentless, since "if duty is to be willed simply for duty's sake and not for the sake of some content, it is only a formal identity whose nature it is to exclude all content and specification."⁴⁵ According to Hegel, Kant maintains "the exclusively moral position, without making the transition to the conception of ethics."⁴⁶ Ethics is understood by Hegel as *ethical life* or social ethics, in which persons recognize their objective moral obligations (as embodied in the laws of the state) as members of a particular community.

Hegel, unlike contractarian philosophers, does not make a distinction between the good and the concrete rights and duties of the individual members of a community. But he does distinguish between the good and abstract rights and duties. For him, "the good is . . . freedom realized, the absolute end and aim of the world." Hegelian freedom and welfare are necessarily connected; we cannot achieve one without the other. Consequently, "welfare without right is not a good" and "right without welfare is not the good."⁴⁷ Public right, as the embodiment of objective freedom, takes precedence over private right, as the embodiment of subjective freedom.⁴⁸ This recognizes *ethical life* or *social ethics* as the supremacy of the public realm over and above the private realm. "Ethical life is the concept of freedom developed

into the existing world and the nature of self-consciousness."⁴⁹ This concept of *freedom* is expressed through the valid laws and the institutions of a particular community. The members of this community are objectively free to the extent to which they recognize these laws and institutions as binding upon them, to the extent, that is, to which they recognize them as duties. It is, Hegel contends, only through the recognition of duty that a human being becomes objectively free; "in duty the individual finds his liberation."⁵⁰ It is also through the recognition of duties that an individual "acquires his substantive freedom."⁵¹ To this extent Hegel's position is similar to those of Kant, and even more, Rousseau. Kant defines moral freedom as the recognition of self-prescribed laws, but Hegel, in the spirit of Rousseau, means more than Kant meant by moral freedom. He means, and in this respect he does not recognize his debt to Rousseau, that people have substantive or objective freedom insofar as they act according to public right and its institutions. Hegel defines virtue as "the ethical order reflected in the individual character."⁵² If this is the case, then individuals are virtuous to the extent they are objectively free. In this sense Hegel's idea of virtue is closely related to the one expressed by Rousseau in his *Discourse on Political Economy*.⁵³

It is important to notice that for Hegel "freedom," understood in the metaphysical sense as the ability to choose, has a negative connotation. This kind of freedom can be called negative or subjective freedom in contrast to *substantive* or positive freedom. The latter is a higher form of freedom: substantive or positive freedom is the recognition and fulfillment of our duties in a *just* ethical community. It is the fulfillment of our potentialities as essentially free beings. Thus, even though metaphysical freedom logically precedes the realization of substantive or positive freedom, the latter has priority from an axiological perspective. Hegel points this out when he argues:

The right of individuals to be subjectively destined to freedom is fulfilled when they belong to an actual ethical order, because their conviction of their freedom finds its truth in such an objective order, and it is in an ethical order that they are actually in possession of their own essence or their own inner universality.⁵⁴

Consequently, in an ethical order, Hegel contends, "right and duty coalesce . . . a man has rights insofar as he has duties, and duties insofar as he has rights."⁵⁵ This means that if we are free in the positive sense, we have a right to do our duty. And our duties will depend on

the position that we occupy in the ethical order (society) and on the kind of ethical order we belong to.

The individual finds a place first as a member of a family in an ethical order, and later as a member of a corporation or guild in civil society. Ultimately, the individual finds dignity or substantive freedom as a member of the state. It is through being a citizen of a particular state that the individual is somebody; it is through the state that the individual is able to concretize the notion of freedom. The state, as Hegel sees it, is a necessary condition for the realization of individual as well as universal freedom. He writes:

The state is the actuality of the ethical Idea. . . . The state exists immediately in custom, mediately in individual self-consciousness, knowledge, and activity, while self-consciousness in virtue of its sentiment towards the state finds in the state, as its essence and the end and product of its activity, its substantive freedom.⁵⁶

Consequently, the state as the concrete embodiment of universal freedom "has supreme right against the individual, whose supreme duty is to be a member of the state."⁵⁷ The state, according to Hegel, is *absolutely rational*.⁵⁸ If this is so, then the individual members of the state are rational insofar as they perform their duties—insofar as they are positively free.

In short, if the state is *absolutely rational* and embodies *the actuality of concrete freedom*, then it follows that members of the state are rational and therefore concretely (positively) free insofar as they perform their duties. Thus Hegel's contention that "individuals have duties to the state in proportion as they have rights against it"⁵⁹ amounts to the claim that the state in its laws and institutions defines the concrete rights of its members, and its members have duties to the state precisely because it defines and protects their concrete rights.

From these considerations it is evident that Hegel's theory of political obligation does not amount to an argument for absolute obedience to any actual state regardless of how arbitrary and tyrannical it might be. For one thing, Hegel is talking about the Idea of the state, which deals not only with actual states but also with the nature or concept of it. Hegel's argument for the justification of political obligation runs as follows: The state is the highest ethical order through which concrete freedom becomes possible; individuals can be free in the positive sense only insofar as they are members of the state, and only to the extent to which they fulfill their duties in it; freedom in the positive sense is a

desirable goal; therefore, individuals are morally obliged to respect the state only if the latter provides the necessary conditions for the realization of concrete freedom.

I turn now from Hegel's positive political philosophy to his criticism of the social contract tradition. Hegel, like the contractarian philosophers, starts his exposition of political philosophy by recognizing the importance of the *will* and its connection with the concept of right.

The basis of right is, in general, mind; its precise place and point of origin is the will. The will is free, so that freedom is both the substance of right and its goal, while the system of right is the realm of freedom made actual.⁶⁰

From these considerations it follows that only individuals with a mind and free will have the capacity for rights. This capacity is a sufficient condition for ascribing moral personhood to individuals, and hence for treating them as such. For Hegel, "the imperative of right is: 'Be a person and respect others as persons.'"⁶¹ Yet from this formal equality of moral personhood and *abstract rights* (natural rights), nothing of substantive importance follows with respect to the problem of political obligation. These rights belong to the realm of subjective morality or *private right*. Hegel's criticism of the social contract tradition is that, by basing the state on contractual relations, it bases its legitimacy on the arbitrary will of individuals. But, since individuals are born as members of a particular state, they do not have the right to decide whether they want to be members of it. As Hegel explains it:

It does not lie with an individual's arbitrary will to separate himself from the state, because we are already citizens of the state by birth. The rational end of man is life in the state, and if there is no state there, reason at once demands that one be founded. Permission to enter a state or leave it must be given by the state; this then is not a matter which depends on an individual's arbitrary will and therefore the state does not rest on contract, for contract presupposes arbitrariness. It is false to maintain that the foundation of the state is something at the option of all its members. It is nearer the truth to say that it is absolutely necessary for every individual to be a citizen.⁶²

In this respect Hegel's conception of the state builds upon Kant's conception of it. Kant contends that we are justified in using coercion in order to enter into a *juridical state of society*,⁶³ since it is only within the boundaries of a social order that justice is possible. Similarly,

Hegel contends that "the rational end of men is life in the state, and if there is no state there, reason at once demands that one be founded."⁶⁴ This is compatible with Kant's ideas; but Hegel goes one step further by defending the view that the foundation of the state is an imperative of reason, since the state is necessary for the concrete realization of the freedom of each citizen.

Hegel argues that contractual relations are valid within the realm of private rights and civil society. But it does not follow this paradigm can be applied to the foundation and legitimacy of the state, because the validity of *private rights* (contractual and property rights) is parasitic upon the validity of *public rights* as defined by the laws and institutions of the state. Bobbio puts it succinctly when he states that Hegel's objection to contractarianism is logical rather than historical.⁶⁵ If the realm of private rights is parasitic upon the realm of public rights, then the former cannot legitimize (morally justify) the latter. The opposite is true; the moral justification of private rights depends upon and is determined by the realm of public rights.

In order to understand Hegel's critique of contractarianism, one should bear in mind that his political philosophy is a philosophy of freedom: concrete freedom as embodied in the state and its public institutions. This use of *freedom* is not traditional, i.e., signifying the absence of external constraints. This, according to Hegel, is only a necessary condition for the realization of *true freedom*: freedom as rational self-determination according to the laws of the state. It does not follow, however, that we are always obliged to obey the state, for a person is obliged to obey the state only when the latter provides the necessary conditions for the concrete realization of freedom.

These considerations suggest that the ideal state would be democratic; but, according to Hegel, this is far from true. The state ought not to be democratic; it must be a parliamentary monarchy. But Hegel does not, in my opinion, present reasonable arguments for this conclusion. I agree with Plamenatz when he contends that democracy might not be a sufficient condition of freedom, but it may very well be a *necessary condition* of it.⁶⁶ In this respect Rousseau is closer to the truth than Hegel. Individuals are free, according to Rousseau, when (1) they act according to self-prescribed moral rules which are sanctioned by the law, and (2) they are able to participate in the making of the same laws on equal grounds with the other members of society. I think these two conditions are compatible with the spirit of Hegel's political philosophy.

GREEN

T. H. Green, like Hegel, is a severe critic of the social contract tradition. The objections he adduces against the latter are also similar to Hegel's: (1) the artificiality of the contractarian paradigm of political obligation, (2) the supremacy, to a certain extent, of the public realm (the state and its institutions) over the private realm (the individual and his family), and (3) the defective nature of the contractarian understanding of freedom (negative freedom) as the absence of external constraints. This, however, is not to say that Green is not an original thinker. His *Lectures on the Principles of Political Obligation*, together with his lectures on "Liberal Legislation and Freedom of Contract" and "On the Different Senses of 'Freedom' as Applied to Will and to the Moral Progress of Man," constitute a substantive and original contribution to the history of political philosophy. Green's reformulation of traditional *laissez-faire* liberalism into what Ramon Lemos calls "positive liberalism"⁶⁷ is more relevant than ever to the contemporary debate about the nature of liberalism.

In his *Lectures on the Principles of Political Obligation*, T. H. Green hardly mentions Hegel and refers to Kant on many occasions; but it does not follow that his political theory is more Kantian than Hegelian. Rather, he understands Hegel through Kant, and Kant through Rousseau. Green, it seems, borrows from these three philosophers in order to construct his own political philosophy. From Rousseau he borrows the idea of the "general will" or common good, from Kant the idea of an autonomous rational will, and from Hegel the idea of positive freedom: the self-conscious rational power or capacity for self-realization within the boundaries of the state.

According to Green, our self-conscious motive in acting is a "desire for personal good."⁶⁸ But this does not mean that all our actions are self-regarding; they may be other-regarding as well. Green is ultimately trying to show that individual or private good is not only compatible with but necessary for the realization of the "common good." He defines the good as involving the satisfaction of desire.⁶⁹ Yet a particular desire is good or bad insofar as it contributes to or conflicts with the realization of one's conception of personal good. He argues against Hedonists that the goodness of an act does not issue from its pleasantness. An act is pleasant, Green argues, because it satisfies some desire.⁷⁰ Thus moral goodness consists in the satisfaction of the desires of moral agents.⁷¹

Green rejects Kant's distinction between the "noumenal self" and

the "phenomenal self." For him there is only one self, namely the concrete self of each individual. For Green, "will" is "an effort (or capacity for such effort) on the part of a self-conscious subject to satisfy itself." Practical reason is "the capacity on the part of such a subject to conceive a better state of itself as an end to be attained by action."⁷² Therefore, there cannot be a real conflict between "reason" and "will," although he would allow that one can make mistakes by willing what might not contribute to one's self-satisfaction. In this sense there can be a conflict of will and reason.

For Green each individual has a duty to live a life according to reason. But this duty depends on the individual's conception of personal good. Consequently, he is faced with a problem: what can guarantee that my idea of personal good is compatible with other people's idea of personal good? Green believes that there exists an "eternal principle of self-objectification"⁷³ which is present in each of us, so that by seeking our personal good we are simultaneously seeking the personal good of each individual in society.⁷⁴ It follows that one cannot conceive of one's own personal good without conceiving of the personal good of others; "man cannot contemplate himself as in a better state, or on the way to the best, without contemplating others, not merely as a means to that better state, but as sharing it with him."⁷⁵ The idea of this "common good" or that which is "absolutely desirable" has its origin, he contends, in "man's consciousness of himself as an end to himself" and in his self-realization as a moral agent.⁷⁶

In light of this ethical theory, Green has objections to the contractarian theory of political obligation. We need, however, to keep in mind that his political philosophy, like Kant's, presupposes his moral theory. His main objective in *Lectures on the Principles of Political Obligation* is to address the following question: What are the ground(s) of political obligation? Why are we morally obliged to obey the state and its institutions? This question, as Prichard correctly indicates, presupposes that we have a duty to obey.⁷⁷ Green assumes that if we are born in a particular state, we have an obligation to obey it. What he wants to determine is whether this is an absolute obligation, whether we are in fact categorically obliged to obey the state and its institutions regardless of its nature.

Green rejects the traditional social contract approach to justify our political obligation because, according to him, there are no such things as "natural rights" and "obligations" in the contractarian sense.⁷⁸ Yet he recognizes "natural rights" and "obligations" in a different sense. He sees them as

a system of rights and obligations which *should be* maintained by law, whether it is so or not, and which may properly be called "natural," not in the sense in which the term "natural" would imply that such a system ever did exist or could exist independently of force exercised by society over individuals, but "natural" because necessary to the end which it is the vocation of human society to realise.⁷⁹

Thus rights and laws are natural insofar as they contribute to the self-realization of each individual in society. The connection of Green's political philosophy with his moral theory is clear: rights and laws are natural to the extent that they contribute to the complete realization of individuals as moral agents.

Green rejects the contractarian conception of political obligation and natural rights, in general, as being inadequate to generate a comprehensive theory of political obligation.

The reason why certain powers should be recognised as belonging to the state and certain other powers as secured by the state to individuals, lies in the fact that these powers are necessary to the fulfillment of man's vocation as a moral being.⁸⁰

He explains the justification of rights in a teleological way: "A right is a power claimed and recognised as contributory to a common good"⁸¹; therefore, "no one therefore can have a right except (1) as a member of a society, and (2) of a society in which some common good is recognised by the members of the society as their own ideal good, as that which *should be* for each of them."⁸² Green is committed to the view that one has a right only if (1) one has the capacity to claim it, and (2) it is recognized or accepted by the members of society as contributing to the ideal of a common good. Later he contends that "rights are made by recognition. There is no right but thinking makes it so."⁸³ At face value, this expression seems unlikely. Surely individuals have moral rights and obligations whether they are recognized by society or not. We have these rights and obligations by virtue of being human with a capacity for moral agency. Perhaps Green means that we have the natural capacity for making certain claims on one another, and, to that extent, we have moral duties, such as duties of beneficence. But it is only as members of society that these claims are recognized and respected as rights with their corresponding obligations. It follows that if, as in some societies, rights are recognized but not respected, then these rights would not be real at all. These rights, Green argues, would be simply nominal rights.

The contractarians, according to Green, cannot present an adequate answer to the following question: Why ought we obey the sovereign or the state? The contractarians contend that we have a moral obligation to obey the sovereign because we have consented to the sovereign's authority. This explanation, Green argues, is not sufficient to account for our obligations.⁸⁴ On the contrary, he contends:

It is only as members of a society, as recognising common interests and objects, that individuals come to have . . . rights, and the power, which in a political society they have to obey, is derived from the development and systematisation of those institutions for the regulation of a common life without which they would have no rights at all.⁸⁵

For Green it is only through a mutual recognition of a common good that we come to acquire rights. Insofar as the state is the vehicle that provides the necessary conditions for bringing about this common good, we ought to obey it.

To ask why I am to submit to the power of the state, is to ask why I am to allow my life to be regulated by that complex of institutions without which I literally should not have a life to *call my own*, nor should be able to ask for a justification of what I am called on to do.⁸⁶

We ought to accept the authority of the state, according to Green, because it is only through the self-conscious recognition of certain ends, and through the mutually recognized freedom of all in society supervised by the state, that we come to develop our moral capacity and a life of our own.

It is through the state and its institutions, Green says, that "man is moralised."⁸⁷ In this respect Green agrees with both Hegel and Rousseau. For him, as for Rousseau, a necessary condition for being free is being able to act according to self-prescribed laws. Only through the recognition of self-imposed regulations, as members of a legal community, can our capacity for moral agency be actualized.⁸⁸ Political obligation and morality in general have a "common source," the "rational recognition" by people in general of a "common well-being" or common good. Green writes:

That common source is the rational recognition by certain human beings . . . of a common well-being which is their well-being, and which they conceive as their well-being whether at any moment any one of them is inclined to it or not, and the embodiment of that recognition in rules by

which the inclinations of the individuals are restrained, and a corresponding freedom of action for the attainment of well-being on the whole is secured.⁸⁹

Yet Green is aware of the problem of trying to justify our obligations to actual states and its institutions on moral grounds, since he recognizes that most actual states have been formed by "force" and "selfish motives."⁹⁰ We cannot have moral obligations to the state, since our obligations are grounded in fear, which would mean that they are grounded in prudential rather than moral considerations. Green tries to circumvent this problem by arguing that, even though the ideal state is just that, it is through actual states that the citizens "apprehend" a common good which belongs to them "in virtue of their relation to each other and their common nature."⁹¹ Thus even if an individual "has no reverence for the 'state' under that name . . . he has the needful elementary conception of a common good maintained by law."⁹² Consequently, whether we recognize a moral obligation to obey the state and its institutions would depend, ultimately, on its nature. Or in Green's words:

It is the fault of the state if this conception ['of a common good maintained by law'] fails to make him a loyal subject, if not an intelligent patriot. It is a sign that the state is not a true state—that it is not fulfilling its primary function of maintaining law equally in the interest of all, but is being administered in the interests of classes; whence it follows that the obedience which, if not rendered willingly, the state compels the citizen to render, is not one that he feels any spontaneous interest in rendering, because it does not present itself to him as the condition of the maintenance of those rights and interests, common to himself with his neighbors, which he understands.⁹³

In Green's view, "it is a mistake then to think of the state as an aggregation of individuals under a sovereign."⁹⁴ The state "presupposes other forms of community, with the rights that arise out of them,"⁹⁵ such as the family and tribes. Thus the state is not, as contractarians argue, an artificial product of the self-interest of individuals, but a natural outcome of human desire for the protection and promotion of a common good. Therefore, so long as we think in terms of the contractarian paradigm, we will be unable to develop an adequate theory of obligation. We will not be able to explain adequately "the rights of individuals against each other or against the state, or of the rights of the state over individuals."⁹⁶

The state, Green argues, "presupposes rights" which we possess by virtue of recognizing each other as equals (*isoi kai homoioi*).⁹⁷ We have rights, that is, to the extent that we recognize an equal capacity for moral agency in others. But it does not follow that we have rights against society or against the state. This, Green argues, is impossible. He does, however, recognize that the laws of actual states "may be inconsistent with the true end of the state as the sustainer and harmonizer of social relations."⁹⁸ We are only allowed to disobey the state by appealing to a "common good" rather than, as the contractarians suggest, by appealing to violations of rights because the recognition and promotion of a common good is what makes the actual exercise of rights possible.

Although Green rejects the idea of natural rights existing apart from society, he talks about "implicit rights" vs. "explicit rights."⁹⁹ He argues that the "implicit rights" of a slave to a free life cannot be forfeited by any state law.¹⁰⁰ These are rights we possess in virtue of our nature (humanity). The justification of these rights is grounded in the "capacity on the part of the subject for membership of a society—for determination of the will . . . by the conception of a well-being as common to self with others."¹⁰¹

These "implicit rights" are made "explicit rights" only through the state (the society of societies).¹⁰² If this is the case, the realm of "public rights" (the rights of the state and its institutions) takes precedence over the realm of "private rights" (the rights of individuals as members of a particular community), since it is only through "public rights" as they are embodied in the state and its institutions that our "implicit rights" become "explicit."¹⁰³ This is a Hegelian argument. Green, like Hegel, recognizes that the realm of private rights precedes the realm of public rights. However, in terms of being morally valuable, public rights (the rights of the state and its institutions) are more important than private rights, since it is only through the state and its institutions that our "implicit rights" become "explicit," and since it is only through the state, as the embodiment of a common good, that we can achieve our self-realization as moral persons.

Keeping in mind this dichotomy between "private rights" and "public rights," we can see that Green's political philosophy, like Hegel's, is a philosophy of positive freedom. The contractarian philosophers in general, with the exception of Rousseau, put great emphasis on the concept of negative freedom, understood as the absence of external constraints. Contrary to this and to *laissez-faire* liberalism or libertari-

anism, Green argues that freedom is more than the absence of external constraints:

When we speak of freedom as something to be so highly prized, we mean a positive power or capacity of doing or enjoying something worth doing or enjoying, and that, too, something that we do or enjoy in common with others.¹⁰⁴

It is through the development of these capacities in every member of society that we measure moral progress. In short, "positive freedom" is the capacity of individuals to "make the most and best of themselves."¹⁰⁵ True freedom is both negative and positive. Like the dichotomy between "private rights" and "public rights," "negative freedom" precedes "positive freedom," in the sense that negative freedom is a necessary condition for exercising positive freedom. We need to be free from external constraints (negative freedom) before we can be free to make the most and best of ourselves (positive freedom). But from an axiological point of view, the positive aspect of freedom is more important than its negative aspect, since it allows us to become what we ought to be—namely, autonomous individuals with a common objective: to make the most and best of ourselves by recognizing a similar capacity in others.

Green maintains, in the spirit of Rousseau, that "the actual powers of the noblest savage do not admit of comparison with those of the humblest citizen of a law-abiding state."¹⁰⁶ It is the law that make us truly free. We are free to the extent that we act according to self-prescribed rules and insofar as we recognize a similar capacity in others. He contends:

If the ideal of true freedom is the maximum of power for all members of human society alike to make the best of themselves, we are right in refusing to ascribe the glory of freedom to a state in which the apparent elevation of the few is founded on the degradation of the many, and in ranking modern society, founded as it is on free industry, with all its confusion and ignorant licence and waste of effort, above the most splendid of ancient republics.¹⁰⁷

Green, like Hegel, assesses the legitimacy of a state and its institutions in terms of whether it provides the necessary conditions for the exercise of true freedom, both positive and negative, and not in terms of whether it rests on some contract, real or hypothetical, into which individuals might or might not have entered in the distant past.

SUMMARY AND CONCLUSION

POLITICAL OBLIGATION OR ANARCHY?

These last pages deal with three major questions. First, are the objections to contractarianism of the utilitarian Hume and the idealists Hegel and Green sound? Second, is the concept of the social contract necessary for the development of a general theory of rights that accounts for natural or moral rights? Third, is the concept of the social contract necessary or sufficient to justify a general *prima facie* moral obligation to obey the state and its institutions?

One of the problems with the social contract approach, as I have explained earlier, is determining precisely what the nature of the contract is. Since each contractarian philosopher uses the concept of the social contract differently from the others, each arrives at a different conclusion. Nonetheless, contractarianism can be generally characterized as a political theory which maintains that all our basic political rights and duties are derived from some kind of explicit or implicit contract among a collection of individuals. Hence, the social contract is the act by which those individuals acquire their basic political rights and duties. According to contractarian philosophers, without this contract the citizens would not have any political rights and duties, although they would still have moral rights.

Unlike their critics, the contractarians explain the genesis of political society (the state) and its authority as a hypothetical voluntary association (social contract) among individuals in order to obtain benefits. For contractarians political society is more like a club than a natural development of an organic process in history, as the idealists maintain.

If they are right, then it follows that the concept of *consent* plays a prominent role in their political philosophy.

I have explained major similarities and differences of several contractarian philosophers, specifically, Hobbes, Locke, Rousseau, Kant, and Rawls. Hobbes, for example, seems to use the *social contract* to justify the political obligation of the subjects to the sovereign. The sovereign, according to Hobbes, is the ultimate authority that determines right or wrong, justice or injustice, in society. Thus *consent* plays a significant role in Hobbes's political philosophy only when the people in the *state of nature* covenant with one another to give up their natural right to do as they please, and simultaneously agree to grant political authority or sovereignty as a *gift* to the sovereign, provided he or she protects them. For Hobbes, *power* rather than *consent* is the ultimate justification of political obligation. Therefore, so long as sovereigns have the power to impose their will on subjects, they *ought* (from prudential considerations) to submit to this authority, since order and peace, according to Hobbes, are preferable to anarchy.

Locke, unlike Hobbes, uses the *contract* to characterize the nature of political authority as a *trust*. Whenever the government persistently and seriously violates this trust, the people have the right to overthrow it. For Locke the authority of the state rests on the *consent* of the people. For him consent can be *express* or *tacit*. By express consent, Locke means something like a promise or the taking of an oath. By tacit consent, he means a subject's continued voluntary residence within the jurisdiction of a particular government regardless of whether he or she agrees with its policies or laws. But consent, although necessary, is insufficient to generate political obligation. Locke also proposes a strong theory of *natural rights*. These are rights people possess by virtue of their nature; they are the same for all, regardless of their time and place. Thus, according to Locke, a government must also be legitimate; it must respect the natural rights of the citizens to life, liberty, and property. Consequently, the citizens have a political obligation to respect political authority (government) only if they have consented to the institution of such an authority and only if this authority is just (does not violate natural rights).

Rousseau, like Locke, develops a theory of *popular sovereignty* but argues that sovereignty always remains with the people and hence is inalienable. Therefore, unlike other contractarian philosophers, Rousseau is against any form of representative government. If the people are to be free, Rousseau argues, they must rule themselves. Like Locke, he uses the concept of consent to ground the political obligation

of the citizens to act according to *the general will*. The citizens, according to Rousseau, have a political obligation to act compatibly with the general will, since they have covenanted with one another to form a political society and the general will is always morally right. Thus, so long as the terms of the contract are observed—that is, so long as the citizens are equally allowed to express their views publicly and are also equally allowed to vote in order to determine the content of the general will—they must act compatibly with the general will.

Kant, like Hobbes and Rousseau, uses the concept of a *contract* in a purely hypothetical way. People, he contends, ought to think of the contract in a hypothetical way in order to understand both the nature of political society (a juridical state of affairs) and the nature of political obligation. Kant, like Hobbes, argues that the requirements of justice can only be satisfied in civil or political society. Thus, for Kant, individuals have a moral obligation to abandon the state of nature and a right to force others, if necessary, to enter political society, where lie the necessary conditions to develop their ethical capacities. The notions of *consent* and *contract* therefore play an insignificant role in Kant's theory of political obligation. He grounds the political obligation of the citizens on moral considerations rather than on consent. The citizens, according to Kant, have an unconditional moral obligation to obey the state, since it is only within the boundaries of political society that they can develop their ethical capacities.

Rawls uses the *contract* in a quasi-Kantian sense. He uses the notion of a *hypothetical original position* and a *veil of ignorance*, together with the notion of a *social contract*, to derive principles of justice that are applicable to the structure of political society.

First Principle: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle: Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged [the difference principle] consistent with the just savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity.¹

Thus Rawls grounds political obligation on his principles of justice. People are morally obliged (*prima facie*) to obey X (a particular government) only if and so long as X's structures are just.

I turn now to Hume's objections against contractarianism. Hume argues that the *social contract* is nonhistorical. We do not have any evidence, past or present, he contends, to support the view that government originated in a contract. But this historical objection simply misses the point. The social contract approach is not used as a historical explanation for the origin of political society, but rather as a heuristic device to assess the nature of political authority and the relationship of the citizens to such an authority. Accordingly, the social contract should be understood as a metaphor to ground the political obligation of the citizens to the state and its institutions. The citizens ought to act "as if" they have consented to abide by such a hypothetical contract.

Hume, like Hobbes, argues that people are alike in their physical and natural abilities. From this natural equality it follows that no single individual has the power to impose his or her will on the majority. To do this, the majority has initially to consent or acquiesce to authority. If this is what is meant by the "original contract," then Hume agrees with the contractarian tradition that "all government is, at first, founded on a contract."² However, this cannot be a real contract, since this concept is "beyond the comprehension of savages."³ Thus, Hume argues, it is only when people develop a *habit* of obedience that they realize it is beneficial to do so in order to preserve peace and stability.

Even if we assume that political authority originated with the consent or acquiescence of our ancestors, it does not follow, Hume argues, that present generations are morally bound by that *original* agreement. This objection works against Locke, who uses past consent to justify present obligations. Yet Locke could have argued that the above objection applies only to "express" rather than to "tacit" consent. But this is precisely Hume's target. The fact that a person lives under the jurisdiction of a particular government with the possibility of departing from it if he or she desires to do so does not, according to Hume, imply "tacit consent." It is simply false, as Hume argues, that most people have a real option to abandon everything and move to a different place.

The above objections against *express* and *tacit* consent seem to be sound. These objections work against Hobbes, Locke, and Rousseau to the extent they use consent to justify political authority and thereby the political obligation of the citizens to such an authority. I will add, in the spirit of Hume, that there is even a stronger argument against any form of consent theory. In order to generate a moral obligation,

consent must involve an overt voluntary act like a promise or an oath. However, we are born as members of a particular state, and there is no way in which we can seriously say that we have promised to obey its laws and institutions. The fact that we receive benefits from the state and its respective institutions (including the law) is not sufficient to generate a political obligation, understood as a self-assumed moral obligation, since we are never or hardly ever asked whether we promise to obey in exchange for benefits. The state is not like a private club that one decides to join, promising to observe its rules. The fact that we live under the jurisdiction of a state does not imply, in any real sense, that we have voluntarily promised to abide by its laws and regulations. Even to acquiesce and not openly challenge the authority of the state is not sufficient to generate political obligations, since our acquiescence can be a matter of habit, intimidation, or simply apathy.

Hume considers his most effective argument against the social contract tradition as follows: We have two kinds of duties, "duties of beneficence" and "natural duties," such as justice (or respect for private property), fidelity (or promise-keeping), and allegiance (or respect for political authority). Without these natural duties civil or political society would disintegrate. If this is true, then a necessary condition for the existence of political society is that most people are willing to obey, and do obey, the commands of the sovereign (the state), even when a particular law is not conducive to their personal welfare. Most people recognize that the institution of political authority is necessary to protect and promote their individual well-being as well as the general well-being of society. Therefore, Hume argues, most individuals recognize a "duty of allegiance" as grounded on utilitarian considerations. It is simply useless, according to Hume, to try to ground the duty of allegiance on the duty of fidelity. In other words, Hume thinks he can better account for the nature of political obligation than the contractarians; i.e., we ought to obey the state simply because it is in our general interest to do so.

It is true, as Hume contends, that someone who tries to ground the *duty of allegiance* on the *duty of fidelity* is faced with a difficult dilemma. If we can justify the duty of allegiance on utilitarian grounds, then why bother to attempt to base it on the duty of fidelity? The contrary argument holds that we ought to keep our promises because this is right, but we know that this is not always the case. Sometimes utilitarian considerations override the obligation to keep our promises. This in itself shows that such considerations are important moral reasons for acting.

Hume has not shown, however—he instead has assumed—that all moral obligations are reducible to utilitarian considerations. I do not think we have any reason to accept this assumption. It is more reasonable to assume that there are many kinds of moral obligations, such as obligations of justice, promise-keeping, gratitude, fair-play, beneficence, etc. These are competing obligations, and whether one will override the other in a concrete situation will depend on a number of different moral considerations and the context in which the conflict of obligations takes place. What Hume has shown (and this is an important contribution) is that any account of political authority must take utilitarian considerations seriously. What he has failed to show is that these are the only important moral considerations in matters political.

Idealists such as Hegel and Green advance a number of succinct and fatal criticisms of contractarianism. Hegel challenges the contractarian tradition on two main grounds. First, in the spirit of Aristotle, he argues against the contractarian explanation of political authority as resting on a voluntary association of independent individuals and presents a communitarian model in which the individual is an integral part of the community. Second, Hegel contends that the contractarian paradigm of political obligation is incoherent.

Hegel, like the contractarian theorists, recognizes the importance of the “will” or power of choice of the individual, but, unlike them, he sees the individual as an integral dependent part of the community or state. Thus, Hegel’s first important objection to the social contract tradition is that it bases the foundation of the state on contractual relations, thereby reducing its legitimacy (moral justification of authority) to the arbitrary will of individuals. According to Hegel, since individuals are born as members of a particular state, they have no right to decide whether they want to be citizens of it.⁴ He contends that “the rational end of man is life in the state, and if there is no state there, reason at once demands that one be founded.”⁵ Consequently, for Hegel the state is an imperative of reason rather than, as the contractarians maintain, a voluntary association. The state, according to Hegel, is a necessary condition for the concrete realization of the positive freedom of each citizen.

The above Hegelian objection is only partially successful against the contractarian explanation of the origin of political authority. It is true, as Hume had already shown, that we are born as members of a particular state, and, as such, most of the time we do not have a real choice concerning our membership. Thus Hegel agrees with Hume

that consent is neither necessary nor sufficient to justify political authority. Instead, Hegel contends, the authority of the state is justified in terms of its moral qualities. Thus the political authority of the state, in turn, is justified by the quality of life it provides to its citizens. But Hegel, unlike Hume, does not justify political authority solely on utilitarian considerations but also in terms of the realization of “objective” or “substantive” freedom (the realization of a person’s moral capacities as a member of a community). Each citizen is objectively or positively free when he or she fulfills duties in a just ethical community or state.

The above Hegelian objection shows that the contractarian explanation of the state as a voluntary association is defective, since it does not consider seriously the necessary conditions that the state or political society provides for the realization of a person’s moral capacities. But Hegel, like Hume, is off the mark when it comes to the contractarian justification of political authority. Contractarian philosophers argue that real or hypothetical consent is a necessary condition for the justification of political authority, but none of them argues that consent is sufficient to justify such authority. According to contractarians, something else is needed, namely, the protection of important moral rights.

The second Hegelian objection against contractarianism seems fatal. According to Hegel, contractual relations are valid within the realm of *private rights* (contractual and property rights) among individuals in civil society, but from this it does not follow that the contractarian paradigm can be applied to the foundation and legitimacy of the state. This paradigm is defective because the validity of *private rights* is parasitic upon the validity of *public rights* as defined by the laws and institutions of the state. If the realm of *private rights* is parasitic upon the realm of *public rights*, then the former cannot legitimize (morally justify) the latter. In fact, the opposite is true: the legitimization of *private rights* depends upon and is determined by the realm of *public rights*.⁶

If the contractarians, to avoid this logical objection, claim that the social contract approach is simply a heuristic device to explain the origin of the state and to justify its authority, one wonders whether this adds anything to our present understanding of the notion of political authority. As E. F. Carritt contends,

If it be urged that the contract is not historical but only a “logical analysis” of our allegiance, this only means that we ought to obey “just

as if" we had contracted to do so. Such "analysis" might as fairly be applied to our duties of beneficence—we ought to spare pain just as if we had promised. The assumption is that all duties are ultimately contractual; an explicit promise would be otiose.⁷

The point, according to the Hegelian objection, is that from a hypothetical contract in a hypothetical situation only hypothetical obligations follow. But hypothetical obligations are not concrete obligations and, by the same token, a hypothetical contract is not a real contract at all. If political authority can indeed be morally justified, it must be justified either on utilitarian grounds or on considerations of justice or both, but not on hypothetical considerations.

T. H. Green, like Hegel, rejects the traditional contractarian approach in political philosophy and proceeds to present two major objections to contractarianism. First, Green rejects the notions of *natural rights* and *obligations* in the contractarian sense. Second, he rejects the notion of consent as a necessary condition for the justification of political obligation and argues that political authority is justified by virtue of its moral quality.

Green contends that "a right is a power claimed and recognized as contributory to a common good."⁸ Accordingly, we have a right only if (1) we have the capacity to claim it and (2) it is recognized by the members of society as contributing to the ideal of a common good. Thus, Green argues, these rights and obligations "do not belong to individuals as they might be in a state of nature. . . . They belong to them as members of a society."⁹ This criticism against contractarian philosophers seems unacceptable. The contractarians, unlike Green, argue that we possess natural rights by virtue of our nature. If so, according to them, natural rights are moral rights we possess whether society recognizes them or not. Neither recognition nor contribution to a common good appear to be necessary for ascribing natural rights (moral rights) to moral agents. The fact that there is no power to enforce these rights does not mean that we have no valid moral reasons to respect them.

Green's second argument against contractarianism, like Hegel's, is fatal. He argues that moral life outside the state is simply impossible. It is through the state and its institutions that individuals develop their moral personality. If this is true, then life in political society is an imperative of reason. The state or political society, Green contends, is not, as contractarians argue, an artificial product of the self-interest of independent and self-contained individuals, but a natural outcome of

the development of people's moral personality for the protection and promotion of a common good. Only through the state and its institutions, Green argues, can our moral rights ("implicit rights") be made concrete rights ("explicit rights"). Consequently, the realm of *public rights* (the rights of the state and its institutions) takes precedence over the realm of *private rights* (contractual and property rights). This is a Hegelian argument. From an axiological point of view, *public rights* are more important than *private rights*, since it is through the state that our moral rights are in fact validated (recognized and protected).

A second important question can now be taken up briefly. Is the concept of the social contract necessary for the development of a general theory of rights that accounts for natural or moral rights? The answer is clear. The idea of the social contract is superfluous to our understanding of natural or moral rights. This can be seen clearly in Locke's political philosophy. Locke, in his *Second Treatise of Government*, develops his theory of natural rights before even mentioning any sort of contract. Natural rights, according to Locke, are rights we possess by virtue of our nature. Thus a contract can neither confer these rights (natural or moral) nor take them away. If so, then we can develop a general theory of rights or talk meaningfully about rights without any reference to the *social contract*.

The concept of the social contract is neither necessary nor sufficient to explain natural or moral rights. The fact that most advocates of contractarianism also talk about natural rights is a matter of a contingent historical situation rather than the result of any logical connection between the *social contract* and *natural rights*. These are two radically different concepts. Consequently, we can talk about one without necessarily talking about the other.

The notion of natural rights is a more fundamental notion than that of a social contract. In fact, most contractarian philosophers use the metaphor of the *social contract* partly as a way of explaining why we ought to protect natural rights. But if natural rights are rights we possess by virtue of our nature, then we ought to respect them regardless of any contract or agreement. Such respect is necessary for the development of our moral personality as well as for our personal integrity.

And, finally, I will question whether contractarianism, in any of its forms, can provide an adequate answer to a third important question: Is the concept of the social contract necessary or sufficient to justify a general *prima facie* moral obligation to obey the state and its institu-

tions? We may agree that we have a moral obligation to promote a "just" government (what Rawls understands as a *natural duty of justice*) but consistently deny that we have a political obligation (understood as a self-assumed obligation) to obey all or most of the laws emanating from such an authority.¹⁰

In order to explain the above distinction between—a moral obligation to promote "just" governments and an obligation to obey the law of the land—I shall distinguish between *natural obligations, artificial obligations, and duties*.

1. *Natural obligations*: These are moral requirements imposed on us (moral agents) regardless of whether we recognize or approve of them. They are Rawls's *natural duties*. We owe them to all persons by virtue of their being persons.

2. *Artificial obligations*: These are, roughly speaking, what H. L. A. Hart identifies simply as "obligations."¹¹ They are moral requirements (i) that are voluntarily created (self-assumed obligations), such as promissory obligations, (ii) that are owed to specific persons who have corresponding claims or rights, and (iii) that are not natural obligations.

3. *Duties*: I will use this term as E. F. Carritt used it, to mean "the strongest present obligation"¹² in a given situation. Thus *duty* is defined as the weightiest moral obligation in a concrete situation.

I shall also use the term "political obligation" to indicate a species of *artificial obligations*. Political obligations are those self-assumed moral responsibilities we acquire by virtue of being members of a political association or group. Political obligations are moral rather than legal or prudential obligations. Legal obligations are easily determined by appealing to the law of the land and its respective legal institutions. Prudential obligations, on the other hand, are not moral, since they are grounded on self-interest. Thus moral obligations differ from legal obligations, since there is no universally agreed institution to which we can appeal to settle conflicts of moral obligations. They also differ from prudential obligations, since they are obligatory reasons for acting regardless of whether they promote our self-interest.

I am assuming throughout the present discussion that there is such a thing as a "moral point of view" that consists in being willing to step in other people's shoes and to apply moral principles consistently, regardless of who is affected by them.¹³ Such a view is grounded on rational considerations, since one can present agent-neutral reasons to

justify one's course of action, and such reasons may be accepted as valid by any other moral agent in a similar position.¹⁴

Those, such as subjectivists, relativists, nihilists, and noncognitivists in general, who deny that there is a "moral point of view" or any agent-neutral reasons for acting would have a difficult time justifying their views. By ruling out the possibility of a "moral point of view" they are faced with a serious dilemma. On the one hand, they must justify all moral values and principles by appealing to their own individual preferences, or to the collective preference of a particular culture, or both. And on the other hand, they must argue with the nihilist that any choice is as good as any other.

If one accepts the first horn of such a dilemma, one is then committed to the view that what makes an action right is not any agent-neutral reason one may advance as justification for one's action because, according to the noncognitivists, there are no such things as neutrally valid reasons for action. Instead, what makes an action right is a person's preferences or a collective approval of his or her actions. From this it follows that if two persons, X and Y, are situated in a similar position they may decide to act in opposite ways and still act rightly, so long as they act compatibly with their own preferences or with the collective preferences of a particular community. However, to destroy and mutilate innocent persons without legitimate justification seems to be wrong, regardless of individual preferences or collective approval of such actions. Therefore, agent-neutral reasons are conceivable and hence valid for passing judgment on such moral matters.

But if one accepts the second horn of the dilemma, then one is open to the charge of arbitrariness or irrationality. If nihilism is true, then we cannot make distinctions between true and false, right and wrong, just and unjust, etc. Yet clearly we do make such distinctions and, moreover, they are necessary to make sense of many concepts in our language. We therefore do not have sufficient reasons for accepting nihilism as an alternative moral or political theory.

I turn now to assess contractarian and anticontractarian views on the nature of political obligation. In answering the question of whether the social contract can generate a political obligation to obey the state and its institutions, the contractarians and their critics adopt two radically different paradigms of political obligation. The contractarians present an "artificial" paradigm of political obligation, since they derive this obligation partially from a backward-looking voluntary act of explicit or implicit consent by the citizens to accept the political

authority of the state. According to the contractarians, we have a political obligation (what I call an *artificial moral obligation*) to act according to the requirements of the state because, among other things, we have voluntarily recognized its authority as binding upon us.

The anticontractarians (including idealists and utilitarians) present a "natural" paradigm of political obligation, since they derive such an obligation from a forward-looking (teleological) recognition of some future good. The utilitarians, such as Hume, argue that we have a political obligation (natural moral obligation) to act in accordance with the requirements of the state because it is in our general interest to do so. The idealists, such as Hegel and Green, argue that we have a political obligation to act according to the requirements of the state because the latter is a necessary condition for the development of our moral personality and thus our freedom.

I contend that neither the contractarians nor their utilitarian and idealist critics present an adequate account of the nature of political obligation. Contractarians fail to justify a general moral *prima facie* obligation to obey the state and its institutions insofar as they attempt to ground political obligation on the nature of past or present explicit or implicit consent. Their critics argue that consent is neither necessary nor sufficient to establish the political obligation of the citizens to obey the state.

For Hume obedience is justified in terms of utility; we ought to obey the law of the land because it is in our general interest to do so. But by the same token, if the laws are unfair and detrimental to our well-being, then it is in our general interest to disobey. Therefore, for Hume obedience as well as disobedience can be justified in terms of utility. However, if we recognize that the utilitarian promotion of the general welfare is only one moral obligation among many, then our obligation to promote the general welfare does not always take precedence over all other obligations, such as our obligation to promote justice (understood as the protection of important rights), our obligation to keep our promises, or our obligation to render aid to people in need of it. There are conflicts of obligations, and there are no preestablished rules to settle these conflicts. Our "duty," understood as our weightiest obligation, to do or refrain from doing something will ultimately depend on the character of the concrete situation or issue in question.

Hegel and Green also fail in their attempt to ground political obligation. They argue that obedience is justified in terms of the moral qualities of the state, but from this it does not follow that one ought to

obey all laws and regulations emanating from such an authority. I agree with Hegel and Green that the institution of the state is an imperative of reason, since it is within the boundaries of political society that we develop our moral personality as free moral agents. But this is not sufficient to generate a general *prima facie* moral obligation to obey the state and its institutions, since other important moral obligations conflict with the state's laws and regulations. If that is so, then obedience as well as disobedience is in need of moral justification. To argue, as some philosophers do,¹⁵ that within a relatively just political system there is a presumption in favor of obedience but that disobedience needs justification is simply to beg the question. If we take moral autonomy seriously, then whether or not we ought to obey a particular rule or law will ultimately depend on its moral qualities.

As responsible moral agents, we have a *natural obligation* to bring about and promote "reasonably just" political institutions, but from this it does not follow that we have a *political obligation* (self-assumed obligation) to obey all laws and regulations emanating from such institutions. To establish that point we would have to show that citizens have voluntarily chosen those laws, and furthermore, that by disobeying such laws they will seriously undermine a "reasonably just" political institution by violating important moral and political rights.

If we agree that political obligation should be understood as a self-assumed obligation that we voluntarily impose on ourselves, as when we promise to do something, or when we enter into a contractual relation, then most people in society do not appear to be bound by this political obligation. Even naturalized citizens do not promise to obey the state and its institutions unconditionally, since they cannot give up moral agency on demand, as if selling themselves into slavery. One should only consent to do that which is morally acceptable. Individuals can always assent to do something morally wrong, but it does not follow that they are morally obliged to do so. On the contrary, once we recognize that we have promised to do something immoral, we ought not to fulfill our promise.

We need to keep in mind that a naturalized citizen is, before anything else, an autonomous person and, as such, is only morally obligated to obey just laws. It might be argued that naturalized citizens acquire a *prima facie* political obligation to obey the law of the land by virtue of their oath of citizenship. However, even in the case of naturalized citizens it is not clear that this oath is always performed voluntarily, since, for example, there might be social pressures compelling them to

become citizens. And even if there were no social or any other kind of pressure, the oath of citizenship, from the perspective of moral agency, does not have any significant moral weight. We simply promise faithful allegiance to those rules and regulations that are morally right; but one ought to respect these rules and regulations by virtue of their being morally right, regardless of what one has promised. Thus it follows that an oath of allegiance is virtually otiose from a moral point of view, although important from a legal perspective.

One could argue that naturalized citizens, as well as native citizens, acquire obligations of gratitude by voluntarily accepting benefits provided by the community (including the government and its institutions). Yet it is difficult to explain, as in the relationship between parents and children, a morally relevant sense of the term "voluntary." One is born in a particular country in the same way one is born into a specific family. We do not choose to be born or, for that matter, to be born in a particular country or as a member of a specific family. This is a matter of natural contingency and thus is morally irrelevant or neutral. In the case of naturalized citizens, however, the situation is somewhat different, since in many situations they could have chosen a different country as their place of residence. Thus, the argument continues, if they have chosen to become citizens of a particular country, they are morally obliged to act according to the law of the land for two main reasons: First, they have promised to do so, and second, they have benefited by residing in that country.

But as I have already argued, a promise as such can never be sufficient to generate a general *prima facie* obligation to obey the law. And although it is true, generally speaking, that citizens have acquired benefits by residing in a particular political community, it is also true that, if they have been good citizens, they have provided benefits to others by contributing to the well-being and stability of the community. This is not a one-way relationship in which one of the parties involved receives benefits at the expense of others. Instead this is a *quid pro quo* situation in which all parties benefit to some degree.

The fact that citizens in general receive benefits from the political community of which they are members cannot generate a serious obligation of gratitude. The reason is that the benefits we acquire in political society, like the benefits we acquire as members of a family, are hardly ever "voluntarily" accepted. Instead, such benefits are generally taken for granted. Most of the time we do not ask for these benefits, they are provided without our having requested them. In order for benefits to generate serious moral obligations, they must be

requested and voluntarily accepted. Otherwise such benefits can be interpreted as "gifts" with no moral strings attached. Benefits thus provided by the political community (the state and its institutions) can never generate serious moral and political obligations.

From these considerations it follows that one can never have a serious moral obligation of gratitude if one does not voluntarily request benefits. Whenever one requests benefits, one should act accordingly to discharge those artificially acquired moral obligations. Since most of the benefits we receive from the state are generally unrequested, it follows that we never or hardly ever have obligations of gratitude to the state.

At this point someone might object to my view that citizens do not have any political obligation by arguing that this invites anarchy and thus rejects "patriotism" (understood as love for one's country).¹⁶ Since patriotism, the objection continuous, is a necessary condition for the preservation of political communities, and since such communities ought to be promoted, especially when they are "reasonably just," then one should reject the idea that citizens do not have any political obligation.

The fact, however, that citizens do not have political obligations does not by itself undermine patriotism. If patriotism is "reasonable" rather than "dogmatic," it may be interpreted as respect and preference for the realization and preservation of some worthy moral and political values as they are exemplified in one's political community. In order for such patriotism to have a real bite, rather than being empty rhetoric, one must be willing to assume substantial risks to preserve the integrity of one's political community and its values whenever they are seriously threatened.

"Reasonable patriotism" is best understood as a disposition to act according to one's beliefs, feelings, and desires to protect and defend worthy moral qualities of one's political community. By acting according to those beliefs, feelings, and desires, I impose an obligation on myself to protect and defend the integrity of my community. Therefore, since those acts by which I defend and protect my community's integrity are consequences of my beliefs, feelings, and desires, they should be construed as a species of supererogatory acts (acts beyond the call of duty). I can deny without inconsistency that I have any political obligations and simultaneously acknowledge a great love and respect for my country and my fellow citizens. Reasonable patriotism is a self-imposed obligation because I voluntarily choose to identify myself with the institutions, values, and customs of my country. On

the other hand, I may be a law-abiding citizen and not be patriotic at all. My obedience may be due simply to prudential considerations or to fear. Thus the objection that a denial of political obligation may lead to unpatriotic and thereby disloyal behavior is unfounded.

Contrary to what some anarchists contend, I argue that a reasonable patriotism is compatible with a strong sense of moral autonomy. It is simply misleading to argue, as Robert Paul Wolff does, that an anarchist "stands in precisely the same moral relationship to 'his' government as he does to the government of any other country in which he might happen to be staying for a time."¹⁷ Even though one may acknowledge that we have natural obligations to all persons *qua* persons regardless of national boundaries, a "moderate" anarchist (one who claims that we do not have any political obligations) can still make a case for having weightier moral obligations to those who share his or her national boundaries, a certain way of life, and thus important values in general.

A moderate anarchist may argue that love for one's country, to be morally justified, must be grounded on sufficient reasons. Within the boundaries of the moral law, we love and prefer the well-being of our fellow citizens over and above (but not necessarily at the expense of) the well-being of other people. The reasons for such preference are grounded in our feelings of attachment and loyalty to our people. Such feelings or sentiments are not arbitrary, since they are grounded in our special but objective relationship with our people.

If my analysis of political obligation is correct, then the large majority of people are not bound by it, although they may be bound to their community by their patriotic sentiments and their natural moral obligations. Most people are born as members of a particular political society (state), and they are never or hardly ever asked whether they voluntarily accept the state's authority and its benefits. Even those who argue that political obligations are generated through the "principle of fair play" fail in their quest for justification.

Rawls's characterization of the principle of fair play captures the important moral considerations involved in such a principle:

A person is under an obligation to do his part as specified by the rules of an institution whenever he has voluntarily accepted the benefits of the scheme or has taken advantage of the opportunities it offers to advance his interests, provided that this institution is just or fair.¹⁸

The defenders of this principle may argue that since political society confers benefits it also generates obligations. Thus a person who

occupies a specific office, such as the president of a country, a professor, or a chess player, has an obligation to act according to the rules and norms that govern such an enterprise. We are assuming, of course, that the persons in question voluntarily accept the obligations attached to the specific roles they are playing and, therefore, other things being equal, would act wrongly if they did not fulfill these obligations.

Yet political society is not like a club that we voluntarily join, voluntarily accepting the obligations attached to our membership. Political society is more like a family: we are born into it without any choice. We use the benefits provided by political society without voluntarily accepting them in any real sense; we just take these benefits for granted.

In order to ground, on the principle of fair play, a *prima facie* obligation to obey the state and its institutions, at least three conditions must be satisfied: (1) the state and its institutions must be generally beneficial; (2) most people must generally act compatibly with the state's institutions (including its laws), so that if we disobey we take unfair advantage of their compliance (by this I mean that we *harm* them in some important way); and (3) we must voluntarily and openly accept, in a real sense, the benefits provided by the state.

Both contractarians and anticontractarians argue convincingly for the acceptance of the first condition; and I do not see anything wrong with the claim that life within political society is better, generally speaking, than life outside of it. But the second and third conditions are independent of the first. If it is true, as I have argued, that the acceptance of benefits in political society is not really voluntary but simply taken for granted, then disobedience of a particular law or regulation is not in fact unfair, although it could be morally objectionable on other grounds. Consequently, if we cannot establish the acceptability of the third condition, then the second condition is useless because its acceptability depends upon that of the third. Therefore, it seems that even an analysis of political obligation in terms of fair play fails to justify a general *prima facie* obligation to obey the state and its institutions.

The fact that both contractarians and anticontractarians fail to justify political obligation (understood as a self-assumed obligation) is nothing new; the anarchists have argued similarly for a long time. But from this conclusion nothing really dramatic follows. From the fact that we generally do not have political obligations, it does not follow that we can disobey the laws of the land as we please. Most of the time there

are legitimate moral reasons for compliance. If this is true, we ought to respect the law, not because we have a political obligation to do so, but because there are important moral reasons for doing so. As free moral agents (autonomous persons), we have *natural obligations* that must be taken into consideration before we obey or disobey any law or regulation.¹⁹

Moreover, the fact that we do not acknowledge a general *prima facie* moral obligation to obey the state and its institutions does not by itself imply a defense of anarchism—if by the latter one means a total rejection of political authority (government) and a denial of the right of punishment by such authority. Nonetheless, if by anarchism one means a rejection, not of government as such, but of its right to command, then my position does imply some sort of anarchy within reasonable limits. This, however, is not to deny that a government has a right to inflict punishment on those who transgress laws. On the contrary, such a right is necessary to maintain social harmony and prevent injustices (violation of rights). Yet if one wants to take moral autonomy seriously, the moral force of law must be independently established by weighing, in each particular situation, whether one has sufficient reasons for obedience or for disobedience.²⁰ The fact that a command is legally valid, according to some internal principle of adjudication, is not sufficient to establish its moral desirability.

From the above considerations two important conclusions follow: (1) that obedience as well as disobedience must be morally justified, and (2) that the legitimacy (moral justification) of political authority or the state does not confer a right to command,²¹ as it has been traditionally understood by both contractarians and anticontractarians, but instead generates moral reasons for respecting and promoting certain kinds of states. These reasons are grounded in our natural obligation of justice (this is the same as Rawls's *natural duty of justice*) rather than in any political obligation.

The contractarian as well as the anticontractarian paradigms of political philosophy add something to our understanding of legitimate political authority. A political authority is legitimate only if: (1) we are allowed to choose who is going to govern us (assuming that some sort of democracy is desirable),²² (2) we have fair access to political power, and (3) we are allowed to be both negatively free, in the sense that the state does not interfere in our private domain, and positively free, in the sense that the state provides us the necessary means to develop our capacities as autonomous persons with a sense of dignity.²³ As Margaret Macdonald succinctly puts it:

To say that the State is justified [legitimate] by its works is to say . . . that it should be judged by the way in which it makes possible for all citizens the material and cultural conditions of good living.²⁴

In this chapter I have assessed some of the idealist and utilitarian arguments against contractarianism and have found the latter wanting as a coherent and reasonable approach to political philosophy. Hume's argument that the concepts of *explicit* and *tacit* consent are inadequate tools to generate political obligation seems to be sound, and his argument grounding allegiance on utilitarian considerations is more reasonable than the contractarian fiction grounding allegiance on a nonexistent contract.

The idealists, such as Hegel and Green, for their part argue that the social contract approach is incoherent, since the validity of *private rights* (contractual and property rights) is parasitic upon the validity of *public rights* as defined by the laws and institutions of the state. If this is true, then *private rights* cannot legitimize *public rights*. The opposite is in fact true: the legitimization of *private rights* depends upon and is determined by the realm of *public rights*.

To sum up, the critics of contractarianism have successfully demonstrated the futile abstractness of this approach to political philosophy. From a hypothetical contract in a hypothetical situation one can only derive hypothetical obligations. Hypothetical obligations are not actual obligations, and a hypothetical contract is not a real contract. If the main idea behind the social contract tradition is to justify political authority, then contractarianism fails in achieving this objective. If political authority can indeed be morally justified, it must be justified either on utilitarian grounds, or on concrete considerations of justice, or on both, but not on hypothetical considerations.

Even were this the case, I argue that the recognition of political authority does not entail a right to command, but only a right to punish transgressions of law. Thus moderate anarchists may reconcile political authority with moral autonomy by acknowledging a state's right to punish rather than its right to command. Simultaneously, they may argue that, if one is not to surrender moral autonomy, then the moral desirability of internally valid laws or commands must be independently established. Such a position, instead of excluding a "reasonable" sense of patriotism, reinforces it. A state that takes seriously the moral autonomy of its citizens ought to be lenient with honest dissenters if their refusal to obey does not violate important moral rights.

This state is more likely to be obeyed than others because, in the long run, if one values moral and political autonomy, then it is in one's interest to avoid undermining those institutions (including the law) that allow for such autonomy.

NOTES

1.

INTRODUCTION

1. I am using the terms "conservative" and "liberal" loosely. These are value-laden terms and therefore contestable. By "conservatives" I refer to those political theorists who basically defend the status quo and hence are skeptical or refuse to accept any major changes in political society, since for them traditions and the preservation of order are important political values. By "liberals" I refer to those political theorists who consider the moral or human rights of individuals so important that they are willing to transform all or some major parts of political society to preserve or promote such rights.
2. Plato, *Plato: The Collected Dialogues*, eds. Edith Hamilton & Huntington Cairns, 9th ed. (Princeton Univ. Press, 1978), p. 606.
3. *Ibid.*, pp. 36-37.
4. For the influence of this concept on Western moral thought, see Patrick Riley, *Will and Political Legitimacy* (Cambridge: Harvard Univ. Press, 1982), pp. 4-5.
5. Saint Augustine, *On Free Choice of the Will*, trans. Anna S. Benjamin & L. H. Hackstaff, 1st ed. (1964; rpt., Indianapolis: The Bobbs-Merrill Co., 1979), p. 36.
6. This idea is discussed in his *Summa Theologica*; see Saint Thomas Aquinas, *Introduction to St. Thomas Aquinas*, ed. Anton C. Pegis (New York: Random House, 1949), p. 373.
7. *Will and Political Legitimacy*, p. 6.
8. *Ibid.*, p. 7.
9. Francisco Suárez, *A Treatise on Laws and God the Lawgiver*, in *Excerpts from Three Works*, ed. G. L. Williams (Oxford: Oxford Univ. Press, 1944), p. 370.
10. *Ibid.*, p. 375.
11. Aristotle, *The Ethics of Aristotle*, trans. J. A. K. Thomson (New York: Penguin Books, 1979), p. 189.
12. For a discussion of such concepts, see Otto Gierke, *Natural Law and*

- the Theory of Society*, I, trans. Ernest Barker (London: Cambridge Univ. Press, 1934), p. XXXV.
13. See Cicero, *The Republic*, in *Society, Law and Morality*, ed. Frederick A. Olafson (New Jersey: Prentice Hall, 1961), p. 35.
14. *Natural Law and the Theory of Society*, p. xxxvi.
15. For a discussion on the nature and different kinds of law, see Saint Thomas Aquinas's "Treatise on Law" in *Summa Theologica*. Saint Thomas Aquinas, *Introduction to St. Thomas Aquinas*, pp. 609-50.
16. *Natural Law and the Theory of Society*, p. XLI.
17. See Ernest Barker, *Social Contract* (Oxford: Oxford Univ. Press, 1960), p. X.
18. *Ibid.*, p. XII.
19. See David G. Ritchie, *Darwin and Hegel* (New York: Macmillan, 1893), p. 202.
20. See John W. Gough, *The Social Contract* (Oxford: Oxford Univ. Press, 1936), p. 2.
21. *A Treatise on Laws and God the Lawgiver*, p. 375.

2. HOBBS

1. For a discussion of this, see Ramon M. Lemos, *Hobbes & Locke: Power & Consent* (Athens: The University of Georgia Press, 1978), p. 12.
2. Thomas Hobbes, *Man & Citizen*, ed. Bernard Gert (New York: Doubleday, 1972), p. 125.
3. Thomas Hobbes, *Leviathan*, Introduction by A. D. Lindsay (New York: E. P. Dutton, 1950), p. 109.
4. *Man & Citizen*, p. 115.
5. *Leviathan*, p. 106.
6. *Man & Citizen*, p. 216.
7. *Leviathan*, p. 106.
8. *Ibid.*, p. 177.
9. *Man & Citizen*, p. 123.
10. *Leviathan*, p. 107.
11. *Ibid.*, p. 103.
12. *Ibid.*, p. 105.
13. *Ibid.*
14. *Ibid.*, p. 141.
15. *Ibid.*, p. 101.
16. *Ibid.*, p. 102.
17. *Ibid.*, p. 105.
18. *Ibid.*, p. 106.
19. *Ibid.*, p. 119.
20. *Ibid.*, p. 139.

21. *Ibid.*, p. 107.
22. *Ibid.*
23. *Ibid.*
24. *Ibid.*
25. *Ibid.*, p. 107-8.
26. *Ibid.*, p. 118.
27. *Ibid.*, p. 113.
28. *Ibid.*, pp. 118-19.
29. *Ibid.*, pp. 142-43.
30. *Ibid.*, p. 144.
31. *Ibid.*, p. 146.
32. *Ibid.*, p. 147-48.
33. *Ibid.*, p. 133.
34. *Ibid.*
35. *Ibid.*, p. 108.
36. *Ibid.*, p. 109.
37. *Ibid.*, p. 110.
38. *Ibid.*, p. 167.
39. *Ibid.*, p. 115.
40. John Locke, *Second Treatise of Government*, ed. C. B. Macpherson (Indianapolis: Hackett, 1980), p. 50.
41. *Leviathan*, p. 133.
42. *Ibid.*, p. 107.
43. *Ibid.*, p. 133.
44. *Ibid.*, p. 244.
45. *Ibid.*
46. *Ibid.*, p. 247.
47. *Man & Citizen*, p. 275-76
48. *Ibid.*, p. 276.
49. *Ibid.*
50. *Leviathan*, p. 321.
51. *Ibid.*, p. 327.
52. *Ibid.*, p. 515.
53. *Ibid.*, p. 516-17.
54. For a discussion of this issue, see *Hobbes & Locke: Power & Consent*, p. 57.
55. *Leviathan*, p. 131.
56. *Ibid.*
57. *Ibid.*, p. 288.
58. See Saint Thomas Aquinas, *Introduction to Saint Thomas Aquinas*, ed. Anton C. Pegis (New York: Random House, 1948), p. 649.
59. *Leviathan*, p. 299.
60. E. F. Carr, *Morals & Politics* (Oxford: Oxford Univ. Press, 1935), p. 39.

3.

LOCKE

1. John Locke, *Second Treatise of Government*, ed. C. B. Macpherson (Indianapolis: Hackett, 1980), pp. 53-60.
2. *Ibid.*, p. 8.
3. *Ibid.*, p. 9.
4. *Ibid.*, p. 15.
5. *Ibid.*, p. 16.
6. *Ibid.*, pp. 65-66.
7. *Ibid.*, p. 66.
8. C. B. Macpherson, *The Political Theory of Possessive Individualism*, 8th ed. (Oxford: Oxford Univ. Press, 1979), p. 240.
9. *Second Treatise*, p. 15.
10. *Ibid.*, p. 66.
11. *Ibid.*
12. *The Political Theory of Possessive Individualism*, p. 3.
13. Thomas Hobbes, *Leviathan*, Introduction by A. D. Lindsay (New York: E. P. Dutton, 1950), p. 307.
14. *Second Treatise*, p. 9.
15. John Locke, *An Essay Concerning Human Understanding*, I. (London: J. M. Dent & Sons, 1967), p. 189.
16. *Leviathan*, p. 42.
17. *Second Treatise*, p. 15.
18. *Ibid.*, p. 66.
19. *The Political Theory of Possessive Individualism*, p. 241.
20. *Ibid.*
21. C. B. Macpherson, Introduction, *Second Treatise of Government*, p. XIV.
22. *The Political Theory of Possessive Individualism*, p. 243.
23. Jean-Jacques Rousseau, *The Social Contract*, ed. Lester G. Crocker (New York: Washington Square Press, 1967), p. 26.
24. *Second Treatise*, p. 17.
25. *Ibid.*
26. *Ibid.*, p. 19.
27. *Ibid.*
28. *Ibid.*, p. 20.
29. Saint Augustine, *On Free Choice of the Will*, trans. Anna S. Benjamin & L. H. Hackstaff, 1st ed. (1964; rpt., Indianapolis: Bobbs-Merrill, 1979), p. 36.
30. Francisco Suárez, *A Treatise on Laws and God the Lawgiver*, in *Excerpts from Three Works*, ed. G. L. Williams (Oxford: Oxford Univ. Press, 1944), p. 375.
31. John Dunn, "Consent in the Political Theory of John Locke," in *Life, Liberty & Property*, ed. Gordon J. Schochet (California: Wadsworth, 1971), p. 134.

32. *Second Treatise*, p. 52.
33. "Consent in the Political Theory of John Locke," p. 138.
34. *Ibid.*, p. 134.
35. *Second Treatise*, pp. 77-78.

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1. C. B. Macpherson, *The Political Theory of Possessive Individualism*, 8th ed. (1962; rpt., Oxford: Oxford Univ. Press, 1979), p. 3.
2. See Stephen Ellenburg, *Rousseau's Political Philosophy* (Ithaca: Cornell Univ. Press, 1976).
3. Jean-Jacques Rousseau, "Discourse on the Origin of Inequality" (*Second Discourse*), in *On the Social Contract*, trans. Donald A. Cress (Indianapolis: Hackett, 1983), p. 113.
4. Ramon M. Lemos, *Rousseau's Political Philosophy* (Athens: University of Georgia Press, 1977), p. 6.
5. "Second Discourse," p. 118.
6. *Ibid.*, pp. 118-19.
7. John Flamenatz, *Man and Society*, I (New York: McGraw Hill, 1963), pp. 374-75.
8. "Second Discourse," p. 125.
9. Maurice Cranston, *Jean-Jacques* (New York: W. W. Norton, 1983), p. 295.
10. Thomas Hobbes, *Leviathan* (New York: E. P. Dutton, 1950), p. 105.
11. "Second Discourse," p. 115.
12. *Ibid.*, p. 135.
13. *Ibid.*, p. 145.
14. *Ibid.*, p. 140.
15. *Ibid.*, p. 138.
16. *Ibid.*, p. 147.
17. Jean-Jacques Rousseau, "Discourse on Political Economy," in *On the Social Contract*, p. 176.
18. *Second Discourse*, p. 157-58.
19. "Political Economy," p. 179.
20. Jean-Jacques Rousseau, *The Social Contract*, ed. Lester G. Crocker (New York: Washington Square Press, 1967), p. 55.
21. *Ibid.*
22. *Ibid.*, p. 26.
23. *Second Discourse*, p. 150.
24. Iring Fetscher, "Rousseau's Concept of Freedom in the Light of his Philosophy of History," in *Nomos IV: Liberty*, ed. Carl J. Friedrich (New York: Atherton Press, 1962), p. 37.
25. *The Social Contract*, p. 5.

26. *Ibid.*, pp. 17–18.
27. *Ibid.*, p. 22.
28. *Ibid.*, p. 23.
29. *Ibid.*, pp. 22–23.
30. Jean-Jacques Rousseau, "Letters from the Mountain," in *Man and Society* by John Plamenatz, vol. 1 (New York: McGraw-Hill, 1963), p. 402.
31. *The Social Contract*, pp. 18–19.
32. "Rousseau's Concept of Freedom in the Light of his Philosophy of History," p. 42.
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34. "Political Economy," p. 171.
35. *Ibid.*, p. 176.
36. Lucio Colletti, *From Rousseau to Lenin*, trans. John Merrington and Judith White (New York: Monthly Review Press, 1974), p. 152.
37. *The Social Contract*, p. 18.
38. *Second Discourse*, p. 154.
39. *The Social Contract*, pp. 12–13.
40. *From Rousseau to Lenin*, p. 183.
41. *The Social Contract*, p. 20.
42. *Ibid.*, p. 106.
43. Otto Gierke, *Natural Law and the Theory of Society*, I, trans. Ernest Barker (London: Cambridge Univ. Press, 1934), p. 150.
44. *The Social Contract*, p. 40.
45. *Ibid.*, p. 21.
46. *Ibid.*, pp. 112–13.
47. *From Rousseau to Lenin*, p. 184.

5.

KANT

1. Immanuel Kant, *The Metaphysical Elements of Justice*, trans. John Ladd (Indiana: Bobbs-Merrill, 1965), p. 34.
2. I. Kant, "To Perpetual Peace: A Philosophical Sketch," in *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Indianapolis: Hackett, 1983), p. 135.
3. I. Kant, *Foundations of the Metaphysics of Morals*, trans. Lewis White Beck (1959; rpt., Indiana: Bobbs-Merrill, 1978), p. 39.
4. *Ibid.*, p. 9.
5. Patrick Riley, *Will and Political Legitimacy* (Cambridge: Harvard Univ. Press, 1982), p. 128.
6. *The Metaphysical Elements of Justice*, p. 19.
7. *Ibid.*, p. 70.
8. Kant uses "Idea" as a technical term that refers to a necessary concept of reason with no reference to spatio-temporal objects.

9. "To Perpetual Peace: A Philosophical Sketch," p. 111.
10. David Hume, *A Treatise of Human Nature*, 2nd ed. (Oxford: Oxford Univ. Press, 1981), p. 415.
11. *The Metaphysical Elements of Justice*, p. 13.
12. *Ibid.*, p. 86.
13. I. Kant, "Idea for a Universal History with a Cosmopolitan Intent," in *Perpetual Peace and Other Essays*, pp. 31–32.
14. *Ibid.*, p. 32.
15. I. Kant, "Speculative Beginning of Human History," in *Perpetual Peace and Other Essays*, p. 57.
16. "Idea for a Universal History with a Cosmopolitan Intent," p. 33.
17. *Ibid.*
18. *Ibid.*
19. *The Metaphysical Elements of Justice*, pp. 43–44.
20. *Ibid.*, p. 34.
21. *Ibid.*, p. 35.
22. *Ibid.*
23. *Ibid.*
24. *Ibid.*
25. Jean-Jacques Rousseau, "Discourse on Political Economy," in *On the Social Contract*, trans. Donald A. Cress (Indianapolis: Hackett, 1983), p. 176.
26. *The Metaphysical Elements of Justice*, pp. 36–37.
27. *Ibid.*, p. 72.
28. *Ibid.*, p. 71.
29. *Ibid.*, p. 76.
30. *Ibid.*
31. For a good discussion of this topic, see Galvano della Volpe, *Rousseau and Marx*, trans. John Frasser (New Jersey: Humanities Press, 1979).
32. *The Metaphysical Elements of Justice*, pp. 79–80.
33. *Rousseau and Marx*, p. 82.
34. *The Metaphysical Elements of Justice*, p. 78.
35. *Ibid.*
36. *Ibid.*, pp. 79–80.
37. *Ibid.*, p. 80.
38. *Ibid.*, pp. 80–81.
39. Jean-Jacques Rousseau, *The Social Contract*, trans. Lester G. Crocker (New York: Washington Square Press, 1967), pp. 22–23.
40. Howard Williams, *Kant's Political Philosophy* (New York: St. Martin's Press, 1983), p. 185.
41. I. Kant, "On the Proverb: That May Be True in Theory But Is of No Practical Use," in *Perpetual Peace and Other Essays*, p. 77.
42. David G. Ritchie, *Darwin & Hegel* (New York: Macmillan, 1893), p. 222.
43. J. W. Gough, *The Social Contract* (Oxford: Oxford Univ. Press, 1936), p. 173.

44. *The Metaphysical Elements of Justice*, p. 78.
45. *Ibid.*, pp. 84-86.
46. Humberto Cerroni, "La Crisis de la Democracia y El Estado Moderno," in *Problemas de la Ciencia Política Contemporánea*, Facultad de Ciencias Políticas y Sociales, Serie Estudios 3 (Mexico: Universidad Nacional Autónoma de Mexico, 1969), pp. 10-11.
47. Thomas Hobbes, *Man & Citizen*, ed. Bernard Gert (New York: Doubleday, 1972), pp. 96-97.
48. *The Metaphysical Elements of Justice*, p. 86.
49. *Ibid.*, p. 82.
50. *Ibid.* See also "On the Proverb: That May Be True in Theory But Is of No Practical Use," p. 73.
51. "On the Proverb: That May Be True in Theory But Is of No Practical Use," p. 72.
52. I. Kant, *Critique of Practical Reason*, trans. T. K. Abbott, 6th ed. (1873; rpt., London: Longmans, Green & Co., 1948), p. 154.

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2. *Ibid.*
3. *Ibid.*, p. 136.
4. *Ibid.*, p. 137.
5. *Ibid.*, pp. 142-43.
6. *Ibid.*, p. 121.
7. *Ibid.*, p. 20.
8. *Ibid.*, p. 7.
9. *Ibid.*, p. 302.
10. *Ibid.*
11. *Ibid.*, p. 303.
12. *Ibid.*, p. 244.
13. *Ibid.*, p. 92.
14. *Ibid.*
15. Brian Barry, *The Liberal Theory of Justice* (Oxford: Oxford Univ. Press, 1973), p. 26.
16. John Rawls, "The Priority of Right and Ideas of the Good," *Philosophy & Public Affairs*, vol. 17, no. 4 (1988), p. 252.
17. *A Theory of Justice*, p. 143.
18. *Ibid.*, p. 421.
19. *Ibid.*, pp. 416-24.
20. *Ibid.*, p. 433.
21. *The Liberal Theory of Justice*, p. 27.

22. *A Theory of Justice*, p. 61.
23. *The Liberal Theory of Justice*, p. 31.
24. *A Theory of Justice*, p. 440.
25. *Ibid.*, p. 178.
26. Rawls adopts MacCallum's distinction between negative and positive freedom. For an elaborate treatment of these concepts of freedom, see Gerald C. MacCallum, Jr., "Negative and Positive Freedom," *Philosophy, Politics and Society*, 4th series, eds. Peter Laslett, W. G. Runciman and Quentin Skinner (Oxford: Blackwell, 1972), pp. 174-93.
27. *Ibid.*, p. 202.
28. *Ibid.*
29. *Ibid.*
30. For a discussion of this issue, see Ian Shapiro, *The Evolution of Rights in Liberal Theory* (Cambridge: Cambridge Univ. Press, 1986), p. 221.
31. For a discussion of this distinction, see Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (Oxford: Oxford Univ. Press, 1979), pp. 118-72.
32. *A Theory of Justice*, p. 204.
33. *Ibid.*
34. Norman Daniels, ed., *Reading Rawls: Critical Studies of a Theory of Justice* (New York: Basic Books, 1975), p. 263.
35. John Rawls, "A Well-Ordered Society," in *Philosophy, Politics, and Society*, 5th series, eds. Peter Laslett & J. Fishkin (New Haven: Yale Univ. Press, 1979), pp. 6-7.
36. *Ibid.*, p. 12.
37. *Ibid.*
38. *Ibid.*, p. 8.
39. *Ibid.*, p. 13.
40. *Ibid.*, p. 18.
41. *Ibid.*
42. *Ibid.*
43. John Rawls, "Kantian Constructivism in Moral Theory: The Dewey Lectures 1980," *The Journal of Philosophy*, vol. 77, no. 9 (1980), p. 519.
44. I. Kant, *The Metaphysical Elements of Justice*, trans. John Ladd (Indianapolis: Bobbs-Merrill, 1965), p. 13.
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48. According to Rawls, his theory is purely political rather than metaphysical. For a discussion of this issue, see John Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy & Public Affairs*, vol. 14, no. 3 (1985), pp. 223-51.

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50. For a thorough and illuminating discussion of this issue, see Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge Univ. Press, 1982).
51. *Foundations of the Metaphysics of Morals*, p. 47.
52. *The Metaphysical Elements of Justice*, p. 86.
53. *A Theory of Justice*, p. 110.
54. *Ibid.*, pp. 111–12.
55. *Ibid.*, p. 114.
56. *Ibid.*, pp. 336–37.
57. *Ibid.*, p. 114.
58. *Ibid.*, pp. 114–15.
59. *Ibid.*, p. 334.
60. "The Priority of Right and Ideas of the Good," p. 275.
61. *Ibid.*, p. 251.
62. *Ibid.*
63. *Ibid.*
64. *Ibid.*, p. 252.
65. *Ibid.*
66. *Ibid.*, p. 253.
67. *Ibid.*
68. *Ibid.*
69. "Kantian Constructivism in Moral Theory," p. 524.
70. *Ibid.*, p. 519.
71. "The Priority of Right and Ideas of the Good," p. 256.
72. *Ibid.*, p. 259.
73. *Ibid.*, p. 262.
74. *Ibid.*
75. *Ibid.*, p. 263.
76. Thomas Nagel, "Rawls on Justice," pp. 8–9.
77. *Ibid.*, p. 10.
78. John Rawls, "Fairness to Goodness," *The Philosophical Review*, vol. 84, no. 4 (1975), p. 554.
79. Ronald Dworkin, "The Original Position," in *Reading Rawls: Critical Studies of a Theory of Justice*, pp. 17–18.

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2. *Ibid.*, pp. 575–76.
3. *Ibid.*, p. 457.

4. *Ibid.*, pp. 574–75.
5. *Ibid.*, p. 578.
6. David Hume, *Hume's Moral and Political Philosophy*, 4th ed., ed. with an Introduction by Henry D. Aiken (New York: Hafner, 1964), pp. 366–67.
7. *Ibid.*, p. 367.
8. *Ibid.*
9. *Ibid.*
10. *Ibid.*, p. 357.
11. *Ibid.*, p. 358.
12. *Ibid.*, p. 363.
13. *Ibid.*
14. *Ibid.*
15. *Ibid.*, p. 359.
16. *Ibid.*
17. *Ibid.*, p. 368.
18. *Ibid.*
19. *Ibid.*
20. *Ibid.*, p. 362.
21. *Ibid.*, p. 368.
22. *Ibid.*, p. 371.
23. *A Treatise of Human Nature*, p. 551.
24. Norberto Bobbio, *Estudios de la Historia de la Filosofía: De Hobbes a Gramsci* (Madrid: Editorial Debate, 1985), p. 211.
25. *Ibid.*
26. G. W. F. Hegel, *Hegel's Philosophy of Right*, trans. with notes by T. M. Knox (Oxford: Oxford Univ. Press, 1979), pp. 122–23.
27. *Ibid.*, pp. 155–56.
28. Hegel uses "Idea" as a technical term that refers to the essence or true nature of a concrete object of thought.
29. *Ibid.*, p. 10.
30. *Ibid.*, p. 11.
31. *Ibid.*
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33. *Ibid.*
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35. *Philosophy of Right*, p. 12.
36. *Ibid.*, p. 12–13.
37. *Ibid.*, p. 160.
38. *Ibid.*, p. 14.
39. *Ibid.*, pp. 15–16.
40. *Ibid.*, p. 20.
41. *Ibid.*, p. 33.
42. *Ibid.*, pp. 33–34.

43. *Ibid.*, p. 38.
44. *Ibid.*, p. 76.
45. *Ibid.*, p. 90.
46. *Ibid.*
47. *Ibid.*, p. 87.
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49. *Ibid.*, p. 105.
50. *Ibid.*, p. 107.
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72. *Ibid.*, p. 184.
73. *Ibid.*, p. 185.
74. *Ibid.*
75. *Ibid.*, p. 210.
76. *Ibid.*
77. H. A. Prichard, "Green's Principles of Political Obligation," in *Moral Obligation and Duty and Interest* (Oxford: Oxford Univ. Press, 1968), p. 54.
78. T. H. Green, *Lectures on the Principles of Political Obligation and other writings*, eds. Paul Harris & John Morrow (Cambridge: Cambridge Univ. Press, 1986), pp. 16-17.

79. *Ibid.*, p. 17.
80. *Ibid.*, p. 24.
81. *Ibid.*, p. 79.
82. *Ibid.*, p. 25.
83. *Ibid.*, p. 106.
84. *Ibid.*, p. 89.
85. *Ibid.*, pp. 89-90.
86. *Ibid.*, p. 90.
87. *Ibid.*, p. 91.
88. *Ibid.*, p. 92.
89. *Ibid.*
90. *Ibid.*, p. 95.
91. *Ibid.*, p. 96.
92. *Ibid.*
93. *Ibid.*
94. *Ibid.*, p. 104.
95. *Ibid.*
96. *Ibid.*, pp. 106-7.
97. *Ibid.*, p. 108.
98. *Ibid.*, p. 112.
99. *Ibid.*, pp. 114-15.
100. *Ibid.*, p. 115.
101. *Ibid.*, p. 118.
102. *Ibid.*, p. 110.
103. *Ibid.*, p. 117.
104. *Ibid.*, p. 199.
105. *Ibid.*
106. *Ibid.*
107. *Ibid.*, p. 200.

8.

POLITICAL OBLIGATION OR ANARCHY?

1. John Rawls, *A Theory of Justice* (Cambridge: Harvard Univ. Press, 1971), p. 302.
2. David Hume, *Hume's Moral and Political Philosophy*, 4th ed., ed. with an Introduction by Henry D. Aiken (New York: Hafner, 1964), p. 357.
3. *Ibid.*, p. 358.
4. G. W. F. Hegel, *Hegel's Philosophy of Right*, trans. with notes by T. M. Knox (Oxford: Oxford Univ. Press, 1979), p. 242.
5. *Ibid.*
6. For an illuminating discussion of the distinction between *private rights* and *public rights* in Hegel, see Norberto Bobbio, *Estudios de Historia de la Filosofía: De Hobbes a Gramsci* (Madrid: Editorial Debate, 1985), Cap. V;

also his recently translated work *The Future of Democracy* (Minneapolis: University of Minnesota Press, 1987), p. 121.

7. E. F. Carritt, *Ethical and Political Thinking* (Oxford: 1947; rpt., Westport, Conn.: Greenwood Press, 1973), p. 147.

8. T. H. Green, *Lectures on the Principles of Political Obligation and other writings*, eds. Paul Harris and John Morrow (Cambridge: Cambridge Univ. Press, 1986), p. 79.

9. *Ibid.*, pp. 107-8.

10. For a discussion of the concept of *political obligation* understood as a species of self-assumed obligations, see Joseph Raz, *The Morality of Freedom* (Oxford: Oxford Univ. Press, 1986), pp. 99-105; A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton Univ. Press, 1979), Chs. I and II.; also Peter Singer, *Democracy and Disobedience* (Oxford: Oxford Univ. Press, 1974), pp. 1-11.

11. H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review*, vol. 64, no. 2 (1955), p. 179.

12. *Ethical and Political Thinking*, p. 3.

13. To specify the necessary and sufficient conditions of the *moral point of view* is a separate project in itself. However, I think that something like Kant's "Categorical Imperative," Hare's "Universalizability Principle," or Rawls's "Original Position" capture to some degree the essence of what has come to be known as the *moral point of view*. When one adopts such a point of view, one is at least committed to apply *important* moral principles consistently regardless of who is affected by them; and unless one can present sufficient reasons for not doing so, one will be incoherent in applying those principles. See I. Kant, *Foundations of the Metaphysics of Morals* (Indianapolis: The Bobbs-Merrill Co., 1959); R. M. Hare, *Moral Thinking* (Oxford: Oxford Univ. Press, 1981); and John Rawls, *A Theory of Justice* (Cambridge: Harvard Univ. Press, 1971).

14. For an interesting discussion on *values* and *objectivity*, see Stanley I. Benn, *A Theory of Freedom* (Cambridge: Cambridge Univ. Press, 1988), Ch. 4. I borrow some of the ideas from this work to argue briefly for the justification of a *moral point of view*.

15. For a defense of such a view, see Richard T. De George, *The Nature and Limits of Authority* (Kansas: The University Press of Kansas, 1985), Ch. 7.

16. For a recent discussion of *patriotism*, see Stephen Nathanson, "In Defense of 'Moderate Patriotism,'" *Ethics*, vol. 99, no. 3 (1989), pp. 535-52.

17. Robert Paul Wolff, *In Defense of Anarchism* (New York: Harper Torchbooks, 1971), p. 18.

18. *A Theory of Justice*, p. 342.

19. For a similar but more elaborate position, see A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton Univ. Press, 1979), pp. 189-201.

20. For an elaborate and persuasive defense of the concept of political obligation on act-utilitarian grounds, see Rolf E. Sartorius, *Individual Conduct and Social Norms* (California: Dickenson, 1975), Ch. VI.

21. Most political philosophers, except anarchists, have traditionally argued that to recognize someone as having *political authority* is to recognize such a person or group as having a *right* to command. If so, then subjects have an obligation to obey those commands. For example, see S. I. Been and R. S. Peters, *The Principles of Political Thought* (New York: Free Press, 1965), pp. 351-91; D. D. Raphael, *Problems of Political Philosophy* (New York: Praeger, 1970), Ch. IV.; G. E. M. Anscombe, "On the Source of the Authority of the State," in *Ethics, Religion and Politics* (Minneapolis: University of Minnesota Press, 1981), III, pp. 130-55; Hanna F. Pitkin, "Obligation and Consent, II," in *Readings in Social and Political Philosophy*, ed. Robert M. Stewart (New York: Oxford Univ. Press, 1986), pp. 42-58.

22. If one takes moral autonomy seriously, then political autonomy should be interpreted as an extension of it. By political autonomy I mean, roughly speaking, the ability to choose who is going to govern us and the possibility of modifying those rules by which we have chosen to be governed.

23. By "dignity" I mean having the capacity for exercising one's rights and being able to claim them. For an important discussion of the connection between human rights and dignity, see Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton Univ. Press, 1980), pp. 143-58.

24. Margaret Macdonald, "The Language of Political Theory," in *Logic and Language*, First & Second Series, ed. with an Introduction by Anthony Flew (New York: Doubleday, 1965), pp. 189-90.

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