

THE SECULAR COVENANT: CONTRACTARIAN  
METAPHOR IN THE MYTHOPOESY OF CIVILITY  
AND ORDER

by

ALAN BOWEN-JAMES

A THESIS SUBMITTED IN PARTIAL FULFILMENT  
OF THE REQUIREMENTS OF THE DEGREE OF DOCTOR  
OF PHILOSOPHY, THE AUSTRALIAN NATIONAL UNIVERSITY,

APRIL, 1979

Insofar as one may claim ownership  
of ideas and their connexions, this  
thesis is my own work.

*A. Louisa James*



To my parents and my uncle, Chaim  
Rutkiewitz, who taught me that the  
most important relationships are  
not contractual.

ACKNOWLEDGEMENTS

I have often wondered at the various ways in which writers acknowledge their multiple debts upon finishing a project. Even as I conclude this thesis I still cannot determine how to thank all those who have helped me. I am reminded of a paper written by a friend some years ago. The text was devoid of footnotes save one simple end-note which went something like this: "Since I knew nothing about this subject when I started, it should be clear that everything written in this paper is owed to someone else and I have used this end-note instead of footnoting every word or sentence."

With this sentiment in mind I would like to mention a few of the many who aided and abetted this work. Needless to say, the errors are my own and I appreciate the efforts of all who tried to keep me from them. I would like to thank:

Professor Peter Herbst, my friend and supervisor, who introduced me to political philosophy and aroused my interest in the present topic. His influence permeates this work.

Dr. Richard Campbell, who inducted me into the mysteries of Luther and Calvin and provided valuable criticism and support when needed most.

Ilana Atlas, who served as the spiritual partner of this enterprise providing criticism, tea and sympathy, not to mention vital support when the conclusion was lost and rewritten the week before submission.

Claire Colyer and family, and Geoff Pollard, whose patience, energy, diligence and dedication in typing and organizing this thesis won the respect and gratitude of all concerned.

My mother (whose chicken fueled this essay), Judi Cooper (whose long-standing friendship, loyalty and generosity sustained my spirit through many long months), Elizabeth (*La Stupenda*) Hynes, Sid and Gwen Sax, Avril Baskind, Nusha Zubrzycki, Fritz Effenberger, Laura Grinvalds, Lany Snyder; my friends and mentors whose kindness, criticisms and patience made possible what intellectual clarity and integrity this study possesses.

The many librarians of the National, Menzies and Chifley Libraries in Canberra, the Law Library of the University of Western Australia, and Biomedical and Menzies Libraries of the University of New South Wales where (beyond my desk) this thesis was written.



ABSTRACT

"Two elements, therefore, enter into the object of our investigation; the first, the idea, the second the complex of human passions; the one the warp, the other the woof of the vast arras- web of history."

Hegel, *Philosophy of History*

The 'mythopoesy' of civility and order is the seminal philosophical and theological literature that gave rise to, and reflected, various problems in Western thought focusing on the relationship between citizen and state, in particular, the germinal question of civil obligation: why ought one obey the law?

Political theorists engage in metaphoric/mythopoeic thinking in a variety of ways ranging between the archetypal poles of the 'hedgehog' and the 'fox'. Citing the Greek poet Archilochus, Isaiah Berlin interprets the symbol of the fox as those persons who take the objects of experience for what they are and adamantly reject an all-embracing moral principle of unifying vision. By contrast, Berlin portrays the hedgehog as the writers who relate phenomena to a single, universal, organizing principle in terms of which alone all that they are and say has significance.

While the hedgehog and the fox do not lend themselves to neat and mutually exclusive categories, they nevertheless suggest something important about the nature and problem of metaphor in political literature. Plato and Hobbes are surely hedgehogs; Machiavelli is equally clearly a fox; Rousseau, consistent with his work, remains a paradox. We cannot claim that the hedgehog is always a monist or nominalist because Plato and Hobbes divide on this point. Nor can we assert that foxes are exclusively pluralist or naturalist, for Hobbes is not a fox though a nominalist, and Machiavelli, though a fox, shows occasional signs of the hedgehog. Any dichotomy over-simplifies and in the extreme voids a complex and diverse world of its fluidity. Yet, when taken as suggestive points of departure, such categories as these aid us in discussing the presuppositions and implications of political metaphors.

The metaphor upon which this work is articulated is the synecdoche of the social contract, the trope of liberal political philosophy. Running in two strands, the argument first addresses the idea of the social contract and its theoretical underpinnings, combining analysis of the principal contractarians (Hobbes, Locke, Rousseau, Kant and Rawls) with a critical discussion of the notion in general. The second strand of the thesis places the first strand in context, as it were, discussing the milieu and implications of the contractarian groundwork.

If one accepts the reality and relevance of individuals acting together in coalitions of mutual interest, three important issues emerge regarding political life. First, group interests and activities diminish the significance of the *Gemeinschaftliche*, 'Hellenic' relationship between the individual and the state. Secondly, the mass of 'atomic' individuals given prominence by Machiavelli and Hobbes is displaced in the so-called hierarchy of power by intersecting and cross-cutting 'life-spaces', groups or classes of persons born of specialization and common interest. And, thirdly, the patterns of integrated, group solidarity and cooperation take on a variety of meanings in the relation of political 'part' to political 'whole'. The imaginative and persistent individual remains a potential force, but that solo force is vectored by the frames of reference that characterize the 'life-spaces' in which he acts. Consequently, there exists a constant tension between personal potentialities and desires, on the one hand, and corporate interests and interpersonal dynamics on the other.

The contractarian metaphor serves both as a reflection of these concerns and as an illustration of judicial reasoning in modern *Gesellschaften*: not as mere jurisprudential methodology but as the ideal typical mode of moral reflection of rational citizens in less-than-perfect societies. The two strands of the thesis thus come together through the juxtaposition of the antithetical poles of social life, the just and unjust states. In the final analysis, the tension that characterizes this dichotomy provides the animus of contractarian thought and makes urgent the resolution of the problem of civil obligation. Whether or not the contractarian metaphor provides a satisfactory solution, the mere consideration of its parameters and approach makes lighter the task of negotiating the problems of order and civility.



Begin, ephebe, by perceiving the idea  
Of this invention, this invented world,  
The inconceivable idea of the sun.

You must become an ignorant man again  
And see the sun again with an ignorant eye  
And see it clearly in the idea of it.

Never suppose an inventing mind as source  
Of this idea nor for that mind compose  
A voluminous master folded in his fire.

How clean the sun when seen in its idea,  
Washed in the remotest cleanliness of a heaven  
That has expelled us and our images...

The death of one god is the death of all.  
Let purple Phoebus lie in umber harvest,  
Let Phoebus slumber and die in autumn umber,

Phoebus is dead, ephebe. But Phoebus was  
A name for something that never could be named.  
There was a project for the sun and is.

There is a project for the sun. The sun  
Must bear no name, gold flourisher, but be  
In the difficulty of what it is to be.

Wallace Stevens, *It Must be Abstract*

CONTENTS

	page
<u>INTRODUCTION</u>	1
Notes	18
<u>PART ONE</u>	
THE FUNDAMENTAL PROBLEM: CIVIL OBLIGATION	22
I. Rules and Principles	24
II. Prima Facie and Presumptive Obligations	33
III. Creating Obligations	37
IV. The Scope of Obligations	44
V. Obligation and Ought	49
VI. The Problem of Civility	52
VII. Is, Ought and Commitment	57
VIII. Autonomy and Authority	67
IX. The Problem of Order	73
Notes	83
<u>PART TWO</u>	
THE MYTHOPOESY OF CIVILITY AND ORDER	86
I. The New Science	101
II. Norms and Historicity	109
III. Descartes and Bon Sens	113
IV. The Philosophy of Authority	116
V. The Barbarism of Reflection	120
VI. The Transformation of Time	126
VII. Egalitarianism and the Advance of Reflection	130
VIII. Locke and Gesellschaft	138
IX. Reflection Without Barbarism	145
Notes	149



	page
<u>PART THREE</u>	
HOBBS AND LOCKE	158
I. The Atomistic Implications of Nominalism	166
II. Leviathan and Obligation	176
III. Hobbes' Contractarianism	188
IV. Locke's Contractarianism	201
Notes	213
<u>PART FOUR</u>	
ROUSSEAU: "THE MORAL VIEW OF THE WORLD"	220
I. On the Origin of Inequality	225
II. The <u>Social Contract</u>	236
III. The General Will	248
IV. Rousseau's Contractarianism	260
Notes	262
<u>PART FIVE</u>	
RAWLS: THE SECULAR COVENANT	267
I. Rawls' Contractarianism	272
II. Principles of Justice	279
III. Criticisms Considered	285
IV. Civil Obligation	289
V. Hart on Fairness and Obligation	292
Notes	299
<u>PART SIX</u>	
THE CONTRACTUAL THEORY OF CIVIL OBLIGATION	303
I. The Question of Generality	305
II. The Just State	309
III. The Contractual Theory of Civil Obligation	310
IV. Citizenship, Fairness and Obligation	317
V. Criticism and Defense	329

	page
VI. The Limits of the Social Contract	336
VII. Obligation, Obedience and the Social Contract	342
Notes	345
 <u>PART SEVEN</u>	
CIVILITY AND ORDER	348
I. The Collapse of Antiquity	355
II. The Two Cities	359
III. A Single and Indivisible Sovereign	361
IV. Apophradism and Incongruity	363
V. The "Mortall God"	367
VI. Corps Moral et Collectif	372
VII. Mill and Epictetus	374
VIII. The Speculative and the Existential	380
Notes	389
 <u>APPENDIX ONE</u>	
I.	394
II.	404
Notes	421
 <u>APPENDIX TWO</u>	
Notes	429
 <u>APPENDIX THREE</u>	
I.	447
II.	451
III.	457
IV.	461
V.	476
Notes	480



	page
<u>APPENDIX FOUR</u>	
I.	485
II.	488
III.	500
IV.	507
V.	514
VI.	520
Notes	523
<u>APPENDIX FIVE</u>	531
Notes	544
<u>APPENDIX SIX</u>	
I.	545
II.	552
III.	557
IV.	560
Notes	565
<u>APPENDIX SEVEN</u>	568
Notes	572
<u>BIBLIOGRAPHY</u>	575

## INTRODUCTION

It is commonly thought that the doctrine of the social contract is best understood as a piece of historical anthropology or, alternatively, as a constitutional model to explain how civil society came to be wedded to political authority. In this thesis a different view will be advocated, partly by reference to historical material and partly on the grounds that the theory thus interpreted is more powerful, more topical and has greater heuristic fertility. Briefly, the view to be developed is that social contract theory derives on the whole from the union of a theological metaphor - covenant - and a juristic reification - contractual obligation. As a complex metaphor in part combining *civitas* and *ordinatio Dei* and, later, natural law, social contract theory came to encapsulate, in its various manifestations, the central tenets of a particular mythopoeic tradition in Western political thought. This tradition, among other things, focussed upon civility and order rather than *imperium* and *sacerdotium* as the sinews of the State. Its 'mythopoeic' character is highlighted not at the expense of 'philosophy' but, rather, in order to better describe its highly metaphorical, narrative articulation. The dramatic emphasis upon origins and transformations in the history of ideas so characteristic of this approach is clearly as much mythopoeic as it is analytical, combining in dialectical form a world view with the embodiment of moral norms. "Each contract of a particular state", wrote Edmund Burke, "is but a clause in the great primeval contract of eternal society, linking the lower with the higher natures, connecting the visible and invisible world...."<sup>1</sup>

Underpinning the metaphor, then, is a series of speculations and statements about the logic and morality of human associations. Its strength derives not from its 'factual' basis but from the expectations it promotes and attitudes it establishes about civil society. The idea of the contract, the idea that political relations ought to be discussed in jurisprudential terms rather than in the language of feudalism lends contractarian theories their force and appeal. Consequently, we are presented with a heuristic device in terms of which civil societies may perceive the facts of their own civility. In a sense, the following account of contractarianism has a phenomenological inflexion, because its object is to explore via a seminal model the 'self-perception' of an entire tradition

dominant in many Western societies. It is therefore neither a 'scientific' hypothesis nor a moral postulate, but an exercise in what J.G.A. Pocock has termed "the politics of language".<sup>2</sup>

The disjointed and often contradictory elements of contractarian literature compel those who wish to explore its contours to begin by asking "what is it that all social contract theories hold in common?". Since the answer cannot reside in a common analysis of civil society (there being so many divergent contractarian analyses of the civil condition) it must lie in a common body of issues. Once these are established it follows that some approaches will seem more appropriate than others, and that the logic of one or a number of theories will prove more compelling than the rest. Yet, surely this determination can give little satisfaction, if only because the thoroughly controversial nature of all contractarian doctrines has shown each to be less than convincing and all to be deficient in some respect. Consequently, in the course of this thesis we shall endeavour to distil the most adequate arguments hitherto presented in order to arrive at a consistent and powerful argument that deals with all the central issues, adheres to the spirit of the common enterprise and yet avoids the pitfalls of the original theories. This eclectic doctrine will then be examined in its own right to see if it has not only surmounted the difficulties encountered by its predecessors but whether or not it can also withstand assaults made upon it as a representative of its school. Where it does prove to be inadequate, this revisionist contract theory will serve as a springboard for analysis of the necessary limitations of the contractarian metaphor and the dangers inherent in any literal, practical rendering. The agenda of the thesis will deviate from this progression at a number of points so as to permit elaboration upon historical and analytical themes kernel to the argument. These deviations, in fact, constitute what may be seen as the 'second strand' of the thesis: a parallel line of argumentation that places the analysis of contractarianism within its intellectual context and provides, in part, the groundwork for a criticism of all political theories grounded in anachronistic appeals to 'eternal' laws of nature and reason.

The idea of a social contract is among the most resilient notions of political philosophy. It is as old, at least, as Plato's earliest dialogues and as contemporary as John Rawls' *A Theory of Justice*. This is not to say, of course, that contract theory has always played a leading role in

political thought, or even that it has never fallen from favour. The point is that, despite the attacks of thinkers of the stature of Hume and Hegel, the idea of a social contract has displayed a remarkable ability to rise like the Phoenix and regain its hold on political philosophers. Why has this been so? Or, to put the question less historically, why is the idea of a social contract so fascinating and, to some, so attractive? This is the general question to which the 'first strand' of this thesis is addressed. In order to answer it, however, it is necessary to provide an account of the essential features of social contract theory and to determine whether a theory of this sort satisfies the problems to which it responds. This is not an easy task, of course, for there is no such thing as *the* social contract theory; there are, instead, a number of theories that employ the contract metaphor which are alike in some important respects and utterly divergent in others. Because of this complication, we approach the general question through a series of more specific questions: firstly, what is the problem which social contract theories try to solve?; secondly, are some contract theories adequate while others are not? - i.e. are some both internally consistent and satisfactory as responses to the problem at hand?; thirdly, can these adequate theories be 'reduced' to the essentials of social contract theory?; and, finally, if so, does this abstracted theory successfully meet and overcome the objections which have been raised against social contract theory?

We deal with these questions in three stages. *Part One*, which comprises the first stage, is concerned with the problem which contract theorists seek to solve. This, it is argued, is the ancient problem of political or civil obligation, which is often expressed in the question, "Why should I obey the law?". Since our understanding of the problem will determine in large measure *what* we want contractarianism to do and *how* it should go about doing it, we devote considerable attention to producing a coherent conception of the problem of civil obligation. This entails criticising what is here taken to be a serious mistake in the familiar formulation of the problem and offering a narrower, more sharply defined alternative.

The second stage of the first strand consists of an examination of important contract theories in the light of this restricted conception of the problem of civil obligation. We analyse the contract theories of

Hobbes, Locke, Rousseau, Kant and Rawls, in particular (in *Parts Three, Four and Five*, and *Appendices Four, Five and Six*), to see if they meet two criteria of adequacy: first, are they really contract theories? - i.e. is the idea of a social contract an essential feature of these theories? - and second, do these theories 'solve' the problem of civil obligation? It is argued that Hobbes fails to meet either of these criteria, but that the theories of Locke and Kant meet them in part and those of Rousseau and Rawls satisfy both.

In *Part Six*, the third stage, we shift from the specific to the general level. There we present an interpretation of contractarianism as an ethical-political theory. Following the analyses of Rousseau and Rawls, the crucial features of contractual theory are outlined and subjected to criticism.

The first strand of the thesis, then, is concerned with defining and locating the cluster of issues at the heart of social contract theory, namely, what Rousseau identified as "the fundamental problem of which the social contract provides the solution":

" "The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each while uniting himself with all, may still obey himself alone, and remain as free as before." <sup>3</sup>

Here the consanguinity of 'authority' and the 'state' make it impossible for Rousseau to treat them separately, that is, as independent as well as distinct notions. If by authority is understood the *right* (not just the power) to be obeyed, then the 'state' is that tangible set of circumstances, or order, in which some people *can* and *may* claim authority over others. Civility, in other words, on all its levels of meaning - as good citizenship (conformity to the principles of social order); the community of citizens collectively; behaviour proper to the intercourse of 'civilized' people - must reflect what Oakeshott calls "a practice of 'just' conduct":

"The idea of a moral practice, constituting a deliberately alterable system of law, and specifying the considerabilities of a distinguishable relationship of civility, which are not commands to be obeyed but conditions to be taken account of and subscribed to in choosing performances."<sup>4</sup>

Conceived of as a response to the dilemmas of civility, the 'social contract' may be regarded as a presumption by which certain philosophers made explicit the decisive role of obligation (rather than 'mere' consent) in the 'rightful' undertakings of public institutions. It served both as a justification of law and a rationalization by which to limit the ambition of legislators. Ultimately, it functioned as an explanation and justification of one man's voluntary submission of his freedom to the will of another, and the special responsibilities borne by each party with reference to themselves and others in similar relation.

In terms of an expressly Lockean formulation, the social contract served as an *explanation* and justification of individual submission to authority: why people defer to some manifestations of authority and not others. Rousseau, on the other hand, sought to determine what constitutes authority in the first place and on what grounds people *ought* to submit to its various manifestations. As with Hobbes, the thrust of Locke's argument is retrospective, whereas for Rousseau and Kant (and later, Rawls) the model is prospective, always current, serving as a framework upon which to hang contemporarily relevant social and political morality.

Whereas Hobbes almost exclusively concerned himself with what might be termed the problem of natural molestation (physical survival), Locke and virtually all the major 'contractarians' other than Hobbes (Rousseau, Kant and Rawls) addressed themselves to the problem of institutional molestation: the infringement of modes of authority and power upon personal and corporate propriety.<sup>5</sup> Granted, the various treatments of this problem hinged upon radically different notions of what constitutes an 'individual', what makes him a 'person'; but what they all shared in common was an awareness that the 'Law of Nature' does not 'molest' men (since its universality and capacity to enforce itself reveals an inbuilt, unarbitrary authority), only the laws of men are open to malicious application, injudicious alteration and inept administration. Volatile and fragile as they are, human associations must at once stiffen the fabric of their union with sensible rules of conduct while guarding against the suffocation of rigidity. Though obviously an over-simplification of the concern underpinning contractarian thought, it is clear that the thrust of all such thought was not so much in the direction of 'liberating' the individual to more fully and assertively manifest his individuality, but, rather, to *protect* the indivi-

dual as a member of society so that he may more fruitfully and assuredly enhance his membership and, thereby, society as a whole. Though they approached this problem from opposite directions, Locke and Rousseau tackled it by asking two questions in ethics, one anthropological in import, the other political: first, what is (social) man?; second, what is it (other than calculable common interests and sheer power) that cements political associations and in terms of which institutional arrangements are sustained, i.e., what is authority? Flowing from these is the further question: what is the nature of assent to authority?; from which questions in toto springs the presumption of the social contract, not as a commitment to a particular set of performances but as a reminder that "civil association is an intelligent engagement and not a so-called 'pattern of behaviour', and that what is constituted in this recognition of *respublica* is relationship in terms of a practice."<sup>6</sup>

It is the position of the individual within the 'practice' that poses the critical dilemma permeating all political thought, indeed, it is the very dilemma which gave rise to and sustains political philosophy - the conservation of the person within the ecology of power; power that derives from any source which generates or accentuates inequalities between men and seeks to regulate their relations. That which is being conserved, according to contractarianism, is the integrity of the individual as a meaningful participant in those processes of change affecting his well-being. Man as the bearer of 'natural rights' - as the possessor of a natural, inalienable dignity - presumes and contrives contractual relations in order, firstly, to ensure mutual respect for and protection of these rights and, secondly, to facilitate individual and corporate development in accordance with these rights. Moreover, there is an additional element of hedonistic utilitarianism implicit in the first point and manifest in the second. For all contractarians (Rousseau least of all, Locke in particular) men's lives outside of civil associations (in the so-called 'state of nature') are *relatively* nasty, brutish and short, needing of institutions to enhance their well-being. The 'contract' is thus concerned with 'growth' to the extent that it is a device calculated to make possible those relations which leaven an otherwise uncomfortable lot. Further, since activity is implicit in agency, the conservation of the individual as a social agent, according to contractarianism, entails enrichment of the scope and quality of human activities. Development thus became tied to conservatism (para-

doxically in the case of Rousseau) as both a reflection of and a lenitive for the human condition: a pragmatic combination of natural rights theory and a limited utilitarianism.

The emphasis upon authority rather than power as the focus of civil relations reflected the all-consuming concern with legitimacy that preoccupied seventeenth and eighteenth century contractarians. The common fear echoed by the victors as well as the vanquished of the English Civil War that "authority hath been broken to pieces"<sup>7</sup> evinced a long-simmering apprehension about the moral foundations of the state, its governance and governability. The felt need to establish and in part reiterate a deontological theory of the state rather than reinforce the prevalent teleological position hinted at more than the final collapse of the feudal order; rather, it intimated the emergence of the modern European state and the instability of its troublesome gestation. The deontological thrust of 'consent' theories arose from the desire to firmly establish 'duty' and 'obligation' in the ambit of practical conduct rather than as the by-products of coercion, habit and/or received tradition. Consent theories of the state stood in direct opposition to teleological theories, such as the cruder forms of utilitarianism and medieval, axiological justifications of feudalism according to which man is merely the propagator of universal values that define the bounds of 'proper' behaviour, not a rule-generating bundle of capacities, aspirations and fears. From the teleological perspective, certain values are the measure of man, as opposed to man being the measure of all things.

The various notions gathered together under the rubrics 'legitimacy', 'authority', 'power', 'obligation' and 'consent' represented, and still represent, four "clusters of questions" (as they have been characterized by Hannah Pitkin) "any or all of which are sometimes taken to define the problem of political obligation".<sup>8</sup> The rebirth of the 'problem' as a modern dilemma requiring more than Aristotelian exegesis indicated the dramatic shift that had taken place in European thought with regard to the citizen and his biospoliticos. The individual was tentatively asserting himself as a member of his political collectivity and not just as one of its elements, inexorably bound to his clan by some genetic compact. The new dispensation ushered in the 'citizen' as representative of his own person and interests



(in particular, property), rather than as, at best, spokesman of a natural collective, such as the family or clan. The resurrection of Roman law<sup>9</sup> in a number of universities, notably Bologna and Oxford, during the eleventh, twelfth and thirteenth centuries revived the essence of *civis Romanus sum* - citizenship entailing privileges and duties before the law and, most importantly, the idea that "the whole of the law... relates either to persons or to things or to legal actions"<sup>10</sup>; whereas insofar as a person is a citizen, "every individual is subjected to treatment in accordance with his own action and no one is made the inheritor of the guilt of another."<sup>11</sup> The state, then, as that most inclusive, self-sufficient system of laws, according to Roman jurisprudence, subsists in a network of mutual obligations between citizens and their mutual recognition of common rights, constituting *in toto* the *respublica*, 'the affair of the people'. "The commonwealth", argued Cicero, "is the people's affair; and the people is not every group of men, associated in any manner, but is the coming together of a considerable number of men who are united by a common agreement about law and rights and by the desire to participate in mutual advantages."<sup>12</sup>

A new compact was emerging in post-medieval Europe, less certain and less readily explicable than the old one, founding itself not on *mysterium evangelii* but on modes of human conduct, the principles of civil interaction within a corporate rather than an organic body; thus making problematical what was hitherto considered self-evident: the nature and extent of civil obligation. As a 'new' problem, then, obligation served to illuminate and focus the key issues of political philosophy, in terms of which subsequent discourse on man, society and the state would be fashioned:

- "(1) The limits of obligation ('When are you obligated to obey, and when not?')
- (2) The locus of sovereignty ('Whom are you obligated to obey?')
- (3) The difference between legitimate authority and mere coercion ('Is there *really* any difference; are you ever *really* obligated?')
- (4) The justification of obligation ('Why are you ever obligated to obey even a legitimate authority?')"<sup>13</sup>

Power enveloped in tradition was no longer enough at the turn of the sixteenth century<sup>14</sup> either as sufficient adhesive with which to unite the mosaic of the secular city, or as an explanation of the overlapping and intricate patterns created by civil life. Not that power and tradition

alone had ever been enough. Rather, the confluence of forces, circumstances and ideas in the sixteenth and seventeenth centuries that eventually culminated in the watershed of the English Revolution changed the emphasis in matters of governance from one sort of insufficiency (namely, coercion clothed in habituation) to another (personal liberty constrained for its own protection). The movement from a 'pact of government', by which the estates accommodated each other within an Aristotelian universe of fixed spheres, to a 'social contract' recognizing each citizen as a party to the web of influences constituting society, represented not a devolution of power in those societies gripped by this notion, but, more subtly, the restructuring and diversification of the sources of authority. The shift in perspective from estates to individuals, albeit propertied citizens, stripped tradition-encumbered power of its 'natural' legitimacy and, consequently, refashioned the bonds of obligation enmeshing government and the governed.

The belief that the very idea of having a centralized system of coercion rests upon the need for stability, security, legislation and administration implicitly negates the sufficiency of mere successful and sustained incumbency as the source of legitimacy in government, necessary though it may be. While passionately centralist, Hobbes focused his entire argument for Leviathan upon the security and well-being of the citizenry, not as Filmer did upon the divine right of kings. Sir Edward Coke's formulation of the 'ancient law' as immemorial custom and parliament its arbiter not only reinforced sentiment for parliament's 'radical' sovereignty as the watchdog of executive power, but provided the ideological underpinnings for the Whig victory of 1688.<sup>15</sup> Moreover, the clash of 'Court' and 'Country' in the Long Parliament debates on the abolition of the 'prerogative' courts (established by the Crown to circumvent the common law) threw into sharp relief, on the one hand, the romantic linkage of private property, private interests and private persons with virtuous rustic arcadia, and, on the other, the dishonest, sycophantic tyranny of the city manifest in the King's Court.

"Society is made up of a court and country; government of court and Parliament; Parliament of Court and Country members. The court is the administration. The country consists of men and property; all others are servants. The business of Parliament is to preserve the independence of property, on which is founded all human liberty and all

human excellence. The business of government is to govern, and that is a legitimate authority; but to govern is to wield power, and power has a natural tendency to encroach. It is more important to supervise government than to support it, because the preservation of independence is the ultimate political good."<sup>16</sup>

The congealment of financial and justiciary interests in western Europe and Britain at the turn of the thirteenth century, realized in the emergence of sovereign states, had granulated, as it were, by the seventeenth century and fragmented into disparate and jealously guarded concerns no longer illuminated by the mystery of the Church or the 'cult of the State',<sup>19</sup> but protected, and thereby enhanced, by an order of civility founded in an explicit articulation of personal as well as corporate interests. By implication, corporate interests boiled to the surface as manifestations of essentially personal contests: each man's struggle for survival, his victories, defeats, coalitions and isolation of necessity gave birth in various arenas to certain equilibria captured and encapsulated in rules of conduct and modes of association. Societies came to be regarded as 'buckets' of mutually-acknowledged civility, and the 'State' its heroic-mythopoeic expression. Thus, insofar as they ran against the tide of sentiment in their time, Dante Alighieri, Marsilius of Padua, John of Paris and William of Ockham pre-empted and, to a large extent prefashioned seventeenth and eighteenth century contractarian thought.

The clash of ecclesiastical and temporal authority in the thirteenth and fourteenth centuries reflected neither the rivalry of church and state nor the collision of the spiritual and political in popular affection, but, rather, the problem of locating sovereignty in government: whether or not the laying down of the law (*ius dicere*) - the steerage of human affairs (*gubernaculum*) was ultimately the province of priests or kings. Within the community of the church, the sacerdotal and the regnal contested each other's right to translate the idea of justice into reality and, consequently, threw into contention the location of original power, "for on that question hinged the answer whether or not a government was entitled to issue the law."<sup>18</sup> The resolution of the conflict in favour of the *regnum* in effect demoted the priesthood to that coterie responsible for the propagation of the foundational myth of Christian civility: a vengeful God who settles his accounts for this life elsewhere. The primal fear of death compounded with the threat of racked immortality served now to reinforce

the *regnum* as the executor of *auctoritas* and *imperium*, not, as had hitherto exclusively been the case, to maintain and replenish the plénitude of ecclesiastical power. Faiths of one stamp or another invested monarchs and clerical republicans<sup>19</sup> alike with a touch of divinity and, where not themselves divinely appointed, inspired and/or maintained, temporal powers eagerly sought spiritual succour from the vicars of the dominant deity.<sup>20</sup> Nevertheless, reliance on divine mystery as the sinews of the state (as in Rome and Persia) or as its backstop (as in feudal Europe) said nothing about the nature of power or the mechanics of the state, or how the entire enterprise of the state hung together. Yet so long as the *raison d'être* of the state remained unquestioned its tectonics were not considered problematical. As a natural given, the order of society need not be any more enigmatic than the order of the beasts, assuming, of course, that the origins and fate of each realm are confidently known. The blanket of speculative innocence fostered by doctrinaire faith, then, did little to encourage political analysis (or at least what we would now regard as such), except in the outstanding instances of Augustine and Aquinas, who did not follow doctrine so much as shape it, in the case of the former with a theory of anti-politics concerned exclusively with salvation from the temporal *civitas diaboli*, and, in the case of Aquinas, with a conception of legitimate temporal authority under the tempering aegis of the church. It was not until the emergence of Florentine *Realpolitik* and, later, Protestant natural law that the intestines of the state were laid bare and discussed, as it were, in anatomical rather than eschatological terms.

Much of the criticism levelled against contractarianism has focused on its 'genetic' approach to civil obligation; in particular, the 'state or nature' as either a piece of descriptive history or a fiction abstracted from history. As history the notion is no doubt erroneous and, to the extent that Locke, especially, considered he was doing history he failed quite spectacularly. Viewed as a fiction, however, the idea of a state of nature cannot be so readily dismissed. We shall argue that despite the varying interpretations of the state of nature, the common attempt in all social contract theories to develop a picture of asocial (rather than pre-social) man is a necessary step in the logical development of any argument for civil obligation. Briefly, the idea of the state of nature represented a kind of 'thought experiment' the aim of which was to conceptualize man both within and without a political context. In this way, the notion

functioned as a critique of civil society by throwing into sharp relief the legal and moral perimeters of political relationships. It provided, in other words, an ideal typical model in terms of which theoretical comparisons of practical import could be made. In addition, it served as a metaphorical expression of the sentiment that even though individual men may not be logically or factually prior to civil society they transcend it as moral beings. One of the many implications of this view is that it is within the scope of human wit and capacity to amend or abandon aspects of civil society. This is possible precisely because man's moral ('asocial') status ethically and, on occasion, psychologically removes him from his artifacts in such a way as to make him (at least potentially) aware of their artificiality.

This theme, though variously expressed and pursued by each author, reveals an attitude to the world at once akin to and sharply at variance with the two most influential schools of Medieval philosophy - Augustinianism and Thomism. For Augustine, the Fall provides the definitive backdrop for all sketches of political society. Had man not fallen from grace and thereby corrupted his nature there would be no need for the institutionalized coercion of the state. But man's tainted condition is a fact, argued Augustine, and the task before man is to consciously strive for a future Christian, non-political salvation. Aquinas took quite the opposite view, however, and in the tradition of Aristotle argued that grace represents the fulfilment of human nature, not its negation. The political state is proper to man, declared Aquinas, the Fall notwithstanding. Emphasizing the intellect rather than the will, Aquinas regarded civil law not merely as an instrument of coercion, but, when properly framed, as an expression of 'right reason'. Whereas Augustine held civil law to be nothing other than a set of commands founded in some dominant will, Aquinas underplayed systematic force in favour of rational morality. From the Augustinian perspective, then, civil law knows no limitations other than those of power, while from the Thomist perspective the sovereign is limited by a higher law. Since Aquinas did not abide by the Augustinian disjunction between fallen man and 'essential' man he could appeal to human reason as a force for justice qualifying brute strength. Consequently, the right of resistance is everpresent in the Thomist scheme of things, duly qualified by a host of prudential considerations of particular cases in question. Clearly, in Augustinian voluntarism we can see the seeds of Hobbes' *Leviathan*

and John Austin's command theory of law, while in Aquinas we may detect the nurslings of Locke's *Second Treatise*.

The myth of the Fall underpins the notion of 'natural' man and serves to make sense of the constant tension between civil society and the 'state of nature' in contractarian thought. As the nexus between two worlds, so to speak, the 'contract' represents a reconciliation of the insular and communal elements of 'human nature'. Insularity manifests itself in modes of separation: self-preservation, self-assertion, self-expansion. Communion resides in contact, union and mutual undertakings. Insularity is associated with the enhancement of the ego; in theological terms, pride. Its objective is dominion over others, whereas communion invites the participation of the individual in some larger endeavour of which he is a part. As a theological metaphor, then, the social contract reifies both the personal and communal consciousness of 'responsibility'. In primitive man, or, at least, according to the classical anthropological conception of primitive man, this consciousness is principally expressed as collective responsibility, in which the awareness of 'self' remains tentative and sketchy. Only when the idea of personal responsibility gains substance and defies collective constraint does the *individual* come to the fore. This featured most prominently in ancient civilizations during the emergence of legal constitutions.<sup>21</sup> While aspects of the organic or collective conception of guilt endured - by which the wrongdoer in conscious or unwitting transgression of the norms involved his immediate kin in the magic world of curses - the subjective responsibility of the individual emerged as the critical factor in the attribution of guilt. Guilt, from being an objective fate which gathers up the doer in its wake, irrespective of his knowledge of and intention with regard to his deed, became a matter of personal and conscious responsibility. Nevertheless, it was not arbitrary human choice but transcendent divine authority which summoned man to responsibility. In this way human dignity retained its spark of divinity.

The movement from natural man to civil man in contractarian thought is depicted in terms of the growth of personal responsibility, whether it be from Hobbesian brutishness, Rousseauan mediocrity or Lockean unreliability. The image of natural man is everpresent - lurking beneath the surface, as it were - as civil man minus his civility. In other words, the very 'naturalness' of natural man is not his chronological primacy but, rather,

his germinal character as the lowest common denominator of humanity from which all development must proceed and back to which all regression must collapse. The true anthropological import of contractarian thought, then, is not the variety of evolutionary schemata it projects onto civil practices but the manner in which it endeavours to frame, and in part resolve, the dilemmas of politics in terms of 'human nature', that is, in terms of what man is - his being in the world - and what man might be - moral being in a just social order.

"In Justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract", writes John Rawls. "This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice."<sup>22</sup>

The Rousseauan and Kantian turning points of contractarianism thus reveal themselves conjointly in the most recent expression of the doctrine as an avowedly metaphorical deontological approach to moral philosophy.

Precisely what is meant here by the Rousseauan and Kantian turning points of contractarianism is in many ways the principal concern of this thesis. It is argued that the lack of clarity in the literature with regard to the actual thrust of the doctrine springs from confusion about what properly constitutes the corpus of contractarianism. The lumping together of such diverse writers as Hobbes, Locke, Althusius, Spinoza, Grotius, Pufendorf, Suarez, Hooker, John Milton, Fichte, Kant, Rousseau, Blackstone, Proudhon, Herbert Spencer, Samuel Taylor Coleridge, Alfred Fouillée and John Rawls, to mention but some of the most prominent among those who, since the sixteenth century, have employed the contractarian metaphor, is confusing to say the least. Needless to say, the mere use of a metaphor is hardly conclusive evidence of an author's commitment to a particular doctrine. Nor is a metaphor in isolation necessarily indicative of a broader doctrine in terms of which the metaphor may be amplified. For a metaphor to have substance it must have a matrix of meaning; for it to necessarily suggest a doctrine it must serve as a kind of 'schematization' which enables us to differentiate between fundamental and derivative details, allowing us to tackle 'structural' characteristics without the

intrusion of irrelevancies. With regard to the notion of a social contract, it must be asked 'does the metaphor have a specific ideational matrix?'; that is, may we speak of contractarianism as a doctrine or should we consider the contract as nothing other than a legalistic turn of phrase properly at home in natural law theory. It will be argued that there is a contractarian doctrine, but, in so doing, we will dispute the contractarian credentials of Hobbes and Locke, in particular, for whom, in the final analysis, the metaphor remains a heuristic device illustrative of the views presented rather than kernel to the argument. Rousseau and (in part) Kant, on the other hand, along with their contemporary disciple, John Rawls, present 'contractarianism' as a distinct doctrine for which the 'social contract' is a constitutive metaphor, that is, a laden expression, the systematic unpacking of which will reveal the doctrine in full. The various other writers mentioned either employ the social contract as an illustrative metaphor in order to illuminate an otherwise unrelated (or distinct) theory, or simply reiterate the seminal contractarians. Consequently, we shall initially focus upon Hobbes and Locke by way of differentiating between a non-contractarian theory (Hobbes) and a very weak contractarian theory - i.e. Lockean natural law - and then look at Rousseau, Kant and Rawls in order to distil the necessary and sufficient conditions for a powerful contractarian doctrine.

The common thread uniting all political theories is the generative dilemma of civil obligation: the claim of the state upon personal property - whether or not the state may demand each citizen's obedience as a matter of right. The most simplistic rendering of social contract theory is that citizens ought to obey the laws of the state because they have somehow agreed or consented to do so. Insofar as Hobbes and Locke are taken to be paradigmatic contractarians this seems to be a reasonable interpretation. But, clearly, the great failing of Hobbes and Locke in this regard is that they place too great an emphasis on consent. While contracts are obviously agreements reliant upon the mutual consent of the contracting parties, they are also agreements to do or not to do something. That is to say, all contracts are conditional. Aside from a host of other difficulties, the problem with both the Hobbesian and Lockean sketches of the social contract is that they are almost exclusively concerned with the notion of consent to the considerable detriment of the conditions of the 'contract'. In other words, we are at best presented with a stunted meta-



phor constrained by the demands of theories not conducive to its full development. The thrust of the metaphor when rounded out, as in the works of Rawls and Rousseau, is not the manner and timing of individual consent to obey the laws of the state, but *what kind of state* is deserving of obedience.

The prospective, rather than retrospective, character of contractarianism thus presents us with the temptation to make political rationality less elusive by 'grounding' normative arguments in consensus-ensuring standards of universal reason. This fond and futile hope of the Enlightenment, however, has evaporated in a world which now despairs of ethical unanimity. The second strand of this thesis, then, represents an exploration of at least one principle for the orientation of 'practical reason' which depends neither on trans-historical canons of justice nor on the unrealistic anticipation of a society based on complete harmony and universal agreement. We call this the principle of *apophradism*: the anachronistic 'return of the dead'. The methodological premise underlying the central argument is that political philosophers should always bear in mind the critical transformations that characterise 'social evolution'. The theory of social evolution, it is maintained, may be regarded as a *functional* equivalent for obsolete kerygmatic guarantees: history as process rather than revelation.

*Part Two* focuses on Giambattista Vico's critique of the doctrine of guaranteed natural rights, in particular, his contention that nature is not a foundation but a *problem*: the problem of *ataxia* - confusion, indeterminateness. Although culture is dependent on nature, according to the *New Science*, it is always under-determined by nature. As science is under-determined by perception, so is marriage by sexuality, law by physical force, and property by the satisfaction of needs. Nature simply does not of itself contain enough 'information' (so we interpret Vico as arguing) to furnish value-discriminating criteria within culture. Such an admission, however, does not force us into an irrationalist relativism or *ad hoc* conventionalism. To demonstrate this we reconstruct Vico's theory of secularization, that is to say, his theory of social evolution, concentrating on the idea that, even without trans-historical canons of justice, political irrationality can be identified by a consideration of social apophradism.

*Appendix Three* and *Part Seven* represent an attempt to develop this idea by discussing the surprising continuum between Hellenic politics and totalitarianism. The unlikely transition from the polis to the Third Reich, so we argue, depends on the functional differentiation of modern society into a loose nexus of largely unsynchronised, uncoordinated and semi-autonomous 'life-spaces', such as the family, education, law, science, religion, economics, politics, and so forth. We first examine how the Hellenic 'totalization' of politics (the failure to distinguish between polity and society) depended on the structural characteristics of the city-state which cannot be reproduced within highly differentiated industrial and post-industrial societies. Of special interest are the Aristotelian claims that, firstly, the state can be 'subjectified' as a 'family' or 'colloquy', and, secondly, the individual can 'realize' himself in political participation. Plausible for the polis, both these ideas lead to personal and institutional deformations when applied to complex modern societies. Although they make sense for a *Gemeinschaft* they are clearly out of step with the structural realities of a *Gesellschaft*. In *Part Seven* we contend that modern philosophical justifications for etatist coercion and 'the party line' stem from a 'Hellenising' and apophradic refusal to differentiate between polity and society, and from an attendant insistence on the classical schematization of society as 'a whole made out of parts'. Because of the limited size of the polis, a polytheistic world view and other related factors, Aristotle could view the subordination of all spheres of life to politics as a subtle moral ideal. By appealing to the 'structural realities' of social evolution, we believe we can demonstrate the contemporary irrationality of such an ideal without the warrant of 'eternal' laws of nature and reason.

The secular covenant, then, not as the constitution of *civitas terrana*<sup>en</sup> but as the 'thought experiment' of anxious and reflective men.

INTRODUCTIONNotes

1. Reflections on the Revolution in France...., 1790, reprinted in L. I. Bredvold and R. G. Ross (eds), The Philosophy of Edmund Burke, Ann Arbor, Michigan, 1960, p.44
2. J.G.A. Pocock, Politics, Language and Time: Essays on Political Thought and History, London, 1973, pp 20-21
3. The Social Contract, chapter VI, in G.D.H. Cole (ed), The Social Contract and Discourses, second edition, London, 1973, p.174
4. Michael Oakeshott, On Human Conduct, Oxford, 1975, p.182
5. In Hobbes, 'molestation' is regarded as a combination of what we might term 'acts of God' and highway robbery, the former relating to nothing other than the frequently hard exigencies of the natural world, and the latter relating to individuals (occasionally wicked, more often than not merely self-seeking) pitting their wills against their fellows'. Locke, however, concerned himself with molestation only insofar as it arises from intentional interference in the lives of men. Unlike Hobbes, Locke was not committed to the view that everyone in a 'natural' condition acts as an individual; consequently, Locke stressed the interference of associations as well as individuals in the lives of citizens.
6. M. Oakeshott, Op Cit, p.150; where a practice is a more or less durable set of human relationships.
7. John Wildman, "Whitehall Debate", 14th December, 1648, in A.S. Wodehouse (ed), Puritanism and Liberty, London, 1974, pp 127-128
8. "Obligation and Consent", in P. Laslett, W. Runciman, Q. Skinner (eds), Philosophy, Politics and Society, Fourth Series, Oxford, 1972, pp 45-84
9. i.e. surviving manuscripts on legal materials compiled under the Emperor Justinian *circa* 529 A.D., divided into four parts: the *Codex* (consisting of twelve books of Imperial ordinances and decisions prior to Justinian, the *Novellae* (laws promulgated by Justinian), the *Institutiones* (a student's guide to the law), and the *Digestum* (fifty volumes of selected judicial opinions covering the entire spectrum of Roman law).
10. Gaius, *Institutiones*, I, i, from F. de Zuleta (trans.), The Institutes of Gaius, Oxford, 1946, in M. Reinhold and N. Lewis (eds), Roman Civilization, New York, 1955, v.2, p.533
11. *Digestum*, XLVIII, xix •26, in Reinhold and Lewis, Op Cit, p.547

12. *Republic*, I, 25, in G. Sabine and S.B. Smith (trans.), On the Commonwealth: Marcus Tullius Cicero, Columbus, Ohio, 1929
13. H. Pitkin, Op Cit, p.48
14. Bodin's Six Books of the Republic first appeared in 1576 as the (then) definitive analysis of absolute sovereignty. Bodin argued for the concentration of all organized power in the hands of the monarch as the embodiment of secular authority, for the reason earlier outlined in the Method for the Easy Comprehension of History (1572) "that the end of the state is not liberty, but a well-ordered life."

At the other end of the spectrum were John Knox (Vindiciae contra tyrannos, 1579) and George Buchanan (De Jure Regni apud Scotos, 1579), Calvinists firmly grounded in Stoicism.

15. "In an age when people's minds were becoming deeply, if dimly, imbued with the fear of some sort of sovereignty or absolutism, it must have satisfied many men's minds to be able to argue that the laws of the land were so ancient as to be the product of no one's will, and to appeal to the almost universally respected doctrine that law should be above will. A later generation... having witnessed with alarm the spectacle of a revolutionary sovereignty styling itself that of the people, and by no means anxious in consequence to derive the laws from the act of some original popular assembly, found in the ancient constitution the perfect argument for pre-Lockean Whigs; as when the Lords were told in 1688 that 'the original contract between king and people' consisted in the king's undertaking to maintain laws which he certainly had not made. Once more we see how the concept of antiquity satisfied the need, still widely felt, for a rule of law which, like Magna Carta, 'would have no sovereign'."

J.G.A. Pocock, The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the 17th Century, New York, 1967, pp 51-52

16. J.G.A. Pocock, "Machiavelli, Harrington, and English Political Ideologies in the 18th Century", William and Mary Quarterly, third series, 22, 1965, p.565
17. "There had long been a cult devoted to the [French] king - the only European monarch who could claim that he was anointed with oil brought directly from Heaven, heir of Charlemagne, healer of the sick. By 1300 there was a cult of the kingdom of France. France was a holy land, where piety, justice and scholarship flourished. Like the Israelites of old the French were a chosen people, deserving and enjoying divine favour. To protect was to serve God. As these ideas spread... loyalty to the state became more than a necessity or convenience; it was now a virtue."

J. R. Strayer, On the Medieval Origins of the Modern State, Princeton, 1973, p.56

18. W. Ullmann, Medieval Political Thought, Harmondsworth, 1975, p.16

"The law attempted the translation of the idea of justice into reality, but what corresponded to justice depended on the view of the respective government, on what it considered just. It was in the contents of justice that political ideas in the Middle Ages can be recognized, and it was the concept of justice which flavoured - and makes understandable - political ideology in the Middle Ages." (pp 15-16)

19. Surely Savonarola's Florentine constitution is the only republican document to have favourably acknowledged a monarch: Christ the King.
20. For Machiavelli, religion was merely an aspect of government which, together with "good laws and good arms", secured and enhanced the state. "It is... the duty of princes and heads of republics to uphold the foundations of the religion of their countries, for then it is easy to keep their people religious and consequently well-conducted and united. And therefore everything that tends to favour religion (even though it were believed to be false) should be received and availed of to strengthen it; and this should be done the more the wiser rulers and the better they understand the natural course of things." (Discourses, Luigi Ricci, trans., New York, 1950, Book I, ch.XII, p.150)

Rousseau reiterated these sentiments in the Social Contract where he commended the idea of a State religion (like Machiavelli he had the Roman experience in mind) as that which makes the "country the object of the citizens' adoration, (it) teaches them that service done to the State is service done to its tutelary god. It is a form of theocracy, in which there can be no pontiff save the prince, and no priests save the magistrates. To die for one's country then becomes martyrdom; violation of its laws, impiety; and to subject one who is guilty to public execration is to condemn him to the anger of the gods: *sacer est od.*" (Cole, (ed), Op Cit, pp 272-273) On this point Hobbes and Rousseau were in rare agreement, as Gibbon was later to agree with Machiavelli and Hobbes that the divisions introduced into the life of the Roman state by Christianity did as much as any barbarian avalanche to shatter Roman hegemony. "Temporall and Spirituall Government, are but two words brought into the world, to make men see double, and mistake their Lawfull Sovereign. It is true, that the bodies of the faithfull, after the Resurrection, shall be not onely Spirituall, but Eternall: but in this life they are grosse, and corruptible. There is therefore no other Government in this life, neither of State, nor Religion, but Temporall; nor teaching of any doctrine, lawfull to any Subject, which the Governour both of the State, and of the Religion, forbiddeth to be taught: And that Governour must be one; or else there must needs follow Faction, and Civil war in the Common-wealth, between the Church and State;... and (which is more) in every Christian mans own brest, between the Christian, and the Man."

(Leviathan, Pt.III, ch.39, C.B. Macpherson (ed), Harmondsworth, 1968, pp 498-499)

21. c.f. Henri Frankfort et al, Before Philosophy, Harmondsworth, 1968, parts II and III.

"While the conception of the cosmic state remained relatively stable throughout the third millenium, the actual human state developed considerably. The central power grew stronger, the machinery of justice became more efficient, punishment followed crime with ever greater regularity. The idea that justice was something to which man had a right began slowly to take form, and in the second millenium - appropriately the millenium of the famous Code of Hammurabi - justice as right rather than justice as favour seems to have become the general conception." (p.223)

22. A Theory of Justice, Oxford, 1973, p.12

PART ONE

THE FUNDAMENTAL PROBLEM: CIVIL OBLIGATION

"Philosophy can exclude nothing. Thus it should never start from systematization. Its primary stage should be termed 'assemblage'."

Alfred North Whitehead

The problem of civil obligation lies at the heart of contractarian thought. It is the generative dilemma from which the idea of the social contract arose and in terms of which its adequacy must be ascertained. To this end, it is necessary to investigate the dimensions of obligation ('civil' or otherwise), and develop a framework for evaluation which will, firstly, provide an analysis of the parameters along which obligations may be identified; secondly, locate obligation within a broader moral-conceptual matrix, in which obligation is related to other moral concepts; thirdly, provide an account of the force of ascriptions of obligation, in particular, the implications of such ascriptions for what the subject of obligation is committed to do, or ought to do, or has reason to do, i.e. the phenomenal dimension of obligation; and, fourthly, set forth the state of affairs, actions or events which bring obligations into being - the grounds of obligation. This last dimension is of particular importance, especially with regard to contractarian thought. The grounds of obligation are inextricably entwined in the network of rules, roles and relations that constitute social practices. That is to say, the applicability of these rules, roles and relations to human affairs *grounds* obligations. Obligations and institutions are coeval, or, perhaps, obligations exist prior to institutions; whatever, the concept is to be understood in terms of how it is manifest in social structures. Consequently, any consideration of the underpinnings of obligation must explore the rules and institutions of social practices.

The grounding of obligations in social practices necessarily makes the task of justifying a particular theory of obligation very difficult. Firstly, one's acknowledgement of an obligation such that one 'has an

obligation' will influence what one has reason to do, and the argument for a reasonable theory of obligation must endeavour to explain how and why having obligations is relevant to the practical reasoning of persons who feel themselves to be under an obligation. However, there is the additional difficulty in justifying obligations necessarily founded in social practices of furnishing criteria by which these practices are themselves justified. These two justificatory projects have often been regarded as separate issues, one dealing with the question 'Why should there be moral rules, or what moral rules should there be?', the other dealing with the question 'Why should one do what is "moral"?'. In the context of political thought, both questions have merged as different aspects of the one problem: the justification of the state. As the most inclusive set of social practices embracing a number of people in a given territory, the state represents "a comprehensive, exclusive, and compulsory association".<sup>1</sup> Consequently, the questions 'Why should there be laws (the rules of the state)?' and 'Why should one obey the law?' may be seen as correlative, since an answer to the first question entails a commitment to answering the second. This is not to say that in endorsing the state one is necessarily committed to obeying the laws of that state, but in endorsing the state, one must give reasons for not obeying its laws, should one choose to do so. In other words, the ultimate concern in offering a justification of the state is to more clearly establish the citizen's relationship with the state as an institution which makes claims on him, i.e. the state as that institution which may demand personal obedience as a matter of right. To ask 'Why should one obey the laws of the state?', then, is to question whether the state properly has the authority (the *right*) to make such claims - the problem of civil obligation as the contestable right of the state to command obedience.

The question 'Why should one obey the law?' is commonly posed in terms of an obligation to obey. The way in which one frames the issue will naturally be influenced by one's view of what it is to have an obligation. It is in some peculiar way to be required or bound to do something - the word derives from the Latin *obligare*, to bind. If one has an obligation to do something then it is no longer simply optional with him whether or not he will do it. There is an element of constraint embracing his freedom to do otherwise. Beyond this, however, there is little agreement, and the differences have been a source of much confusion. To begin



with, the terms 'legal obligation', 'moral obligation' and 'civil (or 'political') obligation' are often employed in different ways, resulting in confusion about the kind of obligation at issue. Secondly, there are different notions of what it is to be under an obligation of any kind. For some, the question of civil obligation reduces to discussion of whether one has consciously made a commitment to obey the law, while for others, it is the issue of whether there is a tacit element of commitment entailing obedience. For still others, the question is whether there can be reasons of any sort why one should obey the law. The idea of the social contract embodies an attempt to deal with the problem, firstly, by showing that there can and must be reasons why one should obey the law, secondly, by developing a volitional (or commitment) theory of obligation, and, thirdly, by offering a theory of the development of political authority. Before we can assess the success or failure of contractarianism, it is therefore necessary to discuss in some detail precisely what is meant by the term 'civil obligation'.

The purpose of this Part, then, is to clarify the notion of civil obligation, rather than to propound a particular theory or to develop in detail the theory largely held in common by Kant, Rousseau and Rawls. However, in the course of discussing obligation in general, we shall focus upon what it means to ask 'Why should one obey the law?' and introduce the first step in the contractarian argument (as found in Kant, Rousseau and Rawls, rather than Hobbes and Locke), namely, that the dilemma is misconceived when framed as 'Why should one obey the law?'. Rather, it is argued, the problem of civil obligation is best posited in the question 'Is one under an obligation to obey the law?'.

## I

### Rules and Principles

Obligation is predicated by rules; civil or political, obligation is predicated by the common life of citizens and, consequently, by the rules of their intercourse. It is not our concern here to tackle the classical philosophical questions or rules, that is, how we know whether a rule is being followed, and how we can individuate rules, problems discussed extensively and effectively by Wittgenstein. Rather, we begin by observing that rules are most apparent in civil intercourse in the giving of accounts. With complete disregard to the corpus of sociological literature, rules do not

appear as inductive generalizations of behaviour; they are, properly speaking, the principles used by persons to account for, explain, justify, or excuse, their conduct. Rules, then, are not mere regularities in conduct, but the underpinnings of *regulated* conduct. Taken in their entirety as the assertorical presumptions which articulate civil society rules constitute, as it were, the grammar of civil intercourse.

Without belabouring the analogy of grammar, it can be seen that the logical relationships between linguistic items in the language of civil intercourse will not be reflected faithfully in their superficial representation. These relationships are not themselves camouflaged in any sense; they are part of the 'linguistic competence' of any speaker of the language. The problem lies not in discerning these relationships, but in giving sufficient attention to them, and not being distracted by shallow analogies. "In the use of words one might distinguish 'surface grammar' from 'depth grammar'," writes Wittgenstein, "What immediately impresses itself upon us about the use of a word is the way it is used in the construction of the sentence, the part of its use - one might say - that can be taken in by the ear. And now compare the depth grammar, say of the word 'to mean', with what its surface grammar would lead us to suspect. No wonder we find it difficult to know our way about."<sup>2</sup>

The confusions and ambiguities apparent in much contemporary philosophy arise from an inability or unwillingness to come to grips with the nature and functions of language. Above all, remarks Wittgenstein, our grammar is lacking in perspicuity. What we must do in order to gain focus, is to take what is already open to view, and to make it surveyable by rearrangement. We must assemble a synoptic, comparative account of the class of concepts which presents difficulty. However, the order which is to be sought in our knowledge of the use of a language is not *the* order, but one out of many possible orders; it is an order with a particular end in view, that of clearing away confusions. By attaining a clear view of a language we can remove all of the ambiguities of traditional philosophy; we can "pass from a piece of disguised nonsense to something that is patent nonsense".<sup>3</sup> In attempting to remove philosophical confusions, then, the concept of a perspicuous representation is of fundamental importance.

There are many possible ways to order a society, but any kind of order depends upon commonly recognized rules of conduct. People must be able, as Dorothy Emmet puts it,

"....to entertain generally fulfilled expectations about how others should behave, so that they can cooperate or compete with some reasonable forecast of the sorts of things others are likely to do....These fairly stable mutual expectations, which are the conditions or purposive action in any society, are only fulfilled where there are some generally accepted ways of behaving."<sup>4</sup>

Some of these ways are customary, having developed informally over the years, while others have been adopted by persons through more formal procedures. In any case, public behaviour has become to all intents and purposes standardized, and is generally considered 'correct' or 'right'; conduct which deviates from this established pattern is 'incorrect' or 'wrong'.

There is no term in ordinary English which readily comes to mind for this general notion of a standard or pattern of correct behaviour. Nevertheless, it has become an important concept in contemporary philosophy, especially in the areas of philosophy of language and philosophy of mind. The term commonly used is 'rule' ('norm' is too weak), but a rule is one specific (if not definite) kind of standard of correctness. (In fact, 'standard' is also a species of the genus under discussion.) There are also regulations, guidelines, precepts, directives, laws, decrees, ordinances, edicts, customs, practices, procedures and precedents. All of these imply modes or patterns of conduct, to conform to which in the appropriate circumstances is correct, to deviate from which is incorrect or wrong. Let us conform to the current practice or fashion and refer to all these as *rules*. Rules, in this broad sense, render certain conduct non-optional or, at best, conditional. That is to say, it is not exclusively one's own business whether or not one conducts oneself in certain ways. One will be corrected or called to account by others if one's conduct does not on the whole conform to the appropriate mode of conduct. The syntactical and regulatory functions of rules, then, give rise to social meanings in addition to those underpinning their (tacit) promulgation.

There is a difference between those rules that have evolved over a lengthy period (for example, customs, practices, and precedents) and those that have been adopted through formal procedures. The former may be considered as a pattern of actual conduct, a regularity of behaviour which is generally seen as a model of correctness. Rules which have been posited by some authority, on the other hand, those which have been enacted and formally promulgated (rules in the narrower sense, but also directives, guidelines and edicts) cannot be understood in quite the same way. In many cases, there would be no mode of conduct were it not for the enactment. No one would pay taxes, or very few at most, if there were not a rule requiring the payment of taxes. (Rules in the narrower sense must be gazetted, but customs are never gazetted. They must await the anthropologist.) In either case, regulated conduct makes it possible to predict what others will do with some degree of confidence. But where a rule is involved, there is more than just regularity. Certain conduct is expected of others, and this means more than that it is predictable.

There are two principal senses in which one may expect another to do something. The first we might term the 'epistemic' or intentional sense, for it involves some mental state or disposition. Expecting in this sense means anticipating or looking for. We might also call this the propositional sense of 'expect', for in this sense "B expects C to do x" entails "B thinks (or believes) that C will do x". Such expectations may concern not only our fellows but any kind of object or event. One may expect his salary to increase because he expects to be promoted, and this because he expects to receive good references. Such expectations are generally based upon some kind of empirical evidence, often past experience. One may speak here of justified or unjustified expectations, meaning that the expectation is well- or ill-supported by the available evidence.

The second sense of 'expect' might be termed the 'normative' sense, for it involves more than anticipation. To expect something in this sense means to look for it *as due* from another, or as fitting, meet, or appropriate to the situation. And, of course, it is only of persons that such expectations may properly be held. One may expect one's bargaining agent to support one's interests in negotiations. One cannot in the same sense expect rain or expect a chair to support one's weight. This second sense of 'expect' may be derived from the first, but it is independent of it:

one may expect an act from another without believing that the act will be performed. One may expect one's agent to be tough while knowing that he folds easily under pressure.

There is a special use of 'expect' in the second sense which implies an injunction or requisition. A policeman says to a motorist, "I expect you to proceed directly to the station". Whereas we only 'have' some expectations, we 'place' others as we place injunctions and make requisitions. "I expect" functions here like a performative utterance, in that we use the expression "I expect you to..." to expose others to requirements. Not every expectation in the normative sense implies a rule, but the converse is definitely true, that every rule implies an expectation.

A rule in the broad sense may be thought of as a system of expectation<sup>5</sup>: at least, it is grounded in expectations even when not stated as an imperative. That expectation forms a system means that it is ordered: it is communal, mutual and reciprocal. In a certain situation one is expected to act in a certain sort of way. The expectation is communal in that it is held in common by at least most members of some 'community'. It is mutual and reciprocal in that it applies to everybody, or, at least, to anybody within the 'community'. Not what *B* would be expected to do, but what 'one' is expected to do, what is to be done by anyone in such circumstances.

Being systemic (or part of a system) is what warrants an expectation or makes it 'legitimate'. If it is grounded in such a system, then it is not random, capricious, or arbitrary. As Oakeshott puts it, "while the terms of (a) procedure may be any that commend themselves to the associates concerned, it is conditional upon their being recognized as authoritative. In other words, legislative procedure in civil association must be composed of rules and it must be recognized as itself a component of the system of *lex*."<sup>6</sup> There being a rule, its being systematically expected, is what entitles, licenses or warrants one to expect in the particular case. The particular expectation is neither justified nor unjustified. It is legitimate if it forms part of a system. The system, the rule, is what may be justified or unjustified. Legitimacy and justification are two quite different notions, and a great deal of confusion in moral and political philosophy has resulted from conflating them. Roughly, legitimacy (or

validity) is conferred by rules, while justification appeals to ends, purposes, or principles.

Something is legitimate if it conforms to or issues through the relevant rules or systems of expectation (which include procedures, practices, and channels). An expectation would be legitimate, as we have seen, if it fits into such a system; but what about the system or rule itself? A rule may be legitimate or illegitimate (valid or invalid) if there is some other rule to which it may or may not conform, some 'rule for making rules'.

This is, of course, quite possible in the case of laws and other rules which are enacted according to certain procedures. We may also speak of an exercise of authority as legitimate if it is licensed by an authority-granting rule, and we may speak of a government as legitimate if there are rules which govern the assumption of office. On the other hand, with customs and other informal moral and social rules there is no question of 'validity', for these rules were not, to all intents and purposes, made by anybody. Questions of legitimacy or validity can be raised only in terms of rules, and this means that the quest for validity must end when the rules terminate. A claim or expectation is legitimate if in accord with a moral rule, but it is confusing to ask whether the rule itself is legitimate, since there are no rules for making rules.

A claim or expectation may be warranted by a legal rule as well. Here one may question the validity of the rule, since there are further legal rules which govern the enactment of laws. However, even with laws one must finally encounter rules which have no further rules to validate them. Their authority derives from their being accepted. There is no 'ultimate validity' for moral or legal rules, but this should neither alarm nor surprise us. Validation is a kind of examination which is relative to a rule or system of rules, and it is no defect in the rule or system of rules that it may not be examined in the same way. For example, linguistic conventions rest upon our social practices; they are constituted or created by our linguistic acts, which amount to the application of our words and sentences. These have a sense only in so far as they form a part of a *technique* in so far as they contribute to a custom or institution. Possessing a concept and understanding a rule are manifest in a

person's correct performance, his mastery of a technique. The ascription of understanding to a person is justified by reference to his behaviour, and this directly entails the impossibility of a private language, one which refers to a person's private, immediate sensations, and one which only he can understand. The public and conventional nature of language readily permits analysis of usage on the grounds of validity even though these grounds must themselves remain 'given'.

This may be disturbing to some if it is taken to imply that the rules or system of rules are not open to examination or review, that they are, in the final analysis, arbitrary. But there is another way in which rules may be assessed: we may evaluate or assess them in the light of the *values* which they enable us to realize. Security, stability, prosperity, happiness, a freedom which we prize, an equitable distribution of resources - whatever it is we think desirable, we may ask whether the rules in current usage offer the best possibility of achieving them. This is justification as distinct from legitimation, evaluation instead of certification, vindication rather than validation. Both these activities are forms of assessment, attempts to show that a claim, expectation, or rule is not arbitrary: the one by showing it to be systematic, the other by showing it to be valuable. (Obviously, the term 'legitimate' is often used more broadly, but in order to maintain the distinction in view, we shall employ the term only for a certain form of assessment.)

It would not be stretching the term too far to speak of the various considerations in light of which rules are evaluated as 'principles'. Expectations are validated by rules, and rules are justified in terms of principles. However, this is not a familiar approach, so it would be best to discuss principles and the ways in which we apply and evaluate rules.

The term 'principle' is probably the least precise and most complex in our moral vocabulary. It is not only, or even primarily, a moral concept. Its uses in science, mathematics, logic and metaphysics have contributed to the complexity of its analysis so that caution seems only natural when using the term in moral philosophy. Ordinary usage offers little guidance, since the philosophical expressions 'moral principles' and 'principles of morality' occur infrequently in our common moral

discourse. Here one hears of men of principle, of acting on principle, or of making something a matter of principle, all of which are somewhat at variance with the philosophical notion of appealing to a principle. The term is also employed in legal deliberation, where 'principles of law' are certain broad considerations, both formal and material, which guide the adoption and the application of particular legal rules.

Rules and principles figure in moral reasoning in very much the same way that they figure in legal reasoning. Rules are applied directly to acts; principles are significant both as justifications of the rules and as guides in determining whether a given rule should be applied. Rules are systems of more or less determinate expectations, but principles are not. Principles determine or legitimate expectations only indirectly, by guiding consideration of when a particular rule should govern a situation. They do not establish alternative systems of expectation of their own.

Naturally, moral reasoning is not limited to the mere application of rules any more than legal reasoning is. Decisions are often premised solely upon consideration of principles. This has been historically the procedure in Chancery courts or 'courts of equity'. During the fourteenth and fifteenth centuries a second system of courts was developed in England supplementary to the King's Bench and other royal courts. Unlike the royal courts, the courts of the Chancellor did not apply the common law but rendered decisions based upon the principles of justice and mercy. The Chancellor was to do 'equity' when the common law failed in this regard. This dual system of justice persisted until the mid-nineteenth century, when the two functions were merged into one unified system. But the distinction still remains between an 'action at law' and an 'equitable remedy'; though both are now administered by one system of courts, there are different rules of practice which govern the two proceedings.

In our own moral deliberations we frequently withhold the application of rules because principles militate against them, and we may have to make decisions without relevant guiding rules. It is in these cases that principles bear most directly on the decisions we make. Considerations of utility or of justice may themselves support a particular decision, rather than manifesting themselves indirectly through rules. Yet,



even though we may be tempted to equate principles with rules, important differences remain. Principles are not 'applied' as rules are, even in these cases. We do not conform to principles or act on them as we do rules. We often act on principle, but acting on principle is quite different from acting according to rules.

Acting on principle is more like making it a rule to do something than conforming to a rule, but it is different in important respects from both. When one makes it a rule to do something one does it habitually and usually without regard to its utility or practicality in individual cases. One could make it a rule to write two thousand words every day, or to more zealously observe the Sabbath. If so, then one would do these things even when it would be more convenient or more agreeable and not the least harmful to make an exception. Making something a rule is different from *doing* something as a rule. If I write two thousand words daily only as a rule, then I may write one thousand words on those days when it is more convenient to do so. But if I have made this a rule, then I do not make exceptions on such grounds. The rules one makes for oneself may be just as strenuous and just as rigidly enforced as those imposed by others, though, of course, they have only the authority which one chooses to give them. Whether one makes exceptions is purely one's own affair. Acting on principle is akin to making something a rule in that no public authoritative rule is involved. The difference is that when I make something a rule it is because I think that doing that sort of thing regularly has some value - that it is a good policy because of some benefit to be derived or some hazard to be avoided. Writing two thousand words a day is conducive to my mental health, and observing the Sabbath may be spiritually uplifting. Perhaps I think that if I do not make these acts regular features of my life a lapse might occur at the wrong time. So even though I feel quite certain no harm would come from any particular deviation from routine, I observe each 'rule' as though it were a *rule*. Given this view of rules, a conflict of rules presents a practical perplexity, such as a double entry in a diary, not knowing which to honour. A conflict of principles, however, is not a practical nuisance but a moral crisis requiring a basic resolution. Rules are, as it were, the practical implications of principles.

Thus far we have considered rules and the principles on the basis of which they are adopted and applied. There is a third element in moral and legal reasoning which has been considered only indirectly so far, and that is judgement. The aim of moral and legal reasoning is usually to reach some conclusion about what ought or ought not to be done. The conclusion may be either particular or general. "I ought to tell him the truth now that we are sure he will not live long" is an example of what is meant by a particular judgement, a judgement about what ought to be done in a particular case. A more general judgement would be "A patient should be told the truth about his condition". General judgements may be the conclusion of a piece of moral reasoning, or they may be invoked in justification of a particular moral judgement. In the latter case they bear a resemblance to legal principles; and they may just as well be called 'moral principles' as general moral judgements. (Note that rules can be carried out by delegation, whereas principle compliance cannot be delegated - one cannot fulfil the requirements of a principle on someone else's behalf.)

In this thesis we are interested in examining the general judgement (or principle) that one has an obligation to obey the law (that is, the rules of the legal system or systems to which one is subject and the edicts, decisions, and so on which are issued in accordance with those rules) regardless of one's own judgement of its worth. Can this judgement be justified by appeal to any of the principles of morality? And if it can, are there any circumstances in which the judgement might not apply?

## II

### Prima Facie and Presumptive Obligations

The term 'obligation' may be used in both a conceptual and a substantive sense. In the conceptual sense it denotes the general state or condition of being bound or required, without regard to the sort of thing one is bound to do or to forbear from doing, as when we say, "He has no sense of obligation toward his fellow citizens", or "Aristotle and Oakeshott offer similar theories of obligation". In the substantive sense

of the term we speak of particular obligations which a person may be under; in this sense the word may be pluralized and given articles. A person may have an obligation to pay his taxes, and he may have a variety of obligations to his family. When we speak of kinds of obligation in the conceptual sense we are speaking of the kind of tie or 'bond' involved. There are various ways of being bound to perform a given act; one may be required by law, by a rule of social propriety, by a commitment one has made, or by other moral considerations. We shall refer to the various kinds of obligation in the conceptual sense as the *forms* of obligation, of which there are at least three: legal, moral, and social obligations.

When we discuss the varieties of obligation in the substantive sense we are speaking not of the form of the bond but, to put it crudely, of its content. One may have an obligation to pay rent, or to educate one's children. When we differentiate kinds of obligations in the substantive sense we may do so by reference to the kind of act required, the person or institution to whom the obligation is owed, or the relationship which gives rise to the obligation. Here we speak of financial and family obligations. We shall refer to the different kinds of obligations in the substantive sense as the *varieties* of obligation. It is to be hoped that these distinctions will enable us to clear up some confusions in terminology. The term 'legal obligation' has been used to describe a variety of obligation, while 'civil' or 'political' obligation has been used for a form of obligation<sup>7</sup>. We shall use the terms 'legal obligation' and 'moral obligation' to refer to different forms of obligation, and we shall use 'civil obligation' to refer to a variety of obligation: the obligation to obey the law. It is not a variety of legal obligation, since there is no law to the effect that the law be obeyed. If there is such a thing as civil obligation, it will be a variety of moral obligation. The literature of politics and government is replete with the plural term 'political obligations', which refers to a set of obligations including such things as being informed, voting, and otherwise participating in the civil life of one's society. So used, however, 'political (or civil) obligations' refers to a variety of moral obligation, of which civil obligation in the singular - the obligation to obey the law - is one particular obligation.

Occasionally in the course of daily life we are confronted by conflicting obligations. We can fulfil one only at the expense of defaulting on the other. Somehow we must determine which obligation we will honour and which we must set aside. Which of the two bonds is stronger, which more readily broken? At other times, fulfilling an obligation may entail bringing about some considerable harm, either to oneself or to others. In this situation, too, one must decide whether the obligation is strong enough to justify the consequences of keeping it, or whether it might not in good conscience be set aside. As Mill remarked, "It is not the fault of any creed, but of the complicated nature of human affairs, that rules of conduct cannot be so framed as to require no exceptions, and that hardly any kind of action can safely be laid down as either always obligatory or always condemnable."<sup>8</sup>

Considerations such as these have led many philosophers to adopt the term '*prima facie* obligation'. A *prima facie* obligation is an obligation which, however strong, can be overridden in concrete situations. To say that one has a *prima facie* obligation to do something is at least to say that one has a good reason for doing it, though there may be better reasons in the particular circumstances for doing something else. Indeed, it is no doubt the case that most people who claim that there is an obligation to obey the law would want to say that it is a *prima facie* obligation. This means that the mere fact that some action is an act of disobedience militates against the performance of the action; its illegality, in other words, is a powerful consideration in every case which must be overcome by other considerations before the performance of the action can be justified. However, if one pursues this point an unwanted implication soon surfaces, namely, that an obligation which is overridden was not an obligation to begin with. What appeared to be an obligation ('*prima facie*': at first appearance) turned out on further investigation not to be obligatory. Yet, surely this cannot be right. An obligation which is overridden is nevertheless an unfulfilled obligation. Recognition of the frustrated existence of unfulfilled obligations underpins our saying that it is a good idea to explain one's actions when one can to those whose expectations have not been fulfilled, both to protect one's own reputation and in order not to undermine confidence in the general reliability of such social bonds. This may help explain the fact that many persons who engage in civil disobedience feel that they ought willingly to accept punishment

for their actions. Accepting the punishment would be acknowledging the force of the obligation which they feel is overridden in that particular situation.

The philosopher's use of the phrase *prima facie* is different from the jurist's. In legal writing the phrase is frequently employed to describe evidence which is sufficiently persuasive to require rebuttal.<sup>9</sup> This suggests a similar but weaker thesis: that though one does not always actually have an obligation to obey the law, one usually does. Since it is generally the case that one has an obligation to obey, one may in any concrete situation be *presumed* to have an obligation to obey until this presumption is rebutted. Because obedience is in most circumstances obligatory, in any circumstance there is a *prima facie* case (lawyer's sense) for ascribing a *prima facie* obligation (philosopher's sense). If one may be presumed to have an obligation, it may be said that one has a 'presumptive obligation' (though, of course, if one has a presumptive obligation one may very well have no obligation at all).

The difference between *prima facie* and presumptive obligations is subtle, but it is important to a theoretical account of civil obligation. If one has a *prima facie* obligation to obey the law, then one always has an obligation to obey; the fact that an act would be illegal must always count against doing it in the absence of stronger reasons to the contrary. If, on the other hand, one has only a presumptive obligation to obey the law, then it is only as a rule that the fact that an act would be illegal would count against doing it. *Considering* the fact of illegality is always relevant in both cases, but the fact of illegality *itself* is not. If the presumptive case is rebutted, then the illegality of the act is not a reason against doing it, and no reason *for* doing it is necessary to justify disobedience.

It may be that there are some obligations so strong that they may never justifiably be set aside. If a particular obligation could never be overridden by another obligation, or by any other sort of consideration, it may be considered an 'absolute obligation'. Would an obligation to obey the law be an absolute obligation? If so, one would never be justified in disobeying the law, regardless of the consequences or the other obligations or principles to be sacrificed. This is a very strong thesis,

one which very few reflective persons would defend. The view which we shall examine is the weaker but more defensible view that one has an obligation to obey the law which, however strong it may be, can be overridden by countervailing considerations. How strong that obligation is will ultimately depend upon the strength of the reasons which support it. It is therefore necessary, before going on to consider absolute obligation, to further discuss the conditions under which one may properly be said to have an obligation.

### III

#### Creating Obligations

As discussed above, rules are systems of expectation; an expectation is licensed, warranted, legitimate if it is part of such a system. But this is not the only way an expectation may be warranted. We have found it immensely useful to have a way of licensing expectations in particular situations not covered by any rule. One can give another a warrant to expect, not only by performing some act which brings oneself under a social rule, but by making a commitment to do something, by directly granting a licence to expect. In making a commitment, one gives rise to and at the same time licenses an expectation. We have devised a number of ways of doing this. We may make a promise, take an oath, make a pledge, enter into a contract or other agreement. Or we may make less formal and perhaps less binding commitments simply by declaring that we will do something. One need not make an explicit declaration; there are many other ways of letting another know that one is to be counted on to do something. (It should perhaps be repeated that we are using 'expectation' in the stronger normative sense discussed above. We might use the term 'entitlement to expect'; the suggestion of 'office' or 'rightful position' would be appropriate to the special, if temporary status which is conferred by the commitment.)

A commitment one has voluntarily made is the one basis of obligation which is recognized by everybody. For this reason we may speak of voluntary commitments as paradigm cases of obligation. When one makes a commitment one creates a kind of bond between oneself (the obligor) and the

person to whom the commitment is made (the obligee). This bond is the expectation which has been created and licensed by the commitment. We speak of an obligation when the tie is viewed from the standpoint of the obligor, of a right when viewed from the standpoint of the obligee.

The notion of a 'bond' well represents the curious way in which one's freedom is restricted by an obligation. In posting bond one puts something of value in trust to guarantee one's appearance in court, for example; and the same is true of commitments. In creating and licensing an expectation one also licenses reprisal in case the expectation is not fulfilled. When obligations are not discharged the obligee has a right, a licence implicitly granted by the obligor, to call the latter's good name into question. In so far as one cares or ought to care about one's reputation, one has some reason for fulfilling commitments.

In summary, the principal features of the paradigm case are as follows: by virtue of some particular act (for example, uttering "I promise to... ") the obligor has directly licensed the obligee, some particular person or group of persons, to expect the obligor to perform (or refrain from) some further act (or kind of act) which can be specified. This is to say that the obligee has a right that the act be performed, at least upon demand; moreover, failure to fulfil the expectation exposes the obligor to retribution. We shall enumerate these features for further use: (1) the basis of the obligation is a voluntary act of the obligor, (2) as a result of which some specifiable act is owed to a certain person (or persons), (3) who may be said to have a corresponding right to the obligatory act, (4) and who may reproach the obligor for failure to discharge the obligation.

Needless to say, one may acquire obligations in other ways than by directly assuming them. One may *incur* an obligation by coming under an appropriate rule. Breaking a neighbour's window and getting an unmarried woman with child are examples of doing something which, by virtue of a rule of our society, results in an obligation. Such cases are similar to commitments in that the obligor owes a more or less specific act to particular persons (feature (2) ), and we may speak of the obligee's right as well as the obligor's obligation (feature (3) ). Failure to discharge the obligation also opens one to censure (feature (4) ). As with the first

feature of commitments, an act of the obligor is necessary, but unlike commitments it is not sufficient. The basis of the obligation in this case is a rule. An act is required to bring one under the rule, but without the rule there would be no obligation. The expectation is warranted by the rule, not directly licensed by the obligor. The debt is not undertaken as part of the act, but is imposed upon one as a result of the act. This last point may be misunderstood. The difference is not between direct avowal on the one hand and custom on the other. It is, rather, between doing something which constitutes undertaking an obligation on the one hand, and doing something which places one under an obligation on the other. There are customs which enable one to assume obligations, and customs which force obligations upon one as a consequence of one's acts.

Commitments are assumed by voluntary acts. Is a voluntary act necessary to incur an obligation? One would think not, at least not in the usual sense of a deliberate and purposeful act. One may incur an obligation as a result of someone else's act, as when one's son hits a cricket ball through a neighbour's window. Nor does the act have to be voluntary in the straightforward sense. An obligation results from an inadvertent lob through the window as well as from a deliberate hit. A special case of incurring an obligation is the acceptance of a gift, favour, or other benefaction. The rules that govern reciprocation, more or less elaborate in different societies, are an important part of the basis of the obligation, but there are other factors as well. Reciprocation is like commitment in that there is something voluntary about it. One accepts the benefaction in the knowledge that one thereby incurs an obligation. But there the similarity ends. The promisor creates an obligation *ex nihilo*, but we cannot say this of benefactions. With reciprocation what one is doing is accepting a gift, and only indirectly by virtue of a convention assuming an obligation. Incurring an obligation sounds better, but even this is not quite right. For it obscures the difference between breaking a window and so by one's own action falling into an obligation, and accepting a gift and so being placed under an obligation by the giver. The difference is that the basis of the obligation is not a rule under which I place myself, but a rule under which I am placed by the act of another. It is partly my own doing, since I can refuse, but not primarily. And so we speak sometimes not of creating, assuming, or incurring, but of being 'put under' an obligation.



An obligation to repay benefactions is akin to the other cases discussed in that something is owed to a specific person or group of persons, but what is owed may not be so easily specifiable. One frequently speaks of feeling *some* obligation, and there is often uncertainty whether one has any at all. If one does feel a need to do something to set the books straight, as it were, it may not be at all clear just what would be appropriate. This is especially so in societies, such as ours, which have less elaborate and less formal codes of reciprocation. It is here, in the penumbra of obligations, that ingenuity and creativity are particularly valuable assets. It is partly for this reason that we do not normally think of the obligee as having a correlative right: since there is no specific act which is called for, there is nothing to claim or demand. There is a further reason: a certain tension in the notion of a gift or other benefaction carrying a price. A present seems not really a gift if something is owed in return. Yet there is value in gifts being generally reciprocated. So we go half way and speak of one being put under some obligation, while not speaking of a correlative right which one acquires by his beneficence. For both these reasons we feel that reprisals are not in general appropriate when obligations of gratitude go unfulfilled. When nothing is forthcoming after a reasonable period of time one may take offense and perhaps offer a mild reproach, but public censure is usually out of the question. Continual disregard of such obligations does reflect on one's good name, however, and may call one's character into public discussion.

There is a third way in which expectations may be warranted, stemming from the fact that every person participates in some 'social role', and most persons occupy a number of 'roles' simultaneously. The term 'role' is, of course, a dramaturgical concept which has been imported into sociological and philosophical discourse. A role is, obviously, a part of a play assumed by a member of the cast. A play can be successfully performed only when each member plays his assigned role or part; that is, when each member says and does what is expected of him at the appropriate time. The temptation to draw analogies with society is overwhelming. There are countless tasks which must be performed in a complex society, and it is imperative that there be a division of labour, in certain areas at least, to ensure the performance of certain tasks. This is best achieved by a system of 'standing parts' which carry with them a number

of more or less specific tasks or functions. These parts include jobs, trades, and professions, but also kinship and marital relations, office, status, and rank. When a person steps into a certain role he acquires that role's constituent tasks: there are now certain acts which are expected of him.

The tasks or functions one may be expected to perform by virtue of occupying a role in the *theatrum mundi* are usually called 'duties'. When one speaks of having a duty it will ordinarily be appropriate to add 'as \_\_\_\_\_ (role)'. We 'assume' duties as we assume a station. We 'do' or 'perform' our duties as we do a task or perform a function. When one changes jobs one's duties change. When one's term of office expires that set of duties passes to another who assumes the office. We may also speak of duties when there is no role involved if there is some similarity to a role-related requirement. Any standing task may be referred to as a duty even when it is not an 'official' task. Each member of a household may have certain duties to perform in preparing for supper, though these are unrelated to the role of husband, wife, or daughter. Similarly, anything which has to be done in an official capacity, anything which 'it falls to one as \_\_\_\_\_' to do, may be spoken of as a duty, even though the task is not a standing one.

Our relationship to the law is not ordinarily thought of in terms of duty, and it should not be difficult now to see why. If duties attach to offices, roles or functions, then it should be something special about one's position which gives rise to the duty. Speaking generally, the reason for assigning duties is to divide up a workload into manageable units, to see that certain tasks are performed by making some specifiable person responsible for each task. ('Responsibilities' serves in most cases as a synonym for 'duties', though it also can be used for a non-standing, assigned task having no connection with a role.) Duties differentiate - but obedience to the law is not incumbent upon one person or group rather than another. One might speak of a duty to obey the law arising from one's role as citizen<sup>10</sup>, though this would stretch the notion of role quite thin, it being one which everybody occupies. (I may speak of what I ought to do *qua* citizen, but this serves to differentiate one aspect of my life from others; it does not differentiate me from anybody else.) Nevertheless, it is intelligible to speak of obeying the law as one of the

duties of citizenship. The question of civil obligation could then be explored by analyzing the concept of citizenship and making a case for seriously adopting the role. Despite Kant's arguments to the contrary, however, this approach is unnecessarily cumbersome, and we can illuminate the issues more easily if we set aside the notion of duty, at least in the restricted sense. 'Duty' has been extended, like 'obligation', to refer to anything which one morally or legally ought to do; but in this sense it is equivalent to the wide sense of 'obligation', so that no new complexities are introduced.

Obligations are assumed or incurred by virtue of some particular act of the obligor, and they are owed to some specific person or group of persons. The obligating act gives rise to a special relationship between individuals. There is a further way of coming by an obligation which does not give rise to such a special relationship. Some rules of a society apply to all its members - we might call them 'categorical' rather than 'hypothetical rules'. Australian citizens, for example, have an obligation to lodge an income tax return by the last day of August. No special act is required to bring one under the scope of this rule, nor is there any particular person to whom the obligation is owed and who thus holds the correlative right. One does not speak here of being put under, but of *finding* oneself under, an obligation. Such obligations are neither assumed nor incurred: they are imposed. (Lodging an income tax return is an example of something I am legally required to do. There are also many things I must refrain from doing. Rules which prohibit certain kinds of acts far outnumber those which impose requirements. One must not assault others or trespass on their property, drive over the posted speed limit or in the oncoming lane, and so on.)

The obligations which are imposed in our society are usually if not always legal ones. The reason for this may be that the acts required of citizens are of such importance to the whole community that legal coercion must be available to ensure that they be performed. Of course, this need not be the case. In a closely-knit and homogeneous society, moral or religious admonition and sanction might be sufficient, but not in a pluralistic or secular society. Though it may be that all imposed obligations are legal obligations, it is certainly not the case that all legal obligations are imposed obligations. One may have legal obligations which one

has either assumed or incurred. The law of contracts, for example, is concerned with the ways in which one may assume a legal obligation, and the law of torts specifies some of the conditions under which one would incur a legal obligation. While obligations which are imposed do not involve any special relationship between individuals, there may nevertheless be some resemblance to obligations which are assumed or incurred. It may be that some particular act is required, such as lodging a tax return, so that the obligation may be discharged or fulfilled. But with prohibitions even this feature disappears. The obligation not to libel another person is not a special bond which one assumes or incurs, and it makes no sense to speak of fulfilling this obligation. It is a standing feature of our civil life, not a temporary burden which can be discharged or from which one may be released. In fact, there are only two imposing similarities to the paradigm case of obligation: such obligations are created, and failure to fulfill them will be met with sanctions.

The signal feature of making a commitment is that one creates an obligation for oneself. One places a requirement on one's own head. Obligations which are imposed are also created, though not by one's own act. They are created, instead, by an act of some legal authority, a person or group of persons whose function it is to make rules and issue edicts, decrees and the like. This power or ability to create new legal obligations is usually governed by a constitutive rule of the legal system, but it may be a matter simply of custom or precedent, or it may be assumed by force as in a military coup. However the locus of authority is determined, its exercise changes the legal environment by giving rise to new legal relationships.

The second feature which remains is that penalties are provided in case a requirement is not fulfilled or if a prohibition is violated. Though there are differences among assumed, incurred, and imposed obligations, they are not nearly so important as this common characteristic. One must be careful not to state the case too strongly, however, for there may be legal obligations to which no sanctions are attached. International law is an example of a body of rules which for the most part carry no sanctions. There is no machinery for enforcing the rules of war or the judgements of the international tribunal at the Hague. But then there is also a hesitation to describe these rules or judgements as determining

legal obligations. It is for this same reason that international law has been held not really to be law at all.<sup>11</sup> A better example, perhaps, would be a requirement within an ordinary legal system which carried no sanction. There are probably a few of these in every legal order. However, sanctionless requirements and prohibitions are rare, and it must be admitted that the possibility of enforcement in almost all cases is necessary if a system of imposed obligations is to function effectively.

#### IV

##### The Scope of Obligations

It has been seen that one may have an obligation even though it does not derive from a voluntary act, and that such obligations need not involve any special relationship between individuals. It is generally held that this is true of legal obligation, but some would deny that it is true of moral obligation. Not everything that we morally ought or ought not to do may be spoken of as a moral obligation, it is argued. It sounds somewhat peculiar to say that we have a moral obligation not to kill another human being or that we have an obligation not to rape persons. Of course, it would be *wrong* to do these things, but would it violate an *obligation*? It sounds equally peculiar to speak of a correlative moral right not to be murdered or raped. Most people regard moral obligations as special bonds which one creates or incurs by his own actions. But the obligation to refrain from rapine, for example, has not been assumed or incurred, nor is it a special relationship: it is one which everybody has toward everybody else. How are these peculiarities to be explained? We may speak of legal obligations which are not special relationships - one does have a legal obligation not to rape persons. Why, then, is there anything odd about speaking of a corresponding moral obligation? The answer, it seems, resides in usage. As the term is ordinarily used, and in all the cases so far discussed, when one has an obligation then an act which would otherwise be optional has become required (or prohibited) because of some obligating act, either of the person himself or of an authority. We have a legal obligation not to rape others because an authoritative enactment has changed the legal situation: what would otherwise be legally permissible is, on account of the rule, no longer optional. But this is just what

seems to be missing in the case of the moral obligation. Nobody has made it wrong to wantonly rape our fellows. Rapine has not been converted from a morally neutral to a wrongful act. Perhaps it is this which makes one hesitate to ascribe moral obligations not to murder, thief, defraud or deceive. Regardless, the term 'obligation' has been extended to embrace such cases, and indeed, to cover the panoply of morally relevant considerations. One is commonly said to have an obligation to do anything which on moral grounds one ought to do. The term is frequently used in this way by philosophers, and not infrequently by others. William Frankena, for example, writes of "the theory of obligation" as covering judgements that "a certain action or kind of actions is morally right, wrong, obligatory, a duty, or ought or ought not to be done"<sup>12</sup>. Here there is no restriction as to what might serve as the basis of an obligation. In this all-inclusive sense one may speak not only of an obligation not to murder, but of an obligation to contribute to charity, to visit the sick, or to devote one's life to some cause. Ordinarily it would make sense to say that, although I have no obligation to join the Red Cross, I think I ought to anyway, but not if we are using the term in this broad sense.

The difference between this broad use and other uses is significant. Whereas obligations in the narrow sense correspond to legitimate expectations, obligations in the broad sense need not. The needy have no expectations corresponding to any obligation I might have to contribute to charity. The notion of a legitimate expectation is out of place. If it were a matter of rights and obligations, one wants to say, it would not be charity. Neither is one always answerable in the same way for failure to discharge such an obligation. In the narrow sense our obligations are strictly non-optional. We may be held accountable to others and liable to sanctions if we break a rule or a commitment. But though failure to discharge is blameworthy, fulfilling the obligation is not considered praiseworthy. It is what would be expected of anybody. One earns no merits for performance, only demerits for nonperformance. Many of the things I ought to do are not like this. I ought indeed to contribute to charity and to spend some of my leisure time with disadvantaged persons, but these are not among my obligations in the narrow sense. We ought in general to help one another when we can, but is this properly described as an obligation? According to those who say it is, it is argued that in addition to obligations of the narrower sort one has an obligation to help others, or

perhaps more generally, to bring about good consequences - an 'obligation of beneficence'.

This putative obligation has been presented in various ways by such diverse writers as William Godwin, Bentham, Kant, Marx, David Ross and William James, to mention but a few. "The foundation of morality is justice", writes Godwin.

"The principle of virtue is an irresistable deduction from the wants of one man, and the ability of another to relieve them. It is not because I have promised that I am bound to do that for my neighbour which will be beneficial to him and not injurious to me. This is an obligation which arises out of no compact, direct or understood; and would still remain, though it were impossible that I should experience a return, either from him or any other human being.... The true ground of confidence between man and man is the knowledge we have of the motives by which the human mind is influenced; our perception that the motives to deceive can but rarely occur, while the motives to veracity will govern the stream of human actions."<sup>13</sup>

*De facto* claims, or expectations, then, create obligations; and there is a good deal of sympathy for this view in contemporary political philosophy.

It seems clear that this view is partly correct and partly wrong, and both parts are significant. To begin with the latter, there *are* conditions under which a 'claim' or 'demand' may be legitimate or valid, and this just *is* the way in which the distinction is ordinarily made between acts which are obligatory and those which are not. Not every claim or expectation constitutes a right, but only those which meet some condition of validity. There is an important difference between 'bare' demands on the one hand and legitimate demands on the other, and it *is* one which common sense and ordinary usage rightly recognize. Nevertheless, there is something quite right about what Godwin says. A world in which people helped others only when it was obligatory, in which the interests of others were considered compelling only if a matter of right, this would be a poor world indeed - a cold, legalistic world which few would care to inhabit. Insisting upon the distinction between claims which are legitimate and those which are not does not rule out the latter as insignificant. No need, however slight, of any creature, however weak, is totally irrelevant to what I ought to do.

What, then, is the important difference between those demands which it is obligatory to fulfil and those which it is not? Or, rather, what is the importance of the difference? It is something like this. For people to live together there must be some ways of forming expectations or establishing claims which we can rest assured will be met. This constitutes the minimum level of social morality - the level of rights, obligations and duties, without which society would surely be impossible. These 'claims' must be regarded as overriding in all but the most exceptional circumstances; otherwise we could not count so heavily on their being met. Of course these claims sometimes conflict, so that one must be overridden by another of the same order. But only rarely may a legitimate or valid claim be defeated by considerations of a different sort, the interests of the obligor. But just as there must be *some* claims which are given this status, they could not *all* be so regarded. There must be a sphere in which one's own interests take precedence over the demands of others. Many of the genuinely difficult and agonizing moral dilemmas which a person faces reflect the fact that the boundaries of that sphere have never been clearly delineated and probably never could be. There is much room here for moral disagreement; but though we disagree about when one's own good ought to override the good of others, we may still agree that both goods have some claim upon one's consideration. The mere existence of a need or even of a desire provides a reason for acting to satisfy it, though in the circumstances it may not be sufficient reason. For there are almost always needs and desires which 'run the other way'. In summary, then, we may concur with Godwin that one's concern for one's fellows should extend beyond the strictly obligatory, without losing the distinction between those acts which are required or prohibited, and those which are fitting, meritorious, or supererogatory. We should remain aware of this distinction despite the common habit of using 'obligation' to cover both sides of it.

Within the general area in which we employ the term 'moral obligation' we have first distinguished those requirements which derive from someone's obligating act from those which do not, and, second, we have distinguished the strictly required from the meritorious. There is one further distinction which must be made in trying to get the question of civil obligation clearly and unambiguously before us.



There are numerous standards of conduct within a given society which may be called moral rules or conventions, as distinct from its rules of law or its less important conventions of social propriety. 'Moral obligation' may be used to refer to the obligations based upon these rules and conventions. On the other hand, one may use 'moral obligation' to express one's own considered judgement about how one ought to act, which may or may not correspond to the conventional view of the matter. We might speak here of one's 'rational obligation' as distinct from one's 'conventional obligation'. These three distinctions correspond closely enough to permit us to speak in most contexts simply of a narrow and a broad sense of 'obligation'. In the narrow sense, obligations are strictly non-optional, are based upon the prevailing *mores*, and are special relationships arising from some obligating act. In the broad sense, obligations are determined by an individual exercising his own judgement, and they may or may not be owed to someone in particular. There are several obligations which do not fit neatly into either of these two rough categories: for example, the obligation not to rape one's neighbour is not a special relationship and does not result from some obligating act, yet it is socially sanctioned. But for the most part these exceptions may be ignored, allowing us to speak simply of obligations in the narrow or broad sense of the term. And it is in this wider sense that the question arises whether we have an obligation to obey the law. However, in doing so it should be emphasized that it is only in the narrow sense of the term that we can properly speak of civil obligations as 'obligations'. The reason we must move beyond this narrow sense when discussing the relationship between people and the law is to avoid ignoring an important possibility: that, though one has no obligation to obey the law, one ought nonetheless to obey it on other grounds.

Before we turn to this issue, though, we must further discuss the narrow sense of obligation and properly amplify the critical features that distinguish the two senses. In doing this we will show the need for the distinction and to clarify it by putting it to work. In particular, we shall consider the relationship between 'obligation', 'ought' and coercion.

Obligation and Ought

"Often we say that a man ought to do something simply because we take it to be his duty", writes Joel Feinberg, "On the other hand, there is no absurdity in saying that he ought not to do his duty. The word 'ought' has several jobs, but at least one of them is not performed equally well by 'duty' and 'obligation'. That job is to prescribe or give advice. When the word 'ought' occurs in a sentence which gives advice, we can call it the 'ought of final judgment, all things considered'."<sup>14</sup>

As Feinberg clearly points out, the distinction between the two concepts, 'obligation' and 'ought', stems from the different linguistic tasks they perform. This is readily seen in the familiar situation of a contested debt. More often than not we conflate acknowledgement of an obligation to repay a creditor with the assertion that one ought to repay one's creditors. Generally, the debate as to whether or not one ought to pay a debt is settled with the clear determination of whether or not a loan was transacted and an obligation thereby incurred. In other words, the burden of argumentation focuses upon the existence of an obligation, subsuming the question of what one ought to do as a mere corollary of what one has actually done. Consider, then, the Rabelaisian case in which the 'moralistic' Panurge happily acknowledges Pantagruel as a *bona fide* creditor, but reguses to repay his debt on the grounds that despite his acceptance of the obligation he ought not to discharge it. "For - notwithstanding the universal opinion of philosophers, who say that out of nothing nothing is made", homilizes Panurge, "although I possessed nothing and had no prime substance, in this I was a maker and creator.

"And what had I created? So many good, fine creditors. Creditors are fine, good creatures - and I'll maintain that to everything short of the stake. The man who lends nothing is an ugly, wicked creature, created by the great ugly devil of hell. And what had I made? Debts. Rare and excellent things! Debts, I say, exceeding in number the syllables resulting from the combination of all the consonants with all the vowels; a number once computed by the noble Xenocrates. If you judge of the perfection of debtors by the multitude of their creditors, you will not be far out in your practical arithmetic.

Despite Panurge's belief that *ceteris paribus* we ought to fulfil our obligations, when it comes to matters or *debitum* the 'ought of final judgment, all things considered' weighs against repayment. Pantagruel's mere advising Panurge of his obligation does not necessarily entail advising him to *do* anything. However, Pantagruel's reminder that one ought to pay one's debts does necessarily involve advising Panurge to do, or refrain from doing something. Although Panurge may respond by asking "ought I *really* give you the money?", this merely questions the prudence or probity of the advice, not the fact that he has been given advice. That is to say, there are different grounds for accepting or rejecting obligation and ought claims stemming from the different functions of the two concepts; and we are forced to respond to the conditions which must be met in order to warrant a claim of either sort. In the case of obligation, the paradigmatic (and least problematical) condition is that of commitment, as discussed above. One commits oneself to do or forbear from doing something with regard to another party. Ought claims, on the other hand, whether moral or prudential, entail neither commitment nor a specific relationship. Rather, such claims are justified by appeals to principles, desires or consequences. Whereas obligation claims are characterized by commitment, ought claims are characterized by their content.<sup>16</sup>

While there is little dispute that the broad sense of obligation is intelligible, the question remains as to whether or not the unreflective conflation of 'obligation' and 'ought' is appropriate to philosophical consideration of related issues. To use 'obligation' when 'ought' is more appropriate merely engenders confusion about what claims are being made and the manner in which such claims may be justified. Despite their obvious relatedness, the concepts must not be blurred else the relationship itself will become meaningless. Consequently, the scope for defections from the narrow sense of obligation is limited largely by the uses of 'ought'. The fact that one is under an obligation to do  $x$  may be sufficient reason for saying that one ought to do  $x$ , but the converse does not hold. The 'ought of final judgment' may eclipse an obligation, but there can be no 'obligation of final judgment'. The philosophical boundary of even the broadest sense of 'obligation' thus travels the perimeter of the question "what am I under an obligation to do?", as distinct from the question "what ought I do?".

According to H.L.A. Hart, obligation exhibits the following features: "(1) dependence on the actual practice of a social group, (2) possible independence of content, and (3) coercion"<sup>17</sup>. While all three features have been surveyed above, the last is deserving of further examination if only to highlight the element of compulsion underpinning obligation. Actually, the question before us is whether coercion undergirds obligation or merely buttresses it. Hobbes, of course, held the former view - that obligation originates in coercion, a view held by all 'command' theorists of law. From this perspective we are under an obligation to do  $x$  because we are bound to do  $x$ , rather than being bound as a consequence of having an obligation to do  $x$ . As Hart has shown in his famous 'gunman allegory'<sup>18</sup>, the reduction of 'having an obligation' to 'being obliged' strips obligation of its moral connotations altogether, leaving one with purely prudential criteria for consideration. If I am accosted by a gunman I may be 'obliged' to surrender my possessions (in order to preserve my life) but I do not have an obligation to do so. The point of coercion in relation to obligation is not that obligations are in any way premised upon force - one is not bound in the sense of submission - but that the institution of obligation is enforced and reinforced when wantonly breached. Sanctions are required as a guarantee that those who would voluntarily fulfil their obligations "shall not be sacrificed to those who would not.... Given this standing danger, what reason demands is *voluntary* co-operation in a *coercive* system"<sup>19</sup>.

Reiterating the paradigmatic case of obligation, then, (1) the basis of an obligation is a voluntary act of the obligor, (2) as a result of which some specifiable act is owed to a certain person (or persons), (3) who may be said to have a corresponding right to the obligatory act, (4) and who may reproach the obligor for failure to discharge the obligation. The obvious differences between 'obligation' and 'ought' springing from the latter's inability to slot into the above format leads us to ask whether the traditional problematic of political philosophy - "Why should one obey the law?" - is better expressed in the question "Is one under an obligation to obey the law?" When framed in terms of 'ought' rather than 'obligation' the question fails to cater for the Rabelaisian proviso that even though one may be under an obligation to obey the law, one ought to disobey it. Moreover, the instrumental connotations of 'ought' may lead one to argue for obedience to the law on purely prudential grounds, because

it will prove beneficial or because sanctions will be invoked if disobeyed. However reasonable this response may seem at first glance, it proves completely unsatisfactory once it is noted that in so answering the question one need not consider obligation claims. Consequently, in approaching the problem of civil obligation it must be recognized that two intersticed but nevertheless distinct questions are being asked: firstly, the question of civil obligation proper: "is one under an obligation to obey the law?"; and, secondly, the question of civil obedience: "should one obey the law?". Therefore, what was earlier characterized as the broad approach to the problem of civil obligation may more accurately be termed the problem of civility, incorporating as it does the most controversial aspects of civil conduct.

## VI

The Problem of Civility

An increasing number of contemporary political philosophers argue that there is something confusing about the problem of civility (as we have termed it), that it is not a genuine problem after all. In her influential articles on obligation and consent, Hanna Pitkin argues that to suppose "that political obligation in general needs (or can have) a general justification" is a sign of "philosophical disorder"<sup>20</sup>. "It is part of the concept, the meaning of 'law', that those to whom it is applicable are obligated to obey it."<sup>21</sup> It would be similar to asking why one has an obligation to do what one has promised. It is not as though there are two things, the promise and the obligation, which we must connect by argument. To promise *is* to assume an obligation. "As with promises, so with authority, government and law: there is a *prima facie* obligation involved in each, and normally you must perform it."<sup>22</sup> It seems that Pitkin is arguing that every valid law creates an obligation and so ought to be obeyed, though there are some problems in interpreting the text. Her analogy with promising certainly suggests this interpretation, and if she does not hold such a view there are others who do.<sup>23</sup> This view, according to which questions of civil obligation dissolve into institutional obligations, may be termed 'conventionalism'; that is, civil obligations are held to be premissed upon the rules of civil practices in

such a way that to participate in the practice is to incur an obligation to obey the laws of that practice. By examining this viewpoint we can further explore the relationship between obligation and conventional moral and legal rules.

Let us begin with promising. According to Pitkin, to promise is not just to utter certain locutions. To promise is to undertake an obligation. "A promise is a self-assumed obligation. If you *assume* an obligation and have not yet performed it, nor been excused from it, then you *have* an obligation; in much the same way as someone who puts on a coat, has a coat on."<sup>24</sup> "Does one have an obligation to do what one has promised?" is a question with an obvious answer. "To ask why promises oblige is to ask why (self-assumed) obligations oblige. And to the question why obligations oblige the only possible answer would seem to be that this is what the words mean."<sup>25</sup> Our question about an obligation to obey the law is equally misconceived. "As with promises, so with authority, government and law: there is a *prima facie* obligation involved in each, and normally you must perform it.... The existence of a law on this subject normally constitutes an obligation, just as having promised normally constitutes an obligation, so that one is not free to decide what to do just as if no promise has been made."<sup>26</sup> It is part of the meaning of the word 'law' that those subject to it have an obligation, and any question why obligations oblige can be answered only by pointing to the meaning of 'obligation'.

The simplest response to this argument would be that it conflates two different forms of obligation. Laws necessarily give rise to legal obligations, but the question of civil obligation is whether one has a moral obligation to fulfil his legal obligations. It is not simply whether obligations oblige, but whether legal obligations oblige morally. One is bound legally to do whatever the law requires, but we want to know if one is bound in another way as well. It would be convenient to leave the matter thus disposed, but more should be said. Our criticism rests upon distinguishing two kinds of obligation, and if one is inclined to question the distinction or its importance, one may not be so easily convinced.

"An obligation is an obligation", begins a likely reply.<sup>27</sup> One may argue that although there are different kinds of obligation, the difference in kind is of little importance. The term 'obligation' is

univocal, referring to the same condition of being bound or of owing. We are not dealing with different senses of the term 'obligation', the argument continues, but with different kinds (forms) of obligation, which means only that different kinds of ties - moral, legal, or whatever - may be involved. If one is bound one is bound, and the kind of rope with which one is tied is relatively unimportant. Moreover, the argument continues, the notion of 'moral obligation' is highly suspect. It is an invention of moral philosophers, and it is used by them to cover much more ground than is familiar to other less systematic thinkers. Moral philosophers tend to reduce every decision about social conduct to a moral decision and then to record their findings in terms of an obligation. This special 'moral obligation' is thought to occupy a privileged position, for only it is unqualifiedly (categorically) connected with action, with what one ought to do. However, in ordinary moral talk, it is held, moral obligations are a function of moral rules, just as legal obligations are a function of legal rules. Both are considered guides to action, neither more fundamental than the other. There are religious and promissory obligations as well. When I say under the appropriate circumstances that I promise to do something, I thereby undertake an obligation, and that means that I am bound to do what I said I would do, which in turn means that I ought to do it. I do not need to be bound by some further moral obligation to keep my promises, it is argued, before my promises place me under an obligation. That I must have a moral obligation to keep my promises is absurd. And equally absurd, it is asserted, is the view that I must have a moral obligation to keep my legal obligations.

This reply, although mistaken, has some plausibility. We may agree that promises generate obligations in a special way, and that there is something strange about the question whether one has a moral obligation to do what one has promised to do. However, this is not true of the question whether one has a moral obligation to fulfil one's legal obligations. In order to see the difference we should recall the distinction between a narrow and a broad sense of 'moral obligation'. In the narrow sense, moral obligations are tied to commitments and to moral rules, rules of the social *mores*. The broader sense, on the other hand, grants that one's moral obligations are determined not simply by consideration of moral rules, but by critical reflection on these rules and on any other relevant features of

one's circumstances. Some philosophers have spoken here of 'natural obligations' or 'rational obligations', as distinct from the 'conventional obligations' premised exclusively upon social *mores*. One may ask: "is 'moral obligation' equivocal or univocal: are there two sense of 'moral obligation', or is there one sense of the term, but two kinds of moral obligations?" It seems reasonable to say that there are two different senses, although there certainly is a common element of meaning. Both uses of the term express the notion of a practical task, something to be done (or withheld), which is grounded in some moral consideration. The difference is in the conception of what constitutes a moral consideration; that is, in the kind of reason that would be offered in behalf of the obligation claim. It is true that this wider notion of obligation is derived at least in part from the writings of moral philosophers, and that it represents a significant extension of the term from its everyday restricted sense. But we must be careful before dismissing a term on such grounds. Philosophers can get into difficulties when they introduce a new term or give an old one a new meaning, but occasionally there is a legitimate need for such departures from ordinary usage.<sup>28</sup> This is especially the case here, where the whole idea of 'being bound' is a metaphor transferred from the sort of ropes making it physically impossible for one to move, to making it *improper* for one to move: impropriety as an invisible barrier and (negative) stimulus that channels behaviour and modulates its implications.

What is the point of talking about natural or rational obligations? The principal purpose it serves is to allow us to formulate and articulate a certain moral point of view - the standpoint of the 'eleutheros': the autonomous rational agent.<sup>29</sup> There are two fundamentally different ways of conceiving morality, in fact two fundamentally different ways of conducting one's life. One may think of morality as primarily a matter of being guided by a set of rules externally imposed, or one may think of it as a matter of self-direction, of being guided by one's own reason. From the former perspective there is no gap between what one has an obligation (narrow sense) to do and what one ought to do. From the latter perspective there is. The existence of an obligation-imposing rule and the reasons for the rule are relevant to a determination of what one ought to do, but the rule itself does not determine what one ought to do. This wide sense of 'moral obligation' enables one to contrast being guided directly and



uncritically by 'conventional obligations', with being guided by a reflective appraisal of these conventions.

Raising the question of civil obligation in the first place presupposes the view of morality as reflective self-direction. This means, on the most basic level, that externally imposed requirements and prohibitions are subject to critical review; where laws are considered paradigmatic of externally imposed requirements and prohibitions. One may ask of particular laws whether they ought to be obeyed, or one may pose the more embracing question whether all laws should be obeyed. (One may ask "what ought I to do, all said?", or "what ought I morally to do?", or "what am I obliged to do?". Specifically, we may frame the question from a limited point of view: the *moral* point of view; or, we can ask the more general question, "ought we obey the law?"). This is what it means to ask if one has a moral obligation (broad sense) to fulfil one's legal obligations. (It would also make sense to ask whether and to what extent one has a moral obligation in the broad sense to fulfil one's moral obligations in the narrow sense.) Promises, however, are not quite like legal requirements, for promissory obligations are voluntarily assumed, not imposed. That is why it seems absurd to ask for a moral justification for keeping one's own commitments. (Of course, some promissory obligations are recognized and enforced by law, and these self-assumed legal obligations would be in no more need of justification than nonlegal promissory obligations.) This is no doubt one attraction of the contractarian metaphor of civil obligation: if one has voluntarily undertaken to obey the law, then it would seem that one has an obligation to obey which stands in no further need of justification.

The almost tautological character of contractual relations has a compelling tidiness conducive to systematic theorizing. The difficulty, however, lies in so formulating models of civil conduct as to make the contractual analogy not only appropriate but overwhelming. Without moving ahead of the argument, it is clear even at this stage that the self-containedness of contractual relations provides an appealing conceptual peg upon which to hang a host of related notions. If the root problem of civility is seen to lie in justifying certain civil relations - in particular, obedience to the law - then what could supply a more appealing solution than the commonsensical circularity of voluntary commitment?

Commitments furnish their own justification, providing, of course, that they can be established in the first place. It is tempting to believe that many contractarian theorists began with a solution firmly in mind to a problem only half-formulated. That is to say, possessing an almost intuitive faith in a quasi-aesthetic notion beautiful in its simple wholeness, some men must have been moved to frame questions in accordance with preconceived answers. One can see this clearly in Hobbes and Locke, in particular. But, naturally, mere employment of an analogy does not of itself permit characterization of an argument in terms of that analogy. Which brings us back again to the heart of the contractarian metaphor - commitment. A genuine contractarian argument must be premised upon a commitment theory of obligation, else the *contractual* element of the dialectic dissolve into mere rhetoric. Whether retrospective, tacit, hypothetical, or prospective, commitment must be central and its logic elaborated upon in some detail. Further, to fill in the philosophical picture completely, reasons must be advanced to show that one ought to keep one's commitments, or at least as a first step, that one ought to keep one's promises. That one has an obligation in the broad sense to fulfil one's commitments is not an analytic statement. It is a substantive claim which can be justified by a moral argument. This is a controversial assertion, however, which is perhaps best discussed in the context of a wider issue which has been at the forefront of contemporary moral philosophy: the 'is-ought question'. Since the above remarks bear upon the issue, it is only natural to place them in this larger context.

## VII

### Is, Ought and Commitment

The 'is-ought question', in general terms, asks whether 'ought' can be derived from 'is'; that is, whether a judgement about what one *ought* to do follows from any statement or statements of what *is* the case. The view that the one *can* be derived from the other may be termed 'descriptivism', and the opposite view, 'prescriptivism'. The prescriptivist maintains that there is an unbridgable logical gap between 'is' and 'ought', or between 'fact' and 'value'. Prescriptivists frequently cite in support of their view the famous passage in Hume's *Treatise* in which he remarks that

the author of every moral system with which he is familiar passes imperceptibly from an 'is' or an 'is not' to an 'ought' or an 'ought not', and that it seems inconceivable that this latter relation could be a deduction from the former. Hare refers to this statement as "Hume's Law".<sup>30</sup>

The issue is generally argued in terms of a theory of the meaning of moral (or 'value') judgements. The prescriptivist claims that such judgements lack any fixed 'descriptive' or 'factual' content, and more importantly, that they contain an extra 'evaluative' or 'prescriptive' meaning not found in descriptive or factual statements. The reason for this is that value judgements perform a different function from descriptive statements. Their job is not to 'read off' the features of the world but to express attitudes toward those features: to praise or condemn, to commend, exhort, and so on. It is for these reasons that moral judgements cannot be derived logically from statements of fact: their factual content is not necessarily the same, and even if it were, the extra evaluative component could never be found in a purely descriptive statement.

There are two rather different lines of attack upon the prescriptivist view. One is represented by the attempts of Phillipa Foot to show a logical connection between 'good' and certain descriptive notions such as 'want' and 'need', or, one could say, between certain facts about human nature and what is of value to human beings.<sup>31</sup> The other is represented by the attempts of J.R. Searle and G.E.M. Anscombe to show a logical connection between 'institutional facts', facts about social rules or conventions, and what one ought to do. It is this latter view which bears more directly upon the present study. The term 'conventionalism' shall be used to distinguish it from other descriptivist views.

Pitkin has given a descriptivist and conventionalist view of civil obligation, since she maintains that every valid law gives rise to an obligation and so ought to be obeyed. That a given statute has been duly enacted seems to fall on the 'fact' side of the fact-value distinction; so if it follows from this fact that one ought to do what the law says, we have derived an 'ought' from an 'is'. A prescriptivist would argue, of course, that the conclusion that one ought to do what the law says contains an extra evaluative or prescriptive component, an endorsement, so to speak, of fulfilling one's legal obligations, which could not be present

in the mere statement of fact that the act is legally required. Neither view is satisfying, however, and it should prove worthwhile to develop a variation of the above standpoints in a dialectical fashion.

Conventionalism is unacceptable because it seems to preclude the rejection of 'bad' social institutions. Slavery is an example of a morally objectionable institution which allocates a number of rights and obligations. The conventionalist view suggests that I ought to return a runaway slave to 'its' 'rightful owner', since that is one of the rules that constitute the institution of slavery. Needless to say, the implications of such a view are overwhelmingly conservative and conformist. It does not merely tell one that one must conform to existing rules and practices, but that there is no logical room for one to criticize such rules and practices. The 'correct' use of our moral concepts, according to the logical extension of this view, will not even allow a contrary view to be stated. In the light of the implications of conventionalism, prescriptivism seems almost promiscuous. Indeed, it is perhaps a bit too liberating, suggesting as it does that there is nothing necessarily binding even about one's own commitments. That one has promised to do something is a fact from which no judgement could follow about what one ought to do. Prescriptivism makes individual decision a logical feature of moral thinking, but the theory of meaning by which this is accomplished seems to leave too many moral contingencies.

Both Anscombe and Searle have forcefully assailed this weak point of prescriptivism. Anscombe asks, by way of illustration, whether she ought to pay for the groceries she has ordered. That she has placed an order and that the potatoes were carted to her house must surely fall on the descriptive side of the 'is-ought' dichotomy; but it just as surely must follow that she ought to pay the grocer's bill.<sup>32</sup> Searle provides a more elaborate 'derivation' of an 'ought' from an 'is' - in this case a promise. It runs as follows:<sup>33</sup>

1. Jones uttered the words "I hereby promise to pay you, Smith, five dollars."
2. Jones promised to pay Smith five dollars.
3. Jones placed himself under (undertook) an obligation to pay Smith five dollars.

4. Jones is under an obligation to pay Smith five dollars.
5. Jones ought to pay Smith five dollars.

Searle claims that, although each step may not 'entail' its successor, they are not just contingently related, and "the additional statements necessary to make the relationship one of entailment do not need to involve any evaluative statements, moral principles, or anything of the sort."<sup>34</sup> The most important step in the derivation appears to be from 4. to 5. Searle says that this inference involves the additional premise that "other things being equal, one ought to do what one has an obligation to do", the term 'obligation' being understood in the narrow sense related to social institutions and the rules which constitute them. Searle claims that this suppressed premise involves no moral decision or commitment, but is logically true.<sup>35</sup> The reason that an 'ought' may be derived from an 'is' is that it is necessarily true that one ought, other things being equal, to fulfil obligations arising from the rules of social institutions.

We may readily agree with Searle that promises constitute a significant problem for the prescriptivist theory, but he in turn presents a questionable rationale. If we accept his account then we appear to be committed to the undesirable consequence of conventionalism that our moral decisions are, at least in part, made for us by others; for the rules of social institutions govern much more than the voluntary assumptions of obligations. But equally unacceptable are the counter-arguments of some prescriptivists. Anthony Flew, for example, finds a weakness in Searle's transition from 1. to 2. According to Searle, the inference is justified by the following statement of linguistic fact:

(1a) "Under certain (factual) conditions C anyone who utters the words (sentence) 'I hereby promise to pay you, Smith, five dollars' promises to pay Smith five dollars."<sup>36</sup>

Flew thinks that this is not just a fact about English usage. The notion of promising contains an evaluative as well as a descriptive component, so that (1a) is true only if one does not use the word 'promise' descriptively, 'with reservation'. In other words, (1a) is true only if one is committed to the institution of promising. Hare also objects for roughly the same reasons. The derivation cannot get off the ground unless there is a commitment to promise-keeping, and this means that the conclusion is not derived from purely factual premises.<sup>37</sup>

Flew and Hare seem to be saying that there are two different sense of 'promise': there is one sense which is descriptive in that it merely reports how certain persons use words, but does not contain the notion of taking on an obligation; and there is another sense which is prescriptive and from which it follows that one ought to do the thing which is promised. Searle may well be correct in denying 'promise' its two senses, but this is not the real issue. The distinction which needs to be made is not between two senses of 'promise' but between two sense of 'obligation'. As we have seen, one sense of the term is enmeshed in rules and conventions, to 'social institutions'. The other sense of the term - the metainstitutional sense - is much wider and implies that the fulfilment of obligation is dependent in part upon a critical assessment of the relevant conventions. It is in the former sense alone that an 'ought' may be deductively derived from an 'is'. It is only in this sense that there is an analytic relationship, a connection of meaning between the terms, such that it follows necessarily from "It is the rule (practice, convention) that one does X in circumstances C" and "A is in circumstance C", that A has an obligation to do X. In the latter sense we might speak of deriving an obligation from a set of social facts, but it would not be a matter of logical entailment. The facts of the matter might support the judgement that one has an obligation, but it would not be a case of interchangeable propositions.

Another difficulty embedded in the criticisms of Flew and Hare is the idea that one must commit oneself to commitments. What is promising, one wants to ask, but the making of a commitment? It seems absurd to say that one must commit oneself to commitments before one's commitments have any binding force. If one's commitments are not already binding, then how could adding another help matters? The reply that this would be a commitment to oneself would not remove the difficulty. One wonders, in the first place, whether the notion of a commitment to oneself is as sound as it may seem, but aside from this, why should one's commitments to oneself be any more privileged than one's commitments to others? Why could one not just as easily break a commitment to oneself when it proves advantageous to do so? (It is interesting to note that Hare does for all moral obligations, what a crude, that is, 'literal', contractarian does for civil obligations by basing them all upon commitments.) A prescriptivist might answer, as would a less literal contractarian, that 'commitment' should not be taken so literally, that it is not used to refer to an actual event or

occurrence but to something like accepting or approving, being in favour of, or the like. It is metaphorical or hypothetical commitment which is at issue, not an actual pledging to oneself. One would be justified, that is, in accepting or approving of the practice and participating in it; there are good reasons, in other words, for playing 'the promising game'. But as with any case of hypothetical consent or commitment, it is the reasons which would justify the commitment which do all the work, not the fictitious commitment itself. And, of course, one *can* give good reasons for keeping one's commitments, though they are so obvious that one would arouse suspicion if one asked for them outside the context of philosophical discussion. There is little dispute that to disregard a promise is to engage in the most abject form of deceit. Promising is the technique we have devised to leave absolutely no question of a person's intention to do something. The promiser, as it were, pawns his good name to guarantee that some act will be performed (and this provides an additional reason: the protection of one's reputation). The plans of others, it is mutually understood, may be made in expectation that the deed will be done. One would be a parasite upon a practice of utmost importance were one to take advantage of it while actively undermining it. In simple terms, there is no question of the practice being forced upon one against one's will, since promissory obligations must be voluntarily assumed. One could go on, but surely there is no need. If there is one basis of obligation requiring no serious justification it is voluntary commitment.

However, while it is difficult to imagine an actual situation in which one would *need* to make such a case for promise-keeping, it is, in principle, possible to make it. This is the important respect in which the prescriptivist is correct even about promising. It is not an analytic truth that one ought to keep one's promises, as claimed by Searle, but a 'synthetic' one, so to speak. The reasons which would establish this 'ought' are not conceptual but moral or prudential. Just as one may give (obvious) reasons why one ought to abide by commitments, one may give (specious) reasons why one should not, indeed, why one should reject the whole 'institution' of promising as pernicious and even try to subvert it from within. Searle even provides a convenient example. "Suppose... a nihilistic anarchist argues that one ought never to keep promises because, for example, an unseemly concern with obligation impedes self-fulfilment."<sup>38</sup>

Searle contends that his position does not exclude such a view as logically absurd. To argue that it is absurd is to fail to make a distinction between what is external and what is internal to the institution of promising.

"The nihilistic argument ... is simply an external attack on the institution of promising. In effect, it says that the obligation to keep a promise is always overridden because of the alleged evil character of the institution. But it does not deny the point that promises obligate, it only insists that the obligations ought not to be fulfilled because of the external consideration of 'self-fulfillment.'"<sup>39</sup>

This reply may save Searle's view from the charge of conservatism, but it does so at a high price. What appeared to be a bold theory has lost a great deal of its pluck. Whether an obligation to obey the law could be derived in this way without committing any logical mistakes begins to look like an uninteresting question. An 'ought' so weak seems hardly worth deriving.

It is possible at this stage to step outside the field of battle and suggest that it is being fought on the wrong ground. The fundamental issue is *not* the meaning of moral (or 'evaluative') terms; the fundamental issue is moral (or rational) autonomy: the responsibility (not just accountability) of each person for the moral decisions which he makes or fails to make. The fulfilment of socially created obligations must be justifiable to the individual if his autonomy is to be preserved. And, once again, that is why promises and other commitments seem to be in no need of such justification. They are not imposed upon one by any social rule, they are voluntarily assumed. With them one's autonomy is not at stake, at least not in the same way as with externally imposed requirements. Add to this the further reason that the case to be made for keeping promises is so overwhelming that to question it seriously seems unthinkable, and one can see why promises seem more directly connected with values than are any other 'facts of life'. One's commitments do occupy a special position, though that status is not a logical one, as some have thought; for the compelling case to be made for promise-keeping, however practically unnecessary it may seem, is a moral and not a conceptual one.

The issue of autonomy is not a matter of logic, to be determined by



analysis of our moral discourse. People use the terms 'obligation' and 'ought' in different ways, and this difference reflects the fact that people govern their lives in different ways. One way of governing one's life consists in conforming uncritically to the social order, and in this case there is an effortless movement from convention to obligation to action. Another way consists in rational self-direction, and on this way of thinking the fluid progression is halted. Consequently, mere appeal to the manner in which people employ these terms would ultimately prove inconclusive. But our point may be made more forcefully. Suppose, contrary to fact, that the necessary investigation conclusively supported the conventionalist theory. Would it not still be open to an autonomist to say that the linguistic facts simply reflect a strong tendency toward conformism in his society, an undesirable trait which ought to be overcome? And were the investigation to arrive at the opposite conclusion, a conventionalist or an authoritarian could still claim that our current usage reflects the Socratic influence of individualists upon our moral thinking, an influence which ought to be counteracted because of the dangers it presents to social stability.

What all this suggests is that the case to be made for autonomy is not conceptual but 'normative'. Two assertions may be made at this point. The first is that most persons have the capacity to determine for themselves how they ought to act, and they may be held responsible for what they do even when it conforms to a social rule or an authoritative command. The second is that reflective self-determination is a valuable trait of character, one which is worth developing and encouraging others to develop. Mill has given perhaps the most forceful contemporary defense of this virtue. According to Mill, what is sometimes called 'self-realization' - the full development of one's powers and capacities - is unattainable in the absence of reflective self-determination.

"The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference, are exercised only in making a choice. He who does anything because it is the custom, makes no choice. He gains no practice either in discerning or in desiring what is best. The mental and moral, like the muscular powers, are improved only by being used."<sup>40</sup>

There are many explications of the notion of 'autonomy' - too many to be discussed here. Yet, when reduced to their basic postulates, most conceptions of autonomy reveal a common Kantian ancestry; and it is this seminal formulation which is employed throughout this thesis, in particular in the appendix dealing with the Kantian model of rational man and, later, Rawls' version of contractarianism.

According to Kant, to be autonomous is to be nothing other than practically rational: an autonomous agent is one whose will is determined by reason. Since, for Kant, an 'autonomous agent' is an ideal type, human beings are called autonomous insofar as they approximate this ideal type. There are other elements, of course, distinguishable from the notion of practical rationality, which are associated with or included in the concept of autonomy. As a rough first approximation we can list the following:

- (a) making one's own decisions and choices;
- (b) acting for one's own reasons;
- (c) taking responsibility for one's actions;
- (d) taking responsibility for the values one cherishes;
- (e) leading one's own life (being one's own master, being independent, self-managing, self-directing).

Now, on the Kantian view of autonomy, all of these elements are seen as either constituents or implications of being practically rational, where to be practically rational is to have (or to be) a will which is determined by reason. One's decisions and wilful intentions are one's own when and only when they are the culmination of the exercise of one's practical reason, where reason (practical and theoretical) is said to be one's nature or higher self. One acts for one's own reasons only when one acts for reasons which one sees to be reasons, and to be sufficient reasons for acting. One's actions are one's own when and only when they are the realization of decisions and intentions which are one's own in the sense stated above. One is responsible, in the first place, for the reasons or maxims of one's intentions and decisions, and responsibility for actions is ascribed on the basis of the reason or maxim which informs the intention or decision. To be responsible for the values or ends one cherishes is to endorse only those ends or values which are such that one judges that one's maxim in pursuing them could be a universal law - a law for all rational beings as such. Finally, a person whose wilful intentions, decisions, and policies are formed in these ways and whose actions are the culmination or express-

ion os such intentions, decisions and policies is self-directing or self-managing in that he is directed by his rational nature, rather than by the will of others or by desires which are 'alien' in the sense of not being 'processed' by that rational nature.

There are conceptions of autonomy which give special or even exclusive emphasis to one or more of the elements listed above. Sometimes one of these elements, for example, the notion of making one's own decisions or choices, is given such singular emphasis that its connection with practical rationality is severed or severely strained. In such treatments, which, following F. Olafson's terminology, we may label "antinomic extreme voluntarist" conceptions, the etymological roots of the term 'autonomy' have been scissioned.<sup>41</sup> The notion of a law of reason, or, indeed, of any sort of law or rule or principle has been abandoned. It is the Kantian conception, not any of the various antinomic conceptions of autonomy, with which we are concerned, since the latter are so distorted as hardly to qualify as conceptions of *autonomy* at all - and that these distortions make the ideals they commend less than rational.

The essence of the Kantian conceptions is that the autonomous agent himself actively pursues ends which are his own and will attempt to secure the resources necessary for doing so. He does not abdicate to others the ultimate responsibility either for determining what those ends are to be or for achieving them. There are three further features of what it is to be an autonomous person which are of crucial importance to our discussion. The first is that being autonomous is for human beings *a matter of degree*. One can be more, or less autonomous. This notion that autonomy as practical rationality is something which can be preserved, cultivated and enhanced, or undermined, diminished and lost, is familiar in Aristotle and Butler, as well as in Kant. Second, for Kant, to conceive of oneself as an autonomous person is to be conscious of one's freedom and one's responsibility, on the one hand, and of one's vulnerability and limitations, on the other. To be conscious of one's freedom and responsibility is, for Kant, to be conscious that one is subject to universal laws of freedom - the laws of practical rationality. To be conscious of one's vulnerability and limitations is to be aware that one is susceptible to having one's wilful intentions, decisions determined by desires and by the will of others, without the full exercise of one's practical reason. Third, an

autonomous person desires to pursue his ends in a manner consistent with the preservation and enhancement of his autonomy.

But the development of the individual is only one of the results of the exercise of rational self-direction. Society as a whole will profit from the rational development of its members and from the improvement of its institutions flowing in the wake of their critical evaluation. These institutions are also less likely to be perverted if they are manned by persons who assume responsibility for their actions. All in all, then, the fruits of autonomy have much to commend them. Yet, in so saying, one is immediately struck by the paradox of civil authority, namely, that in submitting to civil authority, one apparently surrenders one's autonomy. It is the function of a civil authority to decide what shall and what shall not be done in civil intercourse; insofar as we are subject to authority, these decisions are largely made for us. There is, therefore, an apparent incompatibility between autonomy and authority which may fuel yet another *a priori* argument against the possibility of a theory of civil obligation. We return full circle, then, to Rousseau's fundamental problem and the dichotomy he endeavoured to dissolve: autonomy and authority as both the grounds and denial of civil obligation.

## VIII

### Autonomy and Authority

"Government is, in all cases, an evil", argues Godwin, "it ought to be introduced as sparingly as possible. Man is a species of being whose excellence depends on his individuality; and who can be neither great nor wise, but in proportion as he is independent."<sup>42</sup> Since autonomy and independence are the characteristic feature of human nature, claims the philosophical anarchist, the truly autonomous person will be guided by his own conception of propriety. His conduct is moulded, as it were, by the conviction of his unique understanding. Consequently, the reconciliation of authority and autonomy is, if not logically impossible, highly problematical. It follows, then, that since all governmental authority is equally illegitimate, there can be no civil obligation. As the 'right to command', authority entails a right to be obeyed, and if government has a right to

be obeyed then the citizen must have an obligation to obey. However, contends the anarchist, such an obligation could be generated only at the expense of the moral autonomy of the individual, and nothing could justify forfeiting one's autonomy. Briefly, this argument is principally dependent upon two claims. The first is that legitimate authority would be a 'moral right to rule' and that citizens would have a correlative obligation to those in authority to obey their commands. The second is that one could not have an obligation to obey another person and still be an autonomous moral agent. The first claim, it is here argued, rests upon a faulty account of authority, and the second leads us to a closer inspection of the notion of autonomy.

Political authority has traditionally been regarded as a right to command, to which there is a correlative obligation to obey. D.D. Raphael, for example, states that

"the authority to issue commands is not simply a right or permission to do something... ; it is also a right against those to whom the commands are addressed that they should do what they are commanded to do. It is a right to receive obedience, and it corresponds to an obligation on the part of others to give obedience."<sup>43</sup>

The problem with this account is that it presents authority as a right which is logically correlated with an obligation to obey, and that this obligation is owed to the person(s) in authority. Now, one may readily concede that authority is a kind of right, but not one to which there is a logically correlated obligation to obey; that is to say, civil obligation is misrepresented when framed as an obligation to those in authority. To see this more clearly we must consider the different senses of the word 'right' and how they relate to the notions of obligation and authority.<sup>44</sup>

Sometimes we may make legitimate demands upon the behaviour of another person, that he perform or refrain from performing a certain act or series of acts. This is true whenever the person has an obligation in the narrow sense (with exceptions, such as benefaction, discussed above). When A assumes or incurs an obligation toward B the latter thereby acquires a right against A. Whether we speak of the obligor's obligation or the obligee's right, it is the same relationship viewed from two different perspectives. Let us call this correlative of an obligation a 'legitimate

claim', hereafter to be abbreviated as 'claim'.

We may also ascribe a right in the sense, not of a claim on the actions of another, but of a freedom or privilege to act oneself. To say that one has a right to construct a mud hut on a certain block of land is not to say that one may legitimately demand that somebody do something for him. It is to say only that he is at liberty to construct his hut if he so wishes. One might say that this is only a special case of a claim right in that the builder may demand of all others that they not interfere with his construction, but, properly speaking, this is better described as the absence of a claim. To say that I am morally or legally free to do something if I wish is to say that I have no obligation not to do it, which is in turn to say that nobody has a claim against me that I not do it. Let us call rights in this second sense 'liberties'. The correlative of this kind of right is not an obligation, but simply the absence of a claim.

When we say of Parliament that it has the right to levy taxes we are not speaking of a claim that this body has against another person or group of persons. Nor are we saying simply that it is at liberty to do something. We are saying that the Parliament has been empowered under the Constitution (as amended) to perform this function as it sees fit. Parliament has been invested with the legal ability or power to create certain requirements, such as paying taxes. We might call this third kind of right a 'power' right, but there is a more familiar term for it: 'authority'. But the authority of Parliament is not absolute. It does not have the legal ability or power, for example, to establish a religion or to commercially isolate one state of the Commonwealth from the other states. This presents us with a fourth kind of right: 'immunity'. Australian citizens have the liberty to worship or not as they choose, but they also have an immunity right to do so, for Parliament has no authority to require or prohibit such acts.

Authority is a kind of right, then, but not the kind to which there is a correlative obligation. The correlative of authority is what we might call 'liability', being liable or subject to the imposition of requirements and prohibitions. Australian citizens and resident aliens are subject to the authority of the Australian Parliament while Indonesian citizens are not. (To round out the list we may say that a 'disability' is correlative

to an immunity. 'Disability' simply means 'no authority', just as 'immunity' is equivalent to 'no liability'.)

There is a conceptual relationship between authority and obligation, though it is not one of direct correlation. Authority is the legal right to create obligations on the part of those who have a correlative liability. But these obligations are to do such things as pay taxes, send one's children to school, and report traffic accidents, not to obey the law or to obey the authorities. Authority as it has been described above is a legal concept, so that any obligation which is logically correlative to it would have to be a legal obligation. It is not just false to say that there is a legal obligation to obey the law, it is absurd, and it is quite beside the point of any discussion of civil obligation. We are asking here whether one has a moral obligation to fulfil one's legal obligations. If such an obligation were a logical correlate of authority, then authority would have to be a moral concept. But what a moral authority would be is not at all clear.

What would it be like for someone to have moral authority or to be a moral authority? If moral authority is an analogue of legal authority, then one with moral authority may make moral rules - but who could possibly have such authority? If one were a theist, one might claim that God has such authority, but theistic voluntarism has not been a popular view, even among theologians. Nobody is a moral authority in the sense of being able by an act of will to make something right or wrong. We may use the term, however, to refer to somebody who is in a special position to *know* what is morally right and wrong; an omniscient God, for example, or someone with special access to the divine wisdom. The authority which a parent exercises over his/her children is usually conceived in this way. The parent has a right to decide and to discipline, not solely by virtue of ownership of the children, but as a consequence of superior knowledge and understanding. But though there may be moral authority in this sense, this is surely not the kind of authority which the state is considered to exercise. Political authority has indeed been discussed as a variety of paternal authority, but this conception is of negligible influence in the present day. A defense of anarchism surely must deal with a more lively opponent.

One reason why Godwin (Winstanley, Kropotkin, Bakunin, Proudhon, Fourier, Robert Paul Wolf) adheres to this paternalistic model of civil obligation could well stem from his assumption that obligations must be owed to someone. There is obviously some connection between political authority and civil obligation, and it would be easy to assume that they are logically related in such a way that civil obligation must be owed to the political authority. But clearly there are other possibilities. It may be owed to somebody else, one's fellow citizens for example, or it may not be owed to anybody at all, if it is an obligation in the broad sense of the term.

We have characterized political authority as a collection of legal power rights. There is a difference between simply having the power to require and prohibit certain acts of others, and having the legal power to do so. The terms 'legitimate authority' and '*de jure* authority' are sometimes used to mark this distinction. Someone who is imposing rules without legal right is said to be only a '*de facto*' authority or one with no legitimate claim to power. The conditions which confer legitimacy in this sense may vary from time to time and from place to place, but they are usually such things as succession through established channels, or appointment or election through constitutional procedures. It is not legitimacy in this sense which Godwin denies to all governments, so it must be legitimacy in a moral sense. Perhaps here we have something which is correlated with an obligation to obey - morally legitimate authority. Not moral authority, but authority which is morally legitimate.

First of all, we must recall the distinction between legitimacy and justification. It was said that legitimacy is a function of rules, procedures or channels, though we do sometimes use 'legitimate' in a broader sense. The fundamental question underpinning our considerations of the state is whether political authority is justified. The problem of 'the legitimacy of the state', then, is the issue of whether we ought to have the institution of government. Surely, one wants to say, there is some connection between granting that government is 'legitimate' in this broader sense and granting that one ought to obey it. Yet, Godwin grants that government may be legitimate in this broader sense: he says that, under a highly restricted set of conditions, we ought to have governments and that we ought to obey them:



"To a government ... that talked to us of deference to political authority, and honour to be rendered to our superiors, our answer should be: 'It is yours to shackle the body, and restrain our external actions; that is a restraint we understand. Announce your penalties; and we will make our election of submission or suffering. But do not seek to enslave our minds. Exhibit your force in its plainest form, for that is your province; but seek not to inveigle and mislead us. Obedience and external submission is all you are entitled to claim; you can have no right to extort our deference... ' In the meantime it should be observed that it is by no means a necessary consequence that we should disapprove of all the measures of government; but there must be disapprobation wherever there is a question of strict political obedience."<sup>45</sup>

It is quite puzzling, then, when Godwin insists that all authority is equally illegitimate and that the commands of the state have no 'binding moral force'. This brings us to the second important claim on which the philosophical anarchist argument rests.

Godwin denies that any authority can be legitimate because submitting to authority would conflict with the 'fundamental duty' of the individual to preserve his autonomy. Authority would be legitimate only if it would be morally permissible to forfeit one's autonomy and submit one's will to the direction of the state. This is the central theme of Godwin's *Enquiry*, though it is somewhat misleading to express it in terms of the legitimacy of the state. For Godwin's question is not whether the state would be justified in issuing commands and enforcing them, or even whether the citizen ought to obey. The question turns out to be whether the state has a (moral) right to my unthinking obedience. His answer is that it does not because an obligation to obey without question would conflict with a more fundamental obligation always to exercise my own judgement.

Yet it is strange to speak of an obligation to act autonomously, even when reminded of all that has been said above exhorting the importance of autonomy. Is there, one is forced to ask yet again, an irresolvable conflict between authority and autonomy? A tension certainly exists, but it does not automatically preclude the possibility of an accommodation.

The autonomous person is he who decides what he ought to do on the basis of his own deliberation and reflection. One may think that it is

necessary to have a legal system and a political decision procedure, the results of which are generally followed. One may decide after careful reflection that one ought to adopt this principle to govern one's own conduct. This complicates the situation, but such a decision would not accurately be described as forfeiting one's autonomy. There is a difference between blindly and unreflectively following political authority, and doing so because one has judged that it is right to do so. The autonomous person is he who acts upon his own considered best judgement, and one of those judgements may be that he ought to obey the law, even though he might not otherwise have done what the law requires him to do.

A second reason that an autonomous person may recognize a civil obligation is that this obligation is not necessarily an absolute obligation. Acknowledging a civil obligation does not entail abandoning one's judgement about the worth of the law or system of laws. It means only that one's obedience is not contingent in normal circumstances upon a favourable judgement of the law in question. There may, however, be abnormal cases when this (*prima facie*) obligation is seriously challenged. It is up to the individual to determine when such an extraordinary situation has arisen and then to weigh his obligation to obey the law against the competing obligations, principles, or values.

## IX

### The Problem of Order

The problem of civility, as discussed above, bifurcates into two definitive questions: firstly, the question of civil obligation proper: "is one under an obligation to obey the law?"; and, secondly, the question of civil obedience: "should one obey the law?". While it may well be reasonable to argue that the members of a civil society, by virtue of their membership, are necessarily under an obligation to obey the laws of their society, the question remains as to what constitutes civil society in the first place, and what are the significant features of membership. Moreover, it is necessary to further unpack the notion of civil society and distinguish between civil societies proper and those societies characterized more by ubiquitous coercion than civility. Should we fail to draw

this distinction we would be presented with the difficulty of deriving obligation from coercion, or at best, prudential considerations arising from the threat of coercion, rather than from commitment (no matter how widely interpreted). In other words, if we acknowledge that obligation is grounded in something other than mere coercion, then analyses of civil obligation must consider the nature of the milieu in which such obligations are said to exist; or, expressed more forcefully, it must be asked "what are the features of a social order to which one may have an obligation?". The abstract formulation "is one under an obligation to obey the law?" is thus transformed into the more palpable question "does one have an obligation to obey the laws of a particular social order?" And at this point the so-called 'problem of consent' comes to the fore as a dilemma in its own right, as the presumed fulcrum on which the matter of personal obligation to a particular social order is firmly hinged.

"I cannot help thinking", Joseph Tussman writes wistfully, "how much simpler political theory would be ... if we had the equivalent of the Epebic Oath embedded in a ceremonial secular service reminding the native citizen that he, too, shares the commitment or agreement which is quite explicit in the case of the naturalized citizen. In its absence (the path of the contract theorist) is a wearier and hardier one."<sup>46</sup> The path is hardy because, though there are some public affirmations of citizenship, few persons have participated in them intending to assume any kind of obligation. (The ceremonies and affirmations must be understood by the participants as the assumption of obligations in order for them to constitute voluntary commitments.) Care is taken in the naturalization ceremony that the new citizen be fully aware of the nature of the proceedings and of the implications of participation in it. The children of the *patria*, however, simply drift into adult citizenship. There is no ceremonial entry at which time we can say, "I have now become a full member of this society and accept the obligations consequent upon membership". Tussman wearily accepts these facts and concludes that, since a knowing commitment is a necessary condition of having an obligation, there are very few citizens who have an obligation to obey the law. None of the contractarians, of course, were willing to accept such a conclusion. In the face of these difficulties, on the crudest level of interpretation, they substituted a tacit for an express commitment.

The most obvious ways in which we commit ourselves are linguistic, but language is by no means necessary. " 'Martha, will you marry me?' And Martha blushes, sighs, throws herself wordlessly into your arms, and embraces you rapturously. It will be a specious defense later if she argues, 'But I never *said* "yes"'. Acceptance usually needs no special words - only an intelligible history of act and circumstance."<sup>47</sup> In the circumstances, the wordless embrace amounts to accepting the proposal of marriage. It is not a weaker kind of commitment for not being stated in words. The difference between express and implied commitment is not a difference in the quality of the commitment, but in the way the commitment is made. A tacit agreement is still an actual agreement. But what general conditions or circumstances are necessary for a tacit commitment to be made? We cannot simply stipulate that X constitutes a tacit commitment to do Y. There must be an "intelligible history of act and circumstance" such that an intention to take on an obligation may be communicated (or at least inferred or understood). As with express commitments, the actor must know the significance of his act, that what he is doing amounts to committing himself, and his intention to take on the obligation must be communicated to somebody else. This latter criterion may be relaxed in cases of commitment to oneself, but it is necessary if a commitment is to be made to another. The former criterion, that a person must know that what he is doing amounts to making a commitment, is the most interesting and important for our purposes. If it is relaxed, if we say that a person may commit himself without knowing that he is doing so, then we will have lost the connection between committing oneself and voluntarily assuming an obligation; and it was this that made the 'social contract' such an appealing account of civil obligation.

What act could there be which all persons perform, knowing that they are committing themselves to obey the law? In Locke's words, "What shall be understood to be a sufficient declaration of a man's consent to make him subject to the laws of any government?" His answer is that

"... every man that has any possessions or enjoyment of any part of the dominions of any government does thereby give his tacit consent and is so far forth obliged to obedience to the laws of that government, during such enjoyment, as anyone under it; whether this his possession be of land to him and his heirs forever, or a lodging for only a week, or whether it be barely travelling freely on the highway; and,

in effect, it reaches as far as the very being of anyone within the territories of that government."<sup>48</sup>

If we have correctly stated the criteria for tacit commitment, Locke must surely be wrong, for not everyone who travels or resides within a country takes this as implying a commitment to obey the law. John Plamenatz cites examples of persons conspiring to bring down the government:

"... Thistlewood and his associates lived and travelled in (England) for many months after they had decided to attempt the destruction of its government. It is most improbable that their presence in Cato Street *implied* a willingness on their part to obey all the laws administered by the men they plotted to assassinate."<sup>49</sup>

It may be that some persons understand their residence in a country to constitute a promise to obey its laws, but the number is probably not large. It may consist entirely of those charmed by the most primitive version of the social contract.

Locke speaks of tacit consent rather than tacit commitment, and perhaps there is a difference here which deserves to be explored. It does seem to be possible to bind oneself in a way which is less dramatic and more gradual than the ways we have discussed. Accepting responsibility does not always involve a single act or a well-defined course of conduct, nor does it always imply a single-minded intention to take on an obligation. Herbert Fingarette provides a good example:

"I am morally culpable if I do not show up for dinner, have given my wife no forewarning, remain away until late, and cause her grief and anxiety. I am responsible for being home reasonably promptly. Yet I never explicitly announced I would be home for dinner on this night, nor did I ever make some explicit but general commitment to the effect that I would always be home for dinner. I just do come home every night for dinner, and though this, considered in isolation, establishes no responsibility, taken in connection with other features of my home life, it all adds up to the fact that I have accepted this responsibility."<sup>50</sup>

It is more difficult in such cases to speak of *accepting* responsibility rather than simply *becoming* responsible, or of assuming an obligation rather than incurring one. But it can make sense to say that such

responsibilities are assumed if the person is at least vaguely aware that he is becoming responsible and if he could have avoided the responsibility.

"At any point in my domestic career I could have acted otherwise than I did, often without betraying any of my responsibilities at the time. Had I acted differently, my responsibilities would often have had a different form. I might not have married domestic Martha and chosen doting Mary instead: she would have encouraged me to indulge myself. I might have married Martha but only after we had 'had it out' quite frankly: so far and no further would I go in the domestic regularities she was inclined to expect. Or I could have arranged that if I were not home by an hour before dinner, I would not be expected."<sup>51</sup>

Could we say that living in a country constitutes a tacit consent to being governed by all its laws? Such a view was first suggested not by Locke but by Plato. In *Crito*, when Socrates is in jail discussing with his friends their offer to help him escape, he points out to them that he could have left Athens at any time he was displeased with its laws. His remaining in the city thus means that he has agreed to be governed by its laws and so has an obligation to obey them. This argument seems very weak indeed. In the first place, not everybody has the option of leaving his country. Many persons simply do not have the financial means to leave, and if they could get the money they might not be granted entry by another country. Other persons are forbidden by their own laws to leave; it would be ridiculous to maintain that their residence constituted a tacit consent to the very laws that keep them from leaving. Hume also finds this argument quite unappealing:

"Can we seriously say that a poor peasant or artisan has a free choice to leave his country when he knows no foreign language or manners and lives from day to day by the small wages which he acquires. We may as well assert 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."<sup>52</sup>

In the second place, it would hardly occur to most persons that their being in a country constituted any kind of commitment on their part to its laws. If they have consented it would come as news to them. In the absence of either of these criteria it is difficult to see how such 'con-

sent' could amount to a voluntary commitment. If 'consent' means 'acquiescence' or 'passive residence', then consent is not a kind of voluntary commitment. If consent is a kind of voluntary commitment, then mere passive acquiescence does not constitute consent, especially in cases where non-acquiescence has a 'price' attached to it.

Needless to say, this is an unsympathetic and overly literal reading of contractarianism; it is all too easy to establish straw men in this regard and then do much philosophical huffing and puffing. The seminal contractarians had some important insights about civil life, and though they expressed them metaphorically through a convenient contractual fiction, the insights themselves are basically sound. The state of nature, for example, is a striking way of making the point that authority and subjection are not given in the nature of things. Political authority is a product of human convention and needs to be justified in terms of benefits which the subject derives from his subjection. The relationship should be one to which the subject *would* consent if the appropriate circumstances presented themselves. Government is justified if it is the sort of arrangement which would be agreed upon by rational and informed individuals. Moreover, obedience to the law is not owed to the government, but to one's fellow citizens. All these important points are illuminated if we think of our obligation to obey the law on the model of a contractual relationship freely undertaken by equal individuals, one with another, for their mutual benefit.

All this is true, but it must nevertheless be said that the real basis of our obligation to obey the law is somewhat obscured by the contract fiction. A hypothetical contract binds no one. The social contract myth illuminates some aspects of civil obligation, but it does not provide its basis. Rousseau was quite clear about this:

"Let us begin then by laying all facts aside, as they do not affect the question. The investigations we may enter into, in treating this subject, must not be considered as historical truths, but only as mere conditional and hypothetical reasonings, rather calculated to explain the nature of things, than to ascertain their actual origin."<sup>53</sup>

The demythologised social contract is not itself a basis of obligation but a convenient device with which to build a theory of obligation. What would be the terms of a contract which reasonable and informed men would make? Would it include a provision that every law be obeyed no matter what its content, or would some exceptions be built into the agreement? Perhaps laws of a certain sort need not be obeyed. Perhaps they would even agree to disobey laws of a certain sort. The terms of the contract are open for argument, and it is these arguments that will determine the nature and extent of our civil obligation. "For a legitimate government", remarks Pitkin, "a true authority, one whose subjects are obligated to obey it, emerges as being one to which they *ought to consent*, quite apart from whether they have done so... Legitimate government is government which deserves consent."<sup>54</sup> Government, then, must be deserving (or worthy) of obedience, it must encapsulate the principles of a 'moral order', as it were, a complexus of just laws fairly administered. In endeavouring to explicate civil obligation one must therefore advance the conditions (or criteria) of a moral order; and, in delivering oneself of a theory of justice, one must outline the features of a paradigmatic social order deserving of obedience, i.e. a moral order, or just state. The grounding of civil obligation thus exhibits a 'eutopian' inflexion, in that it entails fashioning models of 'good places' - as opposed to utopias ('no place') - which portray the virtuous possibilities of this world. As eutopia, a moral order incorporates the notion of a just state: a satisfactory moral ecology. In other words, it functions as a paradigm of those circumstances which one ought to promote and to whose undergirding authority one ought to consent. It is easy to see how the attempt to translate ideals into reality, or at the very least to express ideals in realistic terms, lends otherwise analytical philosophy a mythopoeic modulation. Simply, the framing of eutopia is as much an imaginative endeavour as it is a formal legalistic exercise; and, insofar as civil obligation entails an awareness of what *ought* to be the case (even if it is never realized) it harbours a mythopoeic vision of human possibilities. "I will venture frankly to say", writes Philo Judaeus, "that the statesman is beyond any doubt an interpreter of dreams....

"a man accustomed to estimate at its true worth the common, universal great dream which is dreamed not only by the sleeping, but also by the waking. This waking dream, to speak truly, is human life itself.... Inasmuch as life is



laden with all confusion and chaos and obscurity, the statesman must come forward and like some wise interpreter of dreams he must sit in judgment on the day dreams and fantasies of his fellows who think that they are awake - using likely conjectures and reasonable persuasions, on such occasions, to show them that this beautiful and that the reverse; this good and that bad; this just and that unjust. And so, too, with other qualities: he will try to show what is prudent, what courageous, what pious, what sacred, what beneficial, what profitable; and again what is unprofitable, what unreasonable, what ignoble, what impious, what profane, what disadvantageous, what injurious and what selfish. And besides these he will also teach other lessons.... Be prepared for change. You have often stumbled: hope now for a better time. For with men things turn to their opposite."<sup>55</sup>

However, the inadequacy of 'hypothetical consent' as an approach to civil obligation reveals itself not in the determination of whether we *ought* to obey an authority which is worthy of our consent, but whether or not we are under an obligation to such an authority. Hypothetical consent is a necessary but insufficient condition of civil obligation because it omits the vital element of *citizenship*: participation in *respublica*. Civil obligation is a function of citizenship, not in the instrumental sense of the word 'function' but as a variable quantity in relation to others in terms of which it may be expressed or on which its value depends. While there may be many social orders worthy of our obedience, we do not have civil obligations to them all. The nexus is such that the very participation in the practices constitutive of a particular social order locates the individual as a political being, that is, it grants him *locus standi* in matters of civility and order. Consequently, the validity of the hypothetical consent model springs not so much from the reasonableness of its application but from its acceptance by those who are in a position to apply it. Together, then, the notions of citizenship and hypothetical consent provide the necessary and sufficient conditions for grounding civil obligations. Paraphrasing Aristotle, one has an obligation to obey the laws of a state when, firstly, one is a citizen of that state and, secondly, one considers that state to be worthy of obedience. In other words, there can be no fixed answer to the question "is one under an obligation to obey the laws of this state?" since the determination of the state's worthiness of obedience is as fluid as the considered opinions of its citizens.

The fusion of civility and (moral) order as the principal criteria of civil obligation claims provides perhaps the most damning condemnation of the crude rendering of the social contract, not merely as poor history, but as rigid, illogical conservatism. A primordial contract which binds a nation for all time allows no change, no moral development. Needless to say, innumerable changes must have taken place since the initial 'constitutional convention', but the assumption is always that 'now' must be forever, as though seventeenth or eighteenth century England were the best of all possible worlds and need be retrospectively enshrined in a secular covenant. There is a presumption of moral order and a stunted, static civility. Yet, despite all the criticism, there is a cogent point to literal contractarianism that reflects upon its metaphorical counterpart, namely, that, like rule-governed behaviour, civil obligation is systemic in nature. If one has a civil obligation to obey the law, then it is to obey all the laws of the state and not some particular law. This is not to say that one is automatically committed to thoughtless obedience having once decided that obedience is warranted, but that in having a civil obligation one has a uniform, universal *prima facie* reason to obey all the laws of the state in the absence of superior conflicting considerations.

Like most dilemmas in political philosophy, the problem of civility is readily resolvable in ideal typical eutopian (or dystopian) models. In heaven, as it were, there is no problem of civil obligation. Similarly, those who participate in a moral order have a civil obligation to it *as a consequence* of its being nothing other than a moral order. The reasons for obedience to the law, then, are to be found in the nature of the state, and the characteristic modes of participation in its practices. To say that one has a civil obligation is to say that one has reasons for obeying the laws of one's state. The problem, however, lies in determining what is citizenship (or civility) and what features characterize a moral order.

With this restricted, systemic conception of civil obligation in mind, then, we proceed in the following sections to an investigation of the theories of Hobbes, Locke, Rousseau, Kant and Rawls. In particular, the adequacy of their theories *qua* contract theories will be assessed by posing two questions: (1) are these theories really contractarian theories?; and, (2) do they solve the problem of civil obligation? This second question must be answered, of course, in the light of the conception of

civil obligation presented above; and this raises two further considerations. The first of these is, do these 'solutions' address the question of civil obligation or are they aimed at the question of civil obedience? If the answer is the former, then the second consideration arises, and it must be asked whether these 'solutions' supply the content necessary to complete the formal (eutopian) solution outlined above. Do these contractarian theories, in other words, provide a suitable conception of civility and order?

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## PART TWO

### THE MYTHOPOESY OF CIVILITY AND ORDER

"The *Mythos* of Synecdoche is the dream of Comedy, the apprehension of a world in which all struggle, strife, and conflict are dissolved in the realization of a perfect harmony, in the attainment of a condition in which all crime, vice, and folly are finally revealed as the *means* to the establishment of the social order which is finally achieved at the end of the play. But the Comic resolution may take two forms: the triumph of the protagonist over the society which blocks his progression to his goal, or the reassertion of the rights of the collectivity over the individual who has risen up to challenge it as the definitive form of community. The first kind of Comic emplotment may be called the Comedy of Desire, the second kind the Comedy of Duty and Obligation."<sup>1</sup>

"In the Wars themselves (which is a time, wherein all Languages use, if ever, to increase by extraordinary degrees; for in such busie, and active times, there arise more new thoughts of men, which must be signifi'd, and varied by new expressions) then I say, it receiv'd many fantastical terms, which were introduced by our *Religious Sects*; and many outlandish phrases, which several *Writers* and *Translators*, in that great hurry, brought in, and made free as they pleas'd, with all it was enlarg'd by many sounds, and necessary Forms, and Idioms, which it before wanted."<sup>2</sup>

It has become a commonplace of contemporary analyses of seventeenth and eighteenth century thought that this period represented the 'age of reason' in European philosophy. No doubt, as Sir Isaiah Berlin has commented<sup>3</sup>, the unprecedented success of mathematical techniques helped forge a 'mechanical' model of the universe conducive to rational investigation. However, it is all too easy to retrospectively secularize times past and import into the thought of persons otherwise disposed a host of notions utterly alien to their understanding. Certainly, Hobbes was no more rational than Aquinas, nor Locke more reasonable than Augustine. While the words 'reason', 'logic' and 'science' figure more prominently in the later writers it does not automatically go to say that they were in any way more reasonable, or, for that matter, more scientific than their pre-

decessors. The implicit assumption here, in the labelling of some writers as 'medieval' and others as 'enlightened', is that somehow the latter managed to free themselves from the shackles of superstition and rigid dogmatism; that they put aside doctrinaire theology for the more 'sensible' (read 'rational') pursuits of natural philosophy, politics and anthropology. In other words, it is supposed that the transition from a medieval to an enlightened outlook entailed the metamorphosis of theocentric scholasticism into cosmocentric 'science' under the catalysis of Renaissance 'humanism'. Progress, that is to say, from patristic theology to a 'modern paganism'. "The men of the Enlightenment", writes Peter Gay, "united on a vastly ambitious program, a program of secularism, humanity, cosmopolitanism, and freedom, above all, freedom in its many forms - freedom from arbitrary power, freedom of speech, freedom of trade, freedom to realize one's talents, freedom of aesthetic response, freedom, in a word, of moral man to make his own way in the world."<sup>4</sup> Heady romanticism and convivial conspiracy theories aside, the fundamental error underlying Gay's description is the ready assumption of a thoroughgoing irreligiousness (exceptions granted) in late seventeenth and eighteenth century thought. The mistake is made of conveniently conflating 'individualism' and 'conscience' with a *rejection* of 'faith', as though the cataclysmic shifts in doctrine of the sixteenth and seventeenth centuries were an abandonment of religious belief rather than a reformulation of its expression and implications. "Seventeenth-century thought was God-ridden", writes John Redwood,

"Whenever a man took up his pen and attempted to write about the weather, the seasons, the structure of the earth, the constitution of the heavens, the nature of political society, the organization of the Church, social morality or ethics he was by definition taking up his pen to write about God. Strive as individuals might to remonstrate with their colleagues and contemporaries that they were only interested in writing about the shape of the stamens of plants or the geological formation of rock strata, strain as they might to confine their comments upon republics and kingdoms to comments about political practicalities and the consequences of pragmatism, they always found that they had striven in vain. For, to the many clerics who were seriously concerned about the theological universe they were describing, and to the many laymen who proffered loyalty, obedience and humility to their clergymen and bishops, the world was God's creation and could only be explained within a deist and Christian framework."<sup>5</sup>



The revisionist surgery performed upon Hobbes' exposition of Christian faith in *Leviathan* provides us with a perfect example of retrospective secularization and literary misprision. This case is all the more interesting because of the central role accorded Hobbes in the rise of modern rational thought and the 'demystification' of political philosophy. The thousands of words spilled in the exegesis and adoration of a sacred history underpinning human thought and action are dismissed by many Hobbes scholars as either lip-service to common practice or cryptic irreligiosity. Yet, as J.G.A. Pocock has argued, "scholarship has suffered until recently from a fixed unwillingness to give the Hebrew and eschatological elements in seventeenth century thought the enormous significance which they possessed for contemporaries." Moreover,

"Hobbes's readers since his own lifetime have found reason to doubt if he was a man of deep personal piety and even to affirm that he was an atheist.... It has thus come to be a near-orthodoxy that he did not believe what he wrote in the unread half of *Leviathan*, and that consequently these books have no meaning.... Although esoteric reasons have been suggested why Hobbes should have written what he did not believe, the difficulty remains of imagining why a notoriously arrogant thinker, vehement in his dislike of 'insignificant speech', should have written and afterwards defended sixteen chapters of what he held to be nonsense, and exposed them to the scrutiny of a public which did not consider this kind of thing nonsense at all."<sup>6</sup>

The critical point here is not the daemonization or sublimation of Hobbes (depending on one's predilections in this regard) but the manner in which the intellectual history of Europe since the Renaissance has been subject to the enthusiasms and excitements of those committed to a linear conception of the history of ideas as the progress of reason - a not altogether ridiculous notion, but one subject to much abuse at the hands of latter-day *philosophes*. The mere assumption of the mutual exclusion of faith and reason in a 'Newtonian' world, or at best an uneasy coexistence, not only overlooks the richly textured and hybridized modes of thought undergirding the so-called rise of reason, but also disregards the eschatological passion energizing speculation and the soteriological addictions of all revolutionaries, utopians, and martyrs of reason and passion. The element of 'faith', revitalized by the Reformation, paradoxically served to fuel the continuing debate on matters of conscience and freedom. Moreover, as the struggles of the Reformation splintered into the scholarship and

criticism of succeeding generations, what had originally begun as a conservative backlash developed into the backdrop for a creative scepticism.

"Works considered entirely secondary to faith by sixteenth-century reformers and eighteenth-century evangelists, began to be stressed by protestant preachers; creeds and ceremonies, always provocative of dispute and even war, were scrutinized anew and their necessary role questioned; doubts about the essential and total depravity of man, belief in a moral sense, debates about the existence and nature of rewards and punishments after death, thoughts on the prescience, benevolence, and good will of the Almighty were voiced.... Skepticism, even at times about reason itself, examination of all manner of common assumptions added to a strong desire by many for a reasonable basis of belief - these attitudes led to a reassessment of 'the good man'."7

The very question 'why should one obey the law?' now made sense in a world exposed to a theology of the autonomous conscience, of a transcendent God immanent in nature and the deeds of men. Not only did this re-examination of criteria for religious truth and Mosaic legal fundamentalism give rise to renewed interest in covenantal relationships with the deity, but it also gave rise to reconsideration of human relations and the formal criteria for their evaluation. However, to talk of the idea of a social contract as mere projection of a theological metaphor is to miss the point. It was the search for criteria, for ways of talking about autonomy and interdependence, for reconciling 'freedom' with the coercion of the state that fashioned a metaphor *all the more powerful* for its biblical connotations. The social contract, in other words, constituted a synecdoche metaphor by which the factors shaping civility and order within the state were expressed, and heightened, in both a dramatic and heuristic form.<sup>8</sup> The complexus of obligations, rights, duties and responsibilities thus came to be focused in an intellectual 'test case', as it were, the examination of which would unfold in an orderly fashion the diversity it contained. Through unpacking the synecdoche, then, its literature of origin - its mythopoesy - would be exposed to critical investigation.

The fluxion of notions now conveniently packaged into either philosophical or theological spheres happily merged and cross-fertilized throughout the Reformation and, until recently, in the generations in its wake. For example, Kant was of the opinion that the whole endeavour which was begun by Plato, and which by Kant's time had been going on for many centu-

ries, to formulate a satisfactory rational demonstration for the immortality of the soul was a mistake. Kant not only effectively but formally separated intellectual enlightenment from moral and religious enlightenment, and assigned the Aristotelian theory of 'ideas' (conceived of as immanent content rather than transcendent objects of thought) to the former, and the Platonic 'idea' (the transcendent object) to the latter. When he argued, then, that the arguments for the immortality of the soul are necessarily invalid, he was in effect reproducing the Aristotelian objection to the Platonic demonstration. The greatest difficulty of Kant's position, besides the ultimate inconsistency of juxtaposing 'idea' as immanent content with 'idea' as transcendent object, is the failure to account for an experience of enlightenment which even in Calvinism is not exclusively religious or exclusively moral, but also in a very comprehensive sense intellectual. It seems possible to combine immanence and transcendence without falling into the implicit contradiction involved in a Kantian division of labour. The way in which this may be done is suggested by Kant himself when he points out that the link between the realm of immanent content and that of transcendent object is the concept of freedom. The point, of course, is that this is the line taken by Calvin, enunciated in his soteriology and replete in his sermons. What both Calvin and Kant understood by 'freedom' was free will, and the link which they saw between the two realms was that in the realm of immanent content freedom appears as a possibility, though no more than a possibility, and in the realm of transcendent object it appears as a necessary actuality. If the Kantian concept of essential freedom is replaced by the concept of effective freedom which figures in Calvin's writings, then the two realms which Kant merely juxtaposed begin to coalesce. Freedom from this perspective will not be something which every man is called upon to achieve, and the degree of freedom a man achieves will be the degree in which the transcendent becomes immanent in him. The experience of immortality will thus be the experience of freedom and elucidating the experience will mean elucidating the process of liberation.

Herein lie the seedlings of the notion of the social contract and can be seen the rationale for linking 'civility' (active participation in the life of the polis) with 'order' (as the well-being of the polis) in terms of the unfolding of that which is transcendent (the *imago Dei*) in the immanent (temporal Being). Liberation, in other words, as the realization of human potential in conduct *inter homines*, the overall characterization

of which constitutes the secular covenant; not secular in its irreligiosity but, rather, in its concern with temporal manifestations of the 'soul'. This is not to frame the entire discussion in terms of religious disposition or to characterize political liberalism as the offspring of theological reform, but, rather, to emphasize an often ignored or underrated perspective on the rise of contractarianism, namely, the Augustinian rejection of Aristotle's 'political' man.

Both Augustine and Aristotle held that man is by nature a social animal, that is to say, 'persons' and the transactional interactions that characterize their most fundamental relations are coeval. However, where Aristotle elaborated upon man's natural sociability by identifying full blown *humanitas* with aptness for *civitas* - that is, equating 'personhood' with aptness for citizenship - Augustine argued that political institutions are not natural to man. Indeed, the structures of authority and coercion endemic to the political state were regarded by Augustine as the bitter harvest of man's fall from grace, a direct consequence of the 'unnatural' condition of a sinful world. Nevertheless, such structures fulfil an ameliorative function in a world otherwise predisposed to vicious anarchy, holding together the tattered post-Fall fabric of man's lost integrity. Aristotle, on the other hand, following Plato, saw in the polis the central condition for the attainment of all human *tele* (the polis itself not being *telion*), in much the same way as we make sense of a cell's existence by reference to the organism of which it is a part. In rejecting the mundane teleology of Aristotle, then, Augustine inadvertently prepared the ground for Machiavelli's stridently secular dissolution of the medieval political organism and his assertion of the temporal and existential primacy of 'transactional relations' (*conduct inter homines*) over *societas*. Human interrelations on the level of personal transactions, then, are given moral precedence over the sum of such interrelations writ large. In other words, rather than arguing from the state or *ecclesia* back to the individual, by way of justifying individual and corporate behaviour in terms of an all-embracing political context - the life of the polis - Machiavelli, and, later Hobbes, Locke, Rousseau and Kant began with the individual and argued through to the state. The teleology of public life was reversed in favour of the individual, making possible rational discussion on the confluence of private interests and public goals, their sympathies and disharmonies. Though the arguments and conclusions are profoundly different,

the basic thrust of the Augustinian-Machiavellian logic remains constant and ultimately decisive: man is not only prior to political society, he transcends it.

Hence the idea of the rational divestment of personal rights and their placement in some collective repository, be it Hobbes' sovereign or Rousseau's general will, bound in a web of reasonable commitments. The authority of this 'repository' is a reflection of its collective concentration of the rights of others, their obligations and mutual responsibilities, rather than a manifestation of some natural or mystical commission. Consequently, what was referred to as a 'reverse teleology' is not really a teleology at all, but a 'tropism' of sorts. The Aristotelian scheme of things centres on the relentless movement of substances towards their completion, the realization of their 'natures'. Hence, one knows some entity's true nature only if one is aware of its particular end - orientation, its 'reason for being'. Since the environment (social and physical) serves as the crucible of all *tele*, given that purposefulness arises from interaction and circumstance, a description of some entity's nature must place its *telos* within a pattern of movement. Thus, man is characterized as a social animal not so much because he is naturally gregarious but because he is *telion* only in the company of other men: he 'completes himself', so to speak, through the application of socially-derived (though biologically determined) faculties. Opposed to this view, we find implicit in Machiavelli, and explicit in Hobbes, Locke, Descartes, Rousseau and Kant, an 'elemental' philosophy disposed towards the 'physics' of life rather than, literally, its 'metaphysics'. Men are, as it were, complete in themselves, albeit dependent upon others for those things which they hold in common and mutually entertain, such as language and ritual. Men do not complete themselves in coalescing to realize ineluctable *tele*, but, rather, to realize goals that enhance their personal and collective well-being. They are drawn towards circumstances that promise fulfilment of ambition, then, rather than the (often) incogitant culmination of their humanity. In other words, men contract to achieve a variety of ends perhaps without ever considering the ultimate *telos* towards which Aristotle would have them oriented.

Nevertheless, Aristotle's point was not completely lost on his critics; indeed, if anything, it was taken up all the more powerfully in being refashioned to meet the needs of a vastly different intellectual climate to that of Attic Greece - an issue pursued in the last part of this thesis.

The point of this discussion is to stress the significance and inter-relatedness of four seminal themes underpinning the primary literature of contractarianism that together not only made sense of the question "why is one under an obligation to obey the law?", but generated 'solutions' that have spread beyond their immediate field of concern to permeate all contemporary discussions of civility and order. It is impossible to understand the rise of contractarianism, its demise and partial resuscitation without paying attention to the intellectual milieu that nourished it and struggled with its implications. The need to focus upon critical turning points is neither a denial of the importance of other factors nor mere acknowledgement of the limitations of this work, but, rather, recognition of the fact that while many aspects of contractarianism have been adequately dealt with in an abundant literature others have been ignored or given scant mention. Consequently, there is little discussion here of the rise of liberalism or the influence of mercantilism, or the fluxion of European geopolitics or the effects of the agricultural revolution; neither are the changing fortunes of various political movements recorded and discussed nor the machinations of Richelieu and Cromwells dissected. All these matters, of course, have been considered elsewhere in great detail and with immense erudition. Yet, with regard to contractarianism something has gone amiss, and somehow in the midst of encyclopaedic learning the strands of a notion until recently much maligned have frayed and submerged. Rather than regarding the social contract as a concept within a 'family' of concepts, such as 'right', 'duty' and 'obligation', some modern scholars treat it as if it were a bit of 'science', i.e. an explanatory hypothesis manufactured to explain why there are politics at all. If treated in this way, it is all too easy to patronize the notion as if it were an antiquarian interest divorced from the main business of political thought. The social contract has become, as it were, a marooned metaphor intellectually parted from the clusters of issues that collectively constitute its ambience. The salvaging of this notion, it must be pointed out, represents neither an attempt to vindicate its contemporary manifestations nor a defense of its classical

tradition. Rather, the point is critically to assess an idea that grew in great part out of the literature now identified as the cornerstone of modern political theory: the body of thought that gave rise to the question 'why ought one obey the law?'

The four themes discussed throughout this thesis are dealt with not as crisply discrete notions or perspectives and thereby somewhat artificially isolated in separate sections, but, rather, they are treated as inter-related aspects of the overall problem of order and civility. It is argued in the following sections that the 'secularization' ushered in by the enlightenment was neither an overturning of superstition nor necessarily a rejection of religious belief but, on the whole, a reflection of the dramatic theological, institutional and intellectual changes brought about by the Reformation. The critical elements of Reform theology, principally fashioned by Luther and Calvin, and, of course, elaborated upon and developed by others, shattered the intellectual template of European thought, making possible ways of discussing the individual and the state that had hitherto seemed blasphemous or incoherent. In particular, the notions of (1) *privity* (conscienceful privacy), (2) *praxis* (active participation in the management of one's well-being), (3) a radically refashioned natural law doctrine rooted in nominalism and the key metaphors of the Word and the *imago Dei*, and (4) the displacement of the language of 'virtue', by the language of 'obligation' served as the groundwork for the development of 'individualism' in European thought and its most powerful political expression in the seventeenth and eighteenth centuries - contractarianism.

The notion of 'privity' here serves as a rubric under which a host of related concepts are located, in particular, 'autonomy', 'individualism' and 'propriety'. The essence of privity is private knowledge or cognizance, one's private thought or counsel. Yet it also denotes any legally recognized relation between two parties characterized by mutual interest in some transaction or thing. The connection is interesting because it illuminates the nexus between autonomy and the pursuit of legitimate interests, the former reflecting the basis of personal freedom, the latter its practical implication. Calvin placed great emphasis upon the mystery of 'conscience' and the silent, inner sanctity of faith which could, nevertheless, be externalized in active participation in the life of one's community. Persons, then, are truly spiritual individuals who unite through

common convictions and mutual interests, who make public their sentiments in what amount to oaths of commitment and professions of faith. Conscience manifest in action mediates the soul and reveals an illuminated propriety all the more powerful for its confessions of faith and loyalty to deeply-held principles. Without distorting the analogy of the Aristotelian practical syllogism, ready parallels can be drawn between the virtuous person pursuing the implications of his beliefs and the autonomous believer acting upon his convictions. The very mystery of an individualistic epistemology demands such a faithful translation of thought into action lest the very substance of civil life dissolve into uncertainty and equivocation. Praxis, then, is both the privilege and justification of privity, according to Calvin: the mechanism by which persons become citizens and their relations ordered.

The nexus between privity and praxis is in many ways the most challenging aspect of Calvin's theology and its link with contractarian thought, namely, man's innate perception of natural law. The work of the Spirit and the *ordinatio Dei*, argues Calvin, conspire in the creation of the natural order, in establishing the integrity of man, and in the achievement through man of political order. Man, in defecting from obedience to God, disrupts the orderly pattern established by the Deity but does *not* thereby destroy it. Creation, the political order, and man himself are now marked by confusion and *ataxia*, but not by chaos. The argument goes as follows: wherever the *ordinatio* and *Spiritus Dei* are correlated, there is order; where the Spirit works apart from the *ordinatio Dei* there is confusion. Since the ordination of the Fall is correlated with the withdrawal of the Spirit there is, after the Fall, confusion and *ataxia*; but since the ordination of the Fall is paradoxically related to the original ordination of God in the creation of the world, such disorder can never amount to unremitting chaos or irreversible destruction; and man, by virtue of his very humanity, perceives this ordination through the mists of disorder as the *lex naturae*.

Men need government, contends Calvin, because God predisposed them towards civility. The 'integrity' of man, which is properly analogous to the order of the world, is reflected in the soul which, through its capacity to transcend nature, lends man his centrality in the order of creation. There is an 'integrity of order', then, that arises from the mundane teleology of the world, superimposed on the mechanics of life as the



divinely appointed 'function' of nature, namely, human well-being. Since the order of man, the socio-political order which men have wrought - the *imago Dei* - is the product of God's gift of reason and its realization, it is in the condition and development of the *ordinem politicum* that man demonstrates his rationality. Consequently, each individual is party to the *ordo politicus* by virtue of his humanity, which entails the further responsibility of protecting and enhancing the innate *imago Dei* as the determinant of human agency. The realm of conscience is the realm of politics. Hence the necessity of post-Fall man to re-establish human integrity through the reconstruction of just order and convivial civility. Discipline and obedience to the essence of the Word: herein lies the regeneration of integrity, in the confluxion of the visible and invisible churches.

In summary, then, Calvin's argument for the *doxice* nexus between privity and praxis goes as follows:

1. Everything is ordained by the Word.
2. Order is the product of the harmonious coexistence of the Spirit and *ordinatio Dei*.
3. The Fall fractured this unity, making the Spirit 'invisible', as it were, and creating disorder in the world.
4. Man, by virtue of his rationality, can perceive the principles of order, i.e. morality.
5. These principles constitute the natural law.
6. Therefore, man innately perceives the natural law.
7. Since the withdrawal of the Spirit is preordained, disorder can never amount to chaos, and since man perceives this ordination as the natural law, man is capable of reconstituting order through adherence to the one 'visible' manifestation of the Spirit and *ordinatio Dei* - the Word.
8. Therefore, natural law is the realization of the Word.

The unity of Calvinist theology and religious experience, then, was wrought in the eminently practical struggle to define a body of practice that could assimilate and be assimilated to the Word while, at the same time, maintaining a coherence adequate to the variety of historical

pressures exerted on it. This concern showed itself in the heavy stress upon the expression of faith - that is, the Word that stood luminous and coherent behind the convolutions of the letter as the perfectly unified disclosure of the mind of God. The common assumption throughout Reform theology was that all Scripture could be reduced to a consistent body of doctrine. The susceptibility of Scripture to such a reduction meant that it could be seen simultaneously as a *fait accompli*, one complete thought in the mind of God, and as a dynamic unfolding; and, as it was developed in the thought of Locke, Rousseau and Hobbes in particular, this superimposition of *stasis* (i.e. the Word) and *cursus* (the unfolding of history) served as a paradigm for contractarianism, conceived of as that which by an advanced *stasis* - what shall be, or ought to be - colours what is the case - at least for what was later to be termed the politics of motion. The fact, incidentally, that the centrality of faith, reflecting a supposed *a priori* unity of the Word as well as an achieved coherence of praxis, proved itself serviceable in bridging the gap between privity and praxis suggests that Calvinism had early attained a fair measure of internal consistency, whatever judgements may be brought against the adequacy or stability of the synthesis.

The displacement of the language of virtue by the language of obligation was not so much the direct result of Reformation theology proper, but, rather, the consequence of its emphasis upon privity and praxis. Whereas the language of virtue depicted life in the polis as the mutual endeavour of interdependent persons committed to public values as authoritative guides to action, the language of obligation focuses upon individual freedom - rather than the good life held in common - as the realization of personal values. "The question of political obligation seems to arise almost naturally from the situation created by the demise of the question of how we ought to live," writes Stephen Salkever, "it is the logical candidate to fill the vacuum in political philosophy left by the rejection on epistemological and metaphysical grounds of the question of virtue.

"If no way of life can authoritatively and finally claim to be superior to any other, and if each individual is thus in principle free to choose or create his own standards or rules of conduct, what are we to say about the ordinary human situation characterized by a submission to authority and an obedience to laws we never made? To ask this question is to

state the modern paradox of liberty and authority posed in classic form by Rousseau.... What is the ground, the justification, of the obligation or duty to obey the law? When is obedience the result of obligation rather than of oppression and coercion? Perhaps the most obvious solution is to say that freedom itself is the ground of obligation: obedience to the law alone makes possible that security which is the necessary condition of freedom. In this manner, politics would appear to be justifiable or legitimate (and 'authority' thus different from 'power') insofar as politics exists for the sake of economic man. In other words, we ought to obey the law because it is in the interest of our freedom to do so. Politics thus conceived appears as a second-rate and inconvenient activity, yet one which is necessary to protect us in our real (i.e. economic or private) existence. Public obedience is the necessary, though unpleasant, price of private freedom."<sup>9</sup>

The pursuit of autonomy in terms of free conscience and political freedom, then, gave rise to new ways of talking about man and society. In particular, it ruptured the established harmony between ruler and ruled such that what had hitherto been taken as given - the status and modes of authority - were now cast in doubt. Our concern lies not in determining whether or not the principal parties to this process of reevaluation rigorously pursued a particular orthodoxy, but, rather, we are concerned with what constituted the critical elements in this process. In this sense, we seek an overview of the transformations of civility and order. The characterization of the flux of seminal theological political and philosophical literature informing this overview as 'mythopoesy' emphasizes the metaphorical, symbolic and 'created' aspects of contractarianism. That is to say, the 'social contract' as a political philosophical notion was born out of metaphoric comparisons marshalled to displace medieval modes of expression, to provide radically new perspectives by juxtaposing and connecting political experience with human potential. The literature giving rise to the contractarian metaphor - its mythopoesy - defined phenomena by creating a new language of expectations and assumptions that gradually revealed the possibility of a new political order. All great political theory, one might say, is characterized by the elements of vision, poetic rendition and considered judgement relating 'human nature' and 'the human condition' to political and social structures. In the symbiotic relation of these elements we locate the genesis and power of political ideas; in the coherent connection of these elements we discern the process by which theorists seek universals for the critical evaluation of thought and

action; and in the choices rooted in a knowledge of these elements we experience the political effort and dilemma of reconciling existence with potential. The articulation and consolidation of these elements and their relations constitute the creation of dominant paradigms of thought by which meaning is imparted to political life. "Poets... late in tradition are both Adams and Satans," writes Harold Bloom,

"They begin as natural men, affirming that they will contract no further, and they end as thwarted desires, frustrated only that they cannot harden apocalyptically. But, in between, the greatest of them are very strong, and they progress through a natural intensification that marks Adam in his brief prime and a heroic self-realization that marks Satan in his brief and more-than-natural glory. The intensification and the self-realization alike are accomplished only through language, and no poet since Adam and Satan speaks a language free of the one wrought by his precursors. Chomsky remarks that when one speaks a language, one knows a great deal that was never learned. The effort of criticism is to teach a language, for what is never learned but comes as the gift of a language is a poetry already written - ... from Shelley's remark that every language is the relic of an abandoned cyclic poem. I mean that criticism teaches not a language of criticism... but a language in which poetry already is written, the language of influence, of the dialectic that governs the relations between poets *as poets*. The poet in *every reader* does not experience the same disjunction from what he reads that the critic in every reader necessarily feels. What gives pleasure to the critic in a reader may give anxiety to the poet in him, an anxiety we have learned, as readers, to neglect, to our own loss and peril. This anxiety, this mode of melancholy, is the anxiety of influence...."<sup>10</sup>

In the following sections we explore the modulations of this anxiety, principally in terms of an author who felt more anxious than most about the permutations and peripeteia of life: Giambattista Vico. According to Vico's conception of social evolution, the process of secularization represents both a gain and a loss, a progress from rigidity to corrigibility and a regress from morality to groundlessness. He shows us how the collapse of religious guarantees is, indeed, rational, but only in an ambiguous sense. Unhindered reflection, Vico argues, progresses by an inner inevitability; yet, it contains a potential for barbarism as well as enlightenment. And it is precisely his ability to sustain this paradoxical evaluation of the 'advance' of reflection that makes Vico a major figure in political philosophy. Moreover, Vico presents us with an extremely sophisticated theory

of what we have termed 'mythopoesy', in terms of which social institutions are viewed as "civil histories" and the natural expression of metaphysical world views. The intellectual revolution of Reformation thought is thus placed in a broader critical context, one that fully develops an overview of the mythopoesy of civility and order while at the same time analysing and drawing out its implications. Somewhat paradoxically, then, in the light of our initial emphasis upon the Reformers, the majority of what follows is devoted to Vichian exposition and analysis, while the Reform exegesis is dealt with mainly in appendices. The reason for this approach is twofold: firstly, the thrust of the argument with regard to the rise of contractarianism is *not* that it arose full-blown from the head of Reform theology, but that the latter made possible new ways of thinking about social relations and man *qua* citizen that in turn set the stage for contractarianism; secondly, we find in Vico's conception of social evolution the seeds for criticism of contractarianism, notions that reflect upon the manner in which metaphors are propagated and employed in political thought and, in particular, a fertile matrix in which to experiment with the host of ideas undergirding or entailed by the social contract.

A Vichian overview of contractarianism aids us in understanding the 'social contract' as a synecdoche for order and civility: as a microcosmic representation of the relations that constitute *Gesellschaft* society. The social contract is not so much a trope of realization - an image of what is the case - as it is a means of implementation, an active metaphor the engagement of which facilitates an understanding of the relations it encapsulates. The ballot box, for example, is not a proper synecdoche for democracy, but a heuristic metaphor by means of which we illuminate the salient features of democracy: those aspects which demand active involvement. The ballot box is the dynamic (albeit partial) synecdoche for democracy, as the social contract is for *Gesellschaft* society. It is, as it were, a figurative mechanism of implementation for order and civility - a scheme to relate the understanding to the manifold of intuition. Once its Calvinist roots are exposed, the social contract may be viewed as an implementation mechanism of natural law, whether it be conceived of as 'right reason', the 'general will', or the fruit of Rawls' 'original position'. The critical point to note here is that ('pure') natural law takes no account of institutions and therefore must be 'rephrased' to become applicable to man. Yet, as our awareness dims of the milieu in which the term

was given life so does the clarity of the metaphor diminish. The process of 'rephrasing' is one of reading back into the synecdoche the world view from which it arose. However, our tendency to read the synecdoche hermeneutically, to understand it in terms of the natural law doctrine which is its 'demythologizing', is not historically permanent. It vanishes once its milieu has ceased to be common intellectual property: the synecdoche is no longer understood as metaphor, leading the inquisitive 'outsider' to indulge in speculative cultural anthropology. The great danger lies in the image remaining after its significance has vanished, like the surviving icon of a forgotten deity. How many rituals and liturgies have survived throughout the ages as unintelligible 'magic formulae', only to be regenerated from time to time through contrived meanings and rationales? One is tempted to speculate that modern contractarianism arises from the search for new meanings for an old synecdoche for which the *Weltanschauung* in which it was conceived has vanished.

## I

The New Science

One of Vico's main goals in the *New Science* is to refute Grotius' enlightened claim that society and justice are possible without religion. The premise he shares with his opponent, of course, is that social life is unthinkable except on the basis of shared norms. The disputed point made by Grotius (as well as by Bayle and others) is merely that this underlying common ground might be furnished by a single man's rational insight into natural law and need not depend on unexamined faith, *mores* or tradition. Consider Grotius' defense of the thesis that a compulsion toward justice is implicit in man's unchanging nature:

"Man is, to be sure, an animal, but an animal of a superior kind, much farther removed from all other animals than the different kinds of animals are from one another; evidence on this point may be found in the many traits peculiar to the human species. But among the traits characteristic of man is an impelling desire for society, that is, for the social life - not of any and every sort, but peaceful, and organized according to the measure of his intelligence, with those who are of his own kind; this social trend the Stoics called 'sociableness'. Stated as

a universal truth, therefore, the assertion that every animal is impelled by nature to seek only its own good cannot be conceded."<sup>11</sup>

Nature, in fact, would impel man to be just even on the hypothesis that "there is no God, or that the affairs of men are of no concern to Him."<sup>12</sup> The naturalness of the principles of justice is firmly established according to Grotius since "no man can deny them without doing violence to himself."<sup>13</sup> As a consequence, he believes that it is possible to reconstruct human relations on the basis of universal reason alone, freeing mankind from all dependence on tradition and prejudice. One should recall that Grotius contrasts the "law of nature" with the "law of nations"<sup>14</sup>. Vico at his most ironical replaces this contrast by an opposition between the "natural law of philosophers" and the "natural law of the gentes"<sup>15</sup>. His main aim, as he repeatedly says, is to undermine the "conceit" of those philosophers (including Grotius) "who will have it that what they know is as old as the world".<sup>16</sup>

According to Vico, first of all, the concept of "nature" cannot be a foundation for legal or political justifications. This already follows from his explicit agnosticism about what "nature" is really like: "since God made it, He alone knows."<sup>17</sup> But the *New Science* contains a more profound critique than this of the "natural law of the philosophers". Nature, and this is Vico's main argument, is not a foundation but a problem, a problem which all social orders attempt to solve. Provisionally, we may call it the problem of '*ataxia*'. Like all genuine problems it is "something thrown in the pathway" (*problema*), an obstacle which must be overcome for a life-process to continue. Technically, one should note, a problem always underdetermines its solution. It does not contain enough information to exclude the possibility of alternative solutions.

According to Vico, in other words, an onto-theological *fundamentum*, far from being a dowry brought by nature for her marriage with culture, must always be thematized as an achievement of society. Kerygmatic guarantees, as we shall see in our examination of the *New Science* below, are genetically inseparable from the overall survival orientation of archaic and early cultures. Primitive religious narratives, to translate Vico's insight into modern idioms, contain a commitment to the 'normative' belief that reality could not be other than it is, and therefore help pre-techno-

logical societies 'interpret away' contingency. Stereotyped codes cannot, in and of themselves, master contingency or prevent its outbreak. However, they do permit inhabitants of primitive social space to absorb sporadic shocks without having to undergo massive and time-consuming readjustments in their behavioural expectations. By reducing complexity, such codes allow for coordinated orientation through memory and custom. (We shall elaborate on these brief remarks later on.) Crucial here is the Durkheimian idea, anticipated by Vico, that archaic societies, in order to survive in a precarious and threatening environment, have to rely heavily on group solidarity. Primitive ontology, articulated in mythical narratives and ritual performances, seems indispensable for the maintenance of a kinship nexus (encompassing nature, men and the gods) upon which social cohesion depends. The collaborative wholeness of early *Gemeinschaften* (a term which will be explained below) is the result of a successful socialization of all members into the unquestionable rules of a religious world view. The social genesis of shared ontological 'certainty' or a guaranteed homogeneity of perspectives enhances group coordination in an unstable world. With every advance of technology, however, man wins further access to natural contingency, becoming increasingly able to adapt to and control a more variegated environment. Secularization in general implies an increased 'access to contingency' - control of nature and revisability of institutional norms. Thus, technical advance is usually accompanied by the kind of impious reflection which undermines religious foundations and ontological certainties. Such reflection also tends to undermine familial cohesion at the societal level. In spite of Enlightenment faith in a universal reason (*bon sens*) distributed equally among all men, there is no historical evidence that irreligious reflection tends to recreate cohesion and consensus at the level of universal humankind. Carried to extremes, impious reflection may even produce a new *ataxia*, a barbaric splintering of perspectives. At any rate, it is this complex genetic and developmental analysis of the way 'binding norms' provisionally solve the original problem of natural overcomplexity which Vico offers as an alternative to Grotius' philosophical insight into the eternal (i.e. context-free) *lex naturae*.

In order to understand the first principle of the *New Science*, that "the world of peoples began everywhere with religion"<sup>18</sup> and that "no nation in the world was ever founded on atheism"<sup>19</sup>, we must cast our minds



back behind society into nature, as it were, behind the achieved 'bindingness' of cultural codes and into the untamed contingency of yet unsocialized mankind, into "the wild estate of dumb beasts"<sup>20</sup>. Man's pre-social nature, according to Vico, is a chaos demanding - but not prefiguring - order. The first of the "elements" of the *New Science*, in fact, begins with a reference to the indefinite nature of the human mind.<sup>21</sup> Beneath the word "indefinite" lies a key to Vico's rejection of modern natural law, of the enlightened (Cartesian) idea that scientific or secular reason can uncover a functional equivalent to the old kerygmatic and coordinating guarantees. For Hobbes, as we shall see in *Part Three*, man's unchanging and essential nature is his fear of violent death. Regarding the fear of violent death as a *ground or foundation*, Hobbes proceeded to 'deduce' from it the legitimacy of absolute government. Vico would have none of this Galileonizing in the study of society. He repudiated Hobbes' deductive continuity between nature and culture and replaced it by a precarious balance of continuity and discontinuity, by the same sort of balance which may be said to exist between a problem and its solution. It is notoriously difficult to pin down precisely what Vico means by "providence", but one thing the idea certainly excludes is the possibility that a philosopher might 'deduce' civil society out of the passions of individuals. Hobbes' mistake, as Vico saw it, was to ignore the paragenesis of society with a principle that must clearly be understood as "something superior to nature"<sup>22</sup> - the self-induced terror of an imaginary divinity. Awe-inspiring religious narratives were 'superior' to the mechanical promptings of organic life and hence "imposed form and measure on the bestial passions of the lost men and thus transformed them into human passions"<sup>23</sup>. This self-narrated myth is the first principle of humanity:

"This principle of institutions Thomas Hobbes failed to see among his own 'fierce and violent men', because he went afield in search of principles and fell into error with the 'chance' of his Epicurus. He thought to enrich Greek philosophy by adding a great part which it certainly had lacked...: the study of man in the whole society of the human race. But the result was as unhappy as the effort was noble."<sup>24</sup>

Like his critique of Grotius, Vico's critique of Hobbes (and especially of the belief which Hobbes shared with Polybius that "if there were philosophers in the world, there would be no need or religions"<sup>25</sup>, builds

on the idea that, *by nature*, man is indefinite or underdetermined. At any one point a number of open possibilities are compatible with man's nature as it is. But once one choice is made others are precluded, and what was once a contingent possibility becomes a determinant fact by its being chosen. In this way, man 'creates' himself; we have no essence, as Sartre says, we have facticity. One source of this fundamental Vichian thought is Pico, what makes man more worthy of admiration than the angels is his very indefiniteness. God first made the cosmos, Pico relates. He populated the heavenly spheres with angelic intelligences and excremental parts of the lower world with brutish animals. Having exhausted His larder of archetypes and filled His inventory of niches in the great chain of being, however, He felt a residual twinge of imperfection. Who was there to enjoy His fine work? Who could worship its beauty and wonder at its vastness? To fill this gap, God created protean and self-transforming man:

"At last the best of artisans ordained that that creature to whom He had been able to give nothing proper to himself should have joint possession of whatever had been peculiar to each of the determinate kinds of being. He therefore took man as a creature of indeterminate nature and, assigning him a place in the middle of the world, addressed him thus: 'Neither a fixed abode nor a form that is thine alone nor any function peculiar to thyself have We given thee, Adam, to the end that according to thy longing and according to thy judgment thou mayest have and possess what abode, what form and what functions thou thyself shalt desire. The nature of all other being is limited and constrained within the bounds prescribed by Us. Thou, constrained by no limits, in accord with thine own free will, in whose hand We have placed thee, shalt ordain for thyself the limits of thy nature. We have set thee at the world's center that thou mayest from thence more easily observe whatever is in the world. We have made thee neither of heaven nor of earth, neither mortal nor immortal, so that with freedom of choice and with honor, as though the maker and molder of thyself, thou mayest fashion thyself in whatever shape thou shalt prefer. Thou shalt have the power to degenerate into the lower forms of life, which are brutish. Thou shalt have the power, out of thy soul's judgment, to be reborn into the higher forms, which are divine.'"<sup>26</sup>

What Vico found in this idea of man's innate indefiniteness was a reason for rejecting all attempts to 'ground political and legal legitimacy by an appeal to fixed anthropological constants. Even Grotius' vague "socialness", given the moral institutional content which it ostensibly preselects, must be ruled out of line. Following Pico, in fact, it becomes illicit to justify any regime or social order on the grounds that it allows man to realize his timeless "essence", or fosters *l'homme do droit divin*.

God's man, prior to his self-transformative action within culture, is an amorphous blob (a much harder line than Rousseau's on man's natural indeterminacy).

The German Romantics, vexed at the Enlightenment notion that man's eternal nature was to be an eighteenth century Frenchman of refined urbanity and impeccable taste, gave new life to Pico's idea that man has no essential nature, or to put it in existential jargon, no essence except the absence of an essence. Since then, and especially in the twentieth century, we have heard innumerable times that secular reason is left without an ultimate foundation ("constrained by no limits") in normative as well as theoretical argument. Pico was quoted at length because the idea that it is, in principle, impossible to dredge-up any normative compulsions out of 'human nature' is pivotal both for the main argument of this thesis and for our explication of Vico's theory of secularization. With this in mind, it may prove fruitful to reformulate Vico's rendering of Pico in contemporary jargon, to update his "mental dictionary", as it were.

According to Vico, institutions can be understood as cultural compensation for an otherwise intolerable degree of instability inherent in the human organism. Unlike other animals, Vico agrees with Pico, man's instinctual organization is unspecified. His biological equipment can best be described in terms of generalized capacities which are never 'precise' or 'directed' enough to pre-identify a narrow and unique ecological niche: a species-specific environment, or what Pico called a "fixed abode". In other words, congenital privation of instinctual guidance entails an elasticity and openness of human action and experience. As a consequence, man is the only species so adaptive that he can live anywhere on earth. Organic foundations, it seems, can never specify in advance the content of man's behaviour and beliefs. If abandoned to biological imperatives alone, in fact, human life would have little stability or direction. Man manages to orient himself, Vico argues, only by means of a 'second nature' which history (not God) creates. By means of institutions, as Vico puts it, man's "giant body", his unwieldy bestiality, is reduced to "the proper human form".<sup>27</sup>

Thus, when Vico denies any isomorphism between organic systems (living bodies in environments) and symbolically organized systems of action (institutions), he does not mean to slight or ignore the compelling

social relevance of man's peculiar biology. On the contrary; the *possibility* or replacing instinctual guidance with some sort of socialization into an institutional and symbolic space organized, say, according to kinship status and religious beliefs, depends on the very indeterminacy of man's "nature". This congenital peculiarity of the human species is related, in turn, to the (biologically) protracted extrauterine infancy of man. Important organic developments which occur during the foetal period in other animals take place after birth for man, that is to say, when he is already interacting with a social surrounding. This suggestively recalls Hegel's (properly, Pico's) assertion that there is no fixed or unchanging substratum underlying and determining the development of human consciousness. For Vico, it means that socialization gets a chance on eminently malleable material, a material upon which, quoting Pico again, "God has conferred the seeds of all kinds and the germs of every way of life."<sup>28</sup> Against Grotius' consoling idea the "the seeds of virtue have been planted in us by nature"<sup>29</sup>, Pico and Vico both deny man the solace of a normative guarantee. The inherent instability of the human organism (faced with threats from an undominated nature), always requires symbolic and institutional restructuring in order for man to survive.<sup>30</sup> But there is no guarantee either that this restructuring will be virtuous or that all virtues somehow coincide. To be sure, Vico asserts, sounding perilously like Grotius, that "man is naturally sociable"<sup>31</sup>. In reality, of course, Vico is arguing against Grotius. When he remarks that "men are *naturally* impelled to preserve the memories of the laws and institutions that bind them in their societies"<sup>32</sup>, he does not claim that these laws and institutions are 'naturally' as philosophers would want them. Fixated patterns of expected behaviour, reciprocal typification and codified boundaries of experience have the anthropological function of reducing organismic and environmental overcomplexity, relieving man from a superabundance of outer stimulus and inner impulse and hence sparing him the attendant vertigo of excessive decision-making demands. Nothing about this description would lead us to assume that institutional orders are 'limited and constrained' by any (natural or divine) *pre-condition* of culture. In fact, this *is* the systematic relation of human biology to action. Foundationlessness should be understood as man's inescapable problem. To be sure, there are intricate correlations between the evolution of, say, the extremely flexible human hand and the innovative capacities of social

systems for technological adaptation to, and control of, the natural environment. Just so, reproduction, filiation and prolonged (partially 'erotic') dependence of offspring on their parents all foreshadow the symbolically organized relationships of kinship and socialization. Nonetheless, it seems a peculiar characteristic of man that his organic and instinctual equipment is so radically 'vague' and 'generalized' that it will hardly ever pre-select his actions and interactions in any detail. Nutritional imperatives, for example, always *underdetermine* human ways of procuring and eating food. In fact, if we take an anticipatory look at the four symbolic "media of communication"<sup>33</sup> which play the largest role in Vico's conceptualization of culture, we can see even more precisely what 'foundationlessness' means. The four media can be labelled: (1) science, (2) marriage, (3) law, (4) property. None of these systems, as Vico makes clear, is self-sufficient. Each *depends* on a symbiotic mechanism, on an organic physiological underpinning: science on perception, marriage on sexual relations, law on physical force, property on immediate need satisfaction. Yet each is *independent* of nature in the sense of being *underdetermined* by it.<sup>34</sup> In other words, for organic life to 'support culture, it must already be transformed and interpreted *by* culture. Organic foundations are so highly generalized, so open to cultural elaboration, variation and redefinition that they cannot serve as a basis for normative selection. They do not contain the "seeds of virtue" any more than they contain the germs of iniquity.

Arguments such as these underlie Vico's repudiation of modern natural law, and especially of its attempt to provide a secular replacement for the old kerygmatic guarantees. Although man is 'by nature' sociable, his social life has no value-discriminating *fundamentum* in nature. Like Pico, Vico rejects all efforts to secure intersubjectively binding normative claims by an appeal to underlying anthropological invariants. The only thing invariable about man is his indeterminacy. Man's nature, therefore, like nature in general, is a problem not a foundation. As a consequence, enlightened reflections on 'human nature' can never ensure value-unanimity or a homogeneity of perspectives. To be sure, the subjectively perceived 'inevitability' of institutional and symbolic codes may dupe children, theologians and philosophers into asserting 'universal natural norms', but such coordinated and coordinating misperceptions belong to a post-natural (and precarious) achievement of social life itself.

## II

Norms and Historicity

The negative thrust of Vico's argument is that the philosopher's appeal to underlying natural constants can never warrant a normative claim; this is the basis of his rejection of Hobbes. Human 'nature', prior to cultural elaboration and definition, is simply too unspecified to function as a meaningful foundation for law and politics. Since God made nature, He alone can know it. This does *not* mean, however, that Vico believes there to be nothing binding about norms. He simply thinks that whatever 'binding force' a norm does have must be understood in all its precariousness and ambiguity - as an intracultural achievement and neither as a gift of nature nor as a universally innate idea (c.f. Calvin on natural law). Against the powerful Cartesian currents of his time, Vico argued that contempt for tradition is contempt for reason, since the locus of reason is neither nature nor the heads of individual enlightened philosophers but, rather, the gradual modifications of man's collective historical 'mind'. Since rational and moral norms are entwined with the institutional and symbolic nexus of a society, he went on to claim, they must be subject to the same transitoriness and historicity as society itself. As he once put it, even the forms of justification are generated and destroyed.<sup>35</sup>

To the apparent surprise of Leo Strauss<sup>36</sup>, however, Vico's denial of an underlying human essence and timeless natural law did not lead him into a promiscuous historicism or conventionalist relativism. He did not conclude that, since normative orders emerge and decay, they are therefore 'baseless' fancies, fictions of comfort only to the insecure. On the contrary, Vico believed, as he says repeatedly, that he had found a "truth" in history, a necessity hidden within the contingency of genesis and destruction. This "truth" is partially expressed in the insight that "the world of civil society has certainly been made by men, and that its principles are therefore to be found within the modifications of our own human mind."<sup>37</sup> One must note that "necessity" here is nothing constant, nothing fixed and static beneath the course of human history. It can best be described as a kind of 'logic' immanent in the development of history itself - a logic, however, unlike Hegel's. Although Vico speaks of "the

common sense of the human race,"<sup>38</sup> he believes that this common sense exists only diachronically, within the process of social evolution and change. The phenomenon of 'convergence' (that all societies tend to move from tribal/particularistic to human/universalistic institutions and norms) does not mean that there is only one set of legitimate human values, a set of values which enlightened philosophers may hawk in the *Theorie markt*. Far from being the product of philosophical insight, Vico's "natural law of the gentes" is coeval with the religious customs of the nations and was established "without any reflection"<sup>39</sup>. In the early and middle periods of social evolution (in the ages of heroes and gods), as Vico sees it, theocratic and aristocratic norms have a genuinely 'necessitating' force, even though they are, by present-day standards, particularistic and unjust. Inhabitants of such earlier periods perceived such norms as 'inevitable' or 'natural', as etched indelibly into the cosmic scheme of things. From the fact that eighteenth century academics repudiate such norms, says Vico, it would be absurd to conclude that they *never were* valid. In retrospect, as a matter of fact, one must say (1) that those norms were experienced as 'binding' in a world which has now disappeared, and (2) that the disappearance of that world was simultaneously good and bad, an advance in flexibility which threatens to tilt into a barbarism of reflection.

Following Vico a step further, we reach the age of men. This third period of socio-cultural evolution usually comes about by a process of secularization culminating in a democratic revolution, an 'enlightened' overturning of old theocratic and aristocratic codes and values. The universal norms which flourish in this period (like universal human equality), although initially improbable, become irreversibly entrenched and *therefore* take on a necessitating or binding force. A crucial misstep which Vico attributes to Grotius is his "philosophical conceit" of reading-back universalistic principles into the beginnings of society: "Grotius... begins with nations reciprocally related in the society of the entire human race."<sup>40</sup> This is quite an anachronism, according to Vico, since the "origins of humanity" were surely "small, crude and quite obscure"<sup>41</sup>. The first men belonged to "family kingdoms", not to the Stoic brotherhood of all mankind.<sup>42</sup> Thus, the first thing Vico wants to say is that universalistic norms were not coeval with the cultural break with nature; but rather had to be generated in a long course of history - through custom and not

through philosophical fiat. The second thing he wants to say is that these universalistic norms are so formal and 'empty' (open to *ad hoc* reinterpretation and discretionary violation) that we can safely speak of a general shift toward reflective corrigibility or a revaluation of arbitrariness. Egalitarian justice, which Vico affirms, cannot be separated from indiscriminateness and social disintegration (the barbarism of reflection), which Vico decries. The new secular or 'cognitive' attitude, at any rate, can be understood as a renewal of access to contingency which had been provisionally 'buried' at the cultural break with nature. In advanced democratic-commercial societies, Vico explains, there is a general drift away from obeisance, solidarity and piety toward discussion, scepticism and impiety. This is part of the general transition toward first theoretical and subsequently practical revisability. Universalistic norms may claim to provide new (finally rational!) rules for social interaction, but in fact they are so abstract, they allow so much room for improvisation, that advanced societies based on such 'norms' are quickly threatened with anarchical fragmentation. This, according to Vico, is that barbarism of reflection which is even "more inhuman" than the original "barbarism of sense".<sup>43</sup> Universalistic norms foster competition, disagreement and self-seeking. As we shall see below, they create the kind of society described by Locke. Their emergence is hard to distinguish from the disappearance of communally shared values in general.

The positive import of these arguments is that the genuinely 'binding' character of social norms remains uncompromised by historicity. We fail to see this chiefly because of a tacit commitment to the idea that all rational value-imperatives must be univocal and mutually compatible. For Vico's first two periods of social evolution, things work out fairly well since, under primitive conditions, group cohesion demands value-unanimity. Difficulties arise in the age of men, however, because (1) the egalitarian break with aristocratic and theological traditionalism implies a simultaneous legitimation of future-oriented corrigibility and delegitimation of the shared customs of the past, and (2) formal and universalistic norms permit intrasocial discussion, discord and disagreement. If this revolutionary combination of 'vertical' and 'horizontal' disintegration can be called normlessness, it is a normlessness dependent upon democratic-commercial-rationalist-individualist norms. Whatever difficulties are involved in affirming both the binding and the historical character of norms, Vico



makes clear that he wants to do just that. With this in the background he can employ the category 'apophrades' (the 'return of the dead')<sup>44</sup> to forms of justification which are historically out of place. The possibility of using such a category explains why Vico constructs his "philosophy of authority" within the parameters set by a theory of social evolution: no one is impressed nowadays by an appeal to Jove's thunderbolt. In times of sceptical decadence, Vico suggests, there is no univocal ground for settling normative disputes. When men live in advanced societies, they promiscuously develop a repertory of such 'grounds'. They can justify nearly everything they do, and eventually become "ready to uphold either of the opposed sides of a case indifferently".<sup>45</sup> Indeed, such promiscuity is a *binding condition* of secular societies, of societies in the grips of the barbarism of reflection. To offer a foundationalist ontology to the inhabitants of such a highly secularized society is *apophradic*. It is like appealing to Jove's thunderbolt, since it is asking for nothing less than that history begin all over again.

What Vico is arguing for, in other words, and without any appeal to natural foundations, is the possible coexistence of normative necessity and contingency, of binding norms and historical displacement. He can argue for this because he holds that there are humanly 'necessitating' norms which happen to be inconsistent with one another, that cannot fit together in a single age. His "logic of history", therefore, is not Hegelian, does not solace us with a palliative like "history is the story of liberty". Of course, in one sense, history is the story of liberty for Vico - but not in a comforting or redemptive way. "The unchecked liberty of free peoples," he says in the concluding paragraphs to the *New Science*, can be "the worst of all tyrannies"<sup>46</sup>, and he goes on to describe the individualistic barbarism of reflection and destruction of the old communal life.

## III

Descartes and Bon Sens

Perhaps Vico's profoundest *bête noire* is the Cartesian-Enlightenment notion of 'progress'. Eighteenth century optimism about the imminence of *the* correct social order was based on a widespread Cartesian confidence in universal reason detached from *mores* and prejudice. If *bon sens* is distributed equally in all men (regardless of particular social and institutional mediations, as Descartes and Calvin assert) then individual reflection can arrive at truths upon which all humanity will agree. This promise of *consensus omnium* contains the covert (to Vico ludicrous) assumption that *all defensible human values harmonize*. The idea of a perfect society, following the common progressivist line, is a logically coherent one, whatever an occasional pessimist might say about its historical likelihood. Already at this point, Vico parted ways with his age. When he says, "There must in the nature of human institutions be a mental language common to all nations, which uniformly grasps the substance of things feasible in human social life and expresses it with as many diverse modifications as these same things have diverse aspects"<sup>47</sup>, he makes no claim that human diversity might be fitted into a coherent whole. Never assumed in the concept of humanity's "mental dictionary"<sup>48</sup> is the wild idea that all utterable values to which an intelligent man might subscribe are congruent with one another.

The age of heroes, as Vico reconstructs it, was an age of vigorous poetry, of fierce religious and communal loyalties and of forthright action. The 'glory' of an archaic society, however, was inseparable from its cruelty, its ferocity, its injustice. "Imagination is more robust in proportion as reasoning power is weak."<sup>49</sup> With the rise of democracy, commerce and science (i.e., the onset of the age of men), heroic barbarism is replaced by tolerance and equitable exchange under written law. Blood vengeance is superseded by due process. Unfortunately, the gain is simultaneously a loss. As cruelty and injustice disappear, so do valorous deeds, heroic poetry, communal ties and the religious wholeness of life. That the cost of advance is irredeemable privation is clear from the fact that, when men begin to be "free of subjugation and attain equality"<sup>50</sup>, they turn all their energies "to making laws with a view to the increase in wealth"<sup>51</sup>. The various values which can be expressed through the mental dictionary of mankind cannot be woven together in a single web.

Cartesian 'reason' stacks certainty upon certainty with never a back-pedal or loss. It admits of no budding incongruities. Vico's repudiation of Cartesianism, therefore, can be explained as follows. Reason is the capacity to solve problems, and every solution to a problem generates new unexpected problems. On the face of it, Vico notes, there is nothing to suggest that all problems could be solved at once. Just the opposite is the case if all solutions produce new problems. If that is true, then there can be no such thing as either a definitive solution to all problems or (in social terms) a perfect society. By breaking the old aristocratic monopolies on power, truth, marriage and wealth, Vico argues, the "plebs" made real progress toward solving the problem of social injustice (of the unequal distribution of life chances). But even though egalitarian justice is rational and valuable, Vico turns around to say, it cannot help eroding religious communalism. In fact, it sets loose a riot of utilitarianism and opportunistic self-seeking. It is unquestionably just, in Vico's eyes, for Solon (or whoever) to tell the plebs to *reflect* on their 'abstract' sameness with the nobles. What makes reason less cunning than some may like, he continues, is that nominalistic universalism ("we are all 'men'", where 'humanity' is an empty name rather than a variable essence admitting degrees of realization or excellence) contains the seeds of social disintegration. Vico views the loss of communal wholeness as a direct consequence of the advance of egalitarian justice. The two norms of 'equality' and 'solidarity' (or 'quantitative' fairness and 'organic' fraternity) are both vital human concerns. Unfortunately, and Vico is right in this, they are not quite compatible with one another.

The importance of the *New Science* for a philosophical alternative to Cartesianism and natural law theories in politics can be provisionally summarized in these four ideas:

- (1) that no normative claim can be established by the appeal to a timeless human nature or essence;
- (2) that there is something disturbingly 'tyrannical' about enlightened philosophical insight detached from *mores* and custom;
- (3) that all human values are not *a priori* compatible with one another;

- (4) that the rise of *Gesellschaft* spells the inevitable demise of *Gemeinschaft*.

Thus, even though Vico's construal of secularization allows us to use the category of 'apophrades' in the philosophical discussion of politics, the *New Science* leaves no illusion that history progresses toward a culminative and redemptive 'highest good'.

The urgency of a Vichian reinterpretation of political reason can most easily be discerned against the background of twentieth century attempts to fuse *Gemeinschaft* and *Gesellschaft* in a single perfect society. These totalitarian 'experiments', complex as they may be, contain an obtuse misperception of the basic inevitabilities of modernization. In pre World War I Italy, for example, the average Italian's sense of the world was dominated by the family. As the country industrialized by the war effort, Italians found themselves suddenly faced with the vast impersonal forces of a modern economy. Fascism, at least in part, was an attempt to 'familiarize' these forces, to reduce the unwieldy and inscrutable structures of *Gesellschaft* to the tightly-knit domesticity of *Gemeinschaft*. Following Vico, it is true, we must recognize the values of both earlier religiously integrated cultures and modern individualist 'bourgeois' society. But we must see modernity's gain as simultaneously an *irreversible* loss.<sup>52</sup> We must not try, as totalitarianism does, any philosophical (i.e. apophradic) fusion of old and new. It was precisely Hegel's desire to reorganize market society like a polis that made him into a hailed progenitor of twentieth century 'ethical states'. Integral perfection may be an inspiring ideal for philosophers, but it is a destructive one for societies. Indeed, the inspired pursuit of utopian goals generally has only one consequence: it makes the world worse. The inherent illegitimacy of totalitarian regimes, moreover, is connected to their systematically apophradic programme. This programme requires that they constantly claim to be doing what they could not conceivably be doing. The breach between ideology and reality (lying), carried to Nazi and Stalinist extremes, is rooted in a politics of 'reason' detached from custom, in the politics of anachronism and in a politics which refuses to recognize the painful fact that human values are not all compatible with one another.

In order to substantiate these claims, we will try to follow Vico in explaining what is involved in the gradual non-linear shift from *Gemein-*

*schaft* to *Gesellschaft*, from inflexible tradition to traditionless flexibility.

## IV

The Philosophy of Authority

Since, as Vico says, it is a "vain curiosity"<sup>53</sup> to seek a foundation for normative reasoning outside of or underneath the symbolic code of culture, the 'philosophy of authority' must begin with the study of (1) religion, and (2) kinship. In contemporary terms (which we will take the liberty of using throughout), one might say that the two basic principles of archaic society are (1) the maintenance of the unity and the 'not otherwise possible' character of the world through religious rituals and narratives, and (2) the clan-integrating primacy of an elaborate and relatively inflexible kinship system. At any rate, we may follow Vico's suggestion that the institutionalization of these two basic principles signals the cultural break with nature. Not even survival imperatives can be thought to be "natural norms" since the action-orienting value of 'survival' is culturally dependent on a socially variable concept of the 'good life'.

Jettisoning the fancy that norms come from nature as a given, Vico tries to show how they arise in society as an achievement. He underlines the intra-cultural genesis of norms by citing the familiar derivation of the word 'religion' from *religare* or 'to bind'. "Religion alone has the power to make us practice virtue, as philosophy is fit rather for discussing it."<sup>54</sup> Socialization into a religious world view is so potent that it can "tame the sons of cyclopes and reduce them to the humanity of an Aristides, a Socrates, a Laetius, and a Scipio Africanus."<sup>55</sup>

Interestingly, Vico did not believe that pre-cultural life is *ordered* instinctually. In fact, this view would have struck him as quite paradoxical, since he tended to identify automatic instinctual promptings with ataxia and disorder. However, this is unrelated to Vico's main point: that man lifted himself out of nature and into culture by the self-induced fear of an imaginary divinity. Vico wants to argue that stereotyped codes of thought and behaviour sprang up in a seemingly natural way in order to

circumvent the potentially overwhelming experience of ataxia. The original subduing of ataxia coincided with the emergence of *piety* or what we have been calling the "normative attitude". This is the moment, according to Vico, when the "creatures began to think humanly".<sup>56</sup> Notice the implication which we have already mentioned (and will return to later on) that humanity is coeval with the institutionalization of defenses against terrifying outbreaks of environmental contingency:

"...at last the sky fearfully rolled with thunder and flashed with lightning, as could not but follow from the bursting upon the air for the first time of an impression so violent. Thereupon, a few giants, who must have been the most robust, and who were dispersed through the forests on the mountain heights where the strongest beasts have their dens, were frightened and astonished by the great effect whose cause they did not know, and raised their eyes and became aware of the sky. And because in such a case the nature of the human mind leads it to attribute its own nature to the effect, and because in that state there nature was that of men all robust bodily strength, who expressed their very violent passions by screaming and grunting, they pictured the sky to themselves as a great animated body, which in that aspect they called Jove, the first god of the so-called greater gentes, who meant to tell them something by the hiss of his bolts and the clap of his thunder."<sup>57</sup>

If we wanted to reduce these unwieldy Neapolitan fancies to proper academic form, we might say that an animistic misinterpretation of environmental contingency was functionally indispensable for impeding a relapse into pre-cultural ataxia. Vico knows, of course, that a mythical world view or "vulgar metaphysics"<sup>58</sup> alone could not stabilize the breach between nature and society. This requires the additional introduction of a stereotyped kinship code, which Vico analyzes into the two principles of marriage and burial of the dead.<sup>59</sup> These principles must be guarded *santis-simamente* for all nations "so that the world should not become again a bestial wilderness."<sup>60</sup> Not to stay aloof too long from the wilderness of the *New Science*, Vico reveals his dream about the inception of marriage. The grunting tantrums of the sky appalled the inchoate men ("stupid, insensate and horrible beasts")<sup>61</sup> to such an extent that they ceased their sloppy habit of fornicating in the daylight.<sup>62</sup>

Piety, or the "normative attitude", is a pre-reflective and dogmatic commitment to a system of cultural codes or action-orienting rules. It

prohibits, by the threat of divine reprisals, any significant backsliding into the promiscuous ataxia of bestiality. Pre-reflective abashment or shame is thus the colour of virtue. A primitive individual is socialized simultaneously into a religious world view and into a set of (more or less intricate) ascriptive kinship relations organized according to sex and generation roles. Taken together, so Vico suggests, a mythical interpretation scheme and a stereotyped kinship system provide a socially produced *fundamentum* ("second nature"), a principle of 'ontological' order which appears 'inevitable' or 'incorrigible' and thus helps orient action and belief at the societal level. Because a normative order like this cannot be questioned ("if you cross this line, the bolt will fall!"), it has enormous selection value, increasing survival capacity by bolstering group coordination.

Of course, when Vico suggests that the double institutionalization of myth and kinship signals a "cultural break with nature", he does not imply that such a break was perceived as such by the first men themselves. On the contrary; as should be clear from the last passage quoted, Vico's *grossi bestioni* were vigorous animists, interpreting the world anthropomorphically and construing *nature as a language*. Savages, not unlike children, "give sense and passion to insensate things," and "take inanimate things in their hands and talk to them... as if they were living persons".<sup>63</sup> In other words, the self-interpretation of archaic man contains no crisp differentiation between the social and the natural. One way to put this is to say that kinship relations tend to permeate the mythical schemes which - received uncritically from previous generations - aid in interpreting *both* man *and* nature. This "both/and" relation is significant precisely because primitive religious narratives (Vico calls them 'theological poetry' or 'divine fables') end up lending a *familial unity* to the cosmos which both comforts the psyche and helps sustain the all-important group solidarity.<sup>64</sup>

Significant here is the suggestion that primitive life is shot through with a nervous intolerance for objects and events which cannot be neatly fitted away into some tidy slot or groove of a unified world-interpreting narrative. As mentioned, the structural incapacity of stone-age economics and technology to master fluctuations and instabilities in the environment is a probable source of this conspicuous anxiety. The anthropomorphic

spill-over of kinship codes into nature ("that tree is my wife's brother") and heaven ("I am descended from the gods") seems to provide some relief. Indeed, familial world views, moral systems and cult practices probably play a major role in absorbing the insecurity which stems from a yet unmastered (contingent) environment. As long as a society's technology remains relatively undeveloped, outbursts of environmental contingency - thunderbolts, floods, pestilence, etc. - must be "absorbed by narrative" if the world is to preserve its action-orienting unity. As mentioned above, these narratives are *ontological* in the sense that they help reconstrue contingency as necessity. They explain to resourceless men why the world could not be other than it is. Later, when technology reaches a higher level of development, it becomes impractical (even inefficient) to interpret away environmental contingency. It becomes essential to conceive nature as a dimension of the "also otherwise possible", as susceptible to non-trivial human intervention and control. Thus, technological advance is a key mechanism in the non-linear shift from a normative to a cognitive orientation. At the more advanced 'cognitive' state, one should note, men forfeit the comfort which originally accrued to their ability to interpret away the fortuitous. In order to learn how to master contingency through their own actions, men have to expose themselves to bitter risks: to the risks of being responsible when they fail and unsolaced when disaster has struck. It is precisely to avoid such disappointment that primitive myths 'blind out' the possibility that the world could be other than it is. That is to say, foundationalist ontology is compensatory for social resourcelessness. Without relatively efficient mechanisms for neutralizing surprise and securing cosmic equilibrium, primitive man might be unable to avoid hysterical panic.<sup>65</sup> Predictably enough, archaic man perceives calamitous occurrences animistically, as the embodiment of daemonic purpose or of ancestral wrath. He cannot bear the idea that such events are the play of chance, that they do not fit into some overarching and inevitable scheme and could have been other than they were. To think that calamities do not 'have to happen' is simply too much contingency for a resourceless man to bear. According to what Vico suggests, in sum, ontological guarantees are fully appropriate only in early undeveloped societies.

Now, this is not to say that holistic and foundationalist world views arose *in response* to early man's fear of contingency. It is impossible to accept literally Statius' idea, which Vico repeatedly quotes, that *primus*



*in orbe deos fecit timor*, simply because, without relatively stable structures, there can be no focused fear. Fear too, as Vico suggests, is an evolutionary achievement. Thus, it cannot be the 'fixed' presupposition of all evolution; it cannot have 'created' the theological narratives upon which depends the stabilization of the breach between nature and culture. Nonetheless, it seems reasonable to say (what is less extravagantly theogonic) that primitive religions erect their ceremonial walls around salient and menacing 'zones of contingency', zones located in the environment (unpredictable thunderbolts), in the organism (lawless instinctual promptings), in technological acquisitions (control of fire), and in language (the possibility of saying "no"). In describing the Trobrianders, Malinowski suggests that every advance in technology is accompanied by a retreat of ontology: "In the lagoon fishing, where man can rely completely on his knowledge and skill, magic does not exist, while in the open-sea fishing, full of danger and uncertainty, there is extensive magical ritual to secure safety and good results."<sup>66</sup> Magic, of course, is not *identical* with ontology. Yet both seem to express a technical impotence in the face of nature's overcomplexity. At the end of their resources, some men resort to witchery; others break out in litany and hosanna. To support such conjectures about early man, at any rate, Vico often adds: "Libertines, too, as they grow older, turn to religion, for they feel nature failing them."<sup>67</sup> Not only environmental nature, but also internal nature can fail us. Birth, death, illness and adolescence are four key 'zones of contingency' upon which much ceremonial energy and imagination is traditionally spent. *Rites de passages* are the typical institutional response to such organismic precariousness.<sup>68</sup>

## V

The Barbarism of Reflection

The justification for belabouring this genetic connection between foundationalism and contingency is its importance for Vico's philosophy of authority. If there is no 'ground' for justice and right outside of religion and religiously supported customs, then secularization and the advance of 'reflection' implies the demise of traditional forms of legal and political rationality. If ontology compensates for resourcelessness

by ensuring group cohesion, then the technical development of resources will inevitably undermine old 'foundations' and loosen old religious solidarities. Attendant to the growing awareness that nature is systematically manipulable (could be other than it is), is the realization that institutional norms are systematically revisable. To paraphrase Nietzsche, as science arises it becomes harder and harder to think of the gods. At any rate, what makes the *New Science* such a crucial book for political philosophy is precisely Vico's exploration of the perplexing relation between secularization and legitimacy. Vico outlines the three basic stages of socio-cultural evolution as follows:

"(1) The age of gods, in which the gentiles believed they lived under divine governments and everything was commanded them by auspices and oracles, which are the oldest institutions in profane history. (2) The age of heroes, in which (the nobles) reigned everywhere in aristocratic commonwealths, on account of a certain superiority of nature which they held themselves to have over the plebs. (3) The age of men, in which all men recognized themselves as equal in human nature, and therefore there were established first the popular commonwealths and then the monarchies, both of which are forms of human government."<sup>69</sup>

It is clear that Vico did not conceive this modernization process as simply a transition from conventional norms to natural norms. The emergence of a universalistic ethic is some sort of a progress, according to the *New Science*, but it cannot be a progress *toward nature*, since 'nature' is ataxia and bestiality, precisely that which man has voyaged into culture to escape. Moreover, it is not 'progress' at all, if that word is meant to be unequivocal. Universalistic ethics must always be understood as destructive of man's earlier communal life, as undermining his familial inclusion within the organic *Gemeinschaft*. But to see all the subtleties of Vico's concept of political evolution, we must look more closely at each of his three stages.

The "world in its infancy"<sup>70</sup>, according to the *New Science*, was composed of "family kingdoms". At this germinal stage of political-cultural evolution, the primary form of social differentiation was 'segmentation'. Vico refers to the roughly equal clans of this stage as "household commonwealths of monarchic form".<sup>71</sup> Each family or clan (a unit based, according to Vico, on the double code of residence and descent) has approximately the

same structure and does approximately the same work as the others. Rudimentary societies like this, of course, do contain differentiations according to strata and function, notably along the lines of sex and generation roles. Such stratification and functional differentiation, however, are normally secondary to a primary differentiation according to family segments. This arrangement, it seems, is bound to enhance survival potential in a menacing environment, since any given segment of society (*un regno familiare*) can be destroyed without damaging functions that are vital for the entire group. Emblematic for the religious origins of these family kingdoms is that "fantastic universal", the totem. The totem has always been recognized by anthropologists as a cosmos-integrating symbol. By representing an animal (or plant) species, the clan and a divine principle, such a fantastic universal links together the subhuman, human and superhuman. This harks back to the need of resourceless men to sustain a narrative unity of the world - the organizational embodiment of this mythical cosmic-integrity is the 'inviolable' unity of the clan. The totem, while 'unifying the cosmos', serves as a *drapeau* (as Durkheim put it)<sup>72</sup>, as a ritual mechanism for securing the symbolic boundaries of group identity, for coordinating the self-interpretation of a collective 'we'. To bring this back to the *New Science*, we can say that a totem helps organize an initiate society into segments, along the lines of a member/non-member classification scheme. (Perhaps the ultimate Vichian critique of both the Hobbesian and Rousseauan anthropological mythopoems of the 'state of nature' is that 'natural man' could not have conceivably been as the latter describe him, namely, isolated and utterly insecure, because 'natural man' was bound and protected by his family clan structure.)

The next great evolutionary transition, Vico claims, is the shift from the "family state" to the "city state", from a society differentiated primarily by segmentation to a society differentiated primarily by stratification. To depart briefly from Vico's version of this shift, we would suggest the following: because of various fortuitous factors like the number of sons, quality of soil, luck, and so forth, lasting inequalities tend to develop among originally equal family segments. In other words, certain families tend to gain and consolidate wealth, power and functional importance (for instance, eligibility to the office of shaman). According to the *New Science*, of course, this is not the way "civil power emerged from family power"<sup>73</sup>, though the stratified and inequitable outcome des-

cribed is the same. Metaphorizing perhaps on stratification through conquest, Vico reconstructs the story this way: while certain men (the original 'fathers') had fled the ataxia of bestiality by establishing fixed residences and founding monogamous marriages and thereby becoming "certain fathers of certain children by certain women"<sup>74</sup>, others had neither ceased their "bestial wanderings",<sup>75</sup> nor their "frequent intercourse with their mothers and daughters".<sup>76</sup> Still untamed by the religious institutionalization of incest-prohibiting kinship codes, these "unchaste, impious and nefarious" men remained on the level of pre-cultural beasts. Life for the yet unhumanized, however, was far from balmy. Hence,

"after a long time, driven by the ills occasioned by their bestial society, weak, astray, solitary, relentlessly pursued by the robust and violent because of quarrels engendered by their infamous promiscuity, they came at last to seek refuge in the asylums of their fathers. The latter, taking them under their protection, proceeded to extend their family kingdoms to include those *famuli* through the clientele. Thus they developed commonwealths on the basis of orders naturally superior by reason of virtues certainly heroic."<sup>77</sup>

Heroic valour lent a 'natural' and 'inevitable' legitimacy to aristocratic power and privilege. And this legitimation through virtue was not quite 'fictitious', argued Vico, even though based on an erroneously ontological interpretations of class superiority. The nobles *really are* more virtuous than the plebs since they have had a head start on humanization and have thereby consolidated their monopoly on, among other things, "generating in human fashion with wives taken under divine auspices"<sup>78</sup>. Although the newly socialized *famuli* were now human, they were still not as "deeply human" as the original fathers (who had had more practice). The lower classes were thus 'naturally' subjugated by the upper classes. For Vico, as stated, the divine right of nobles was partially erroneous, "for (the nobles) were after all, men who merely imagined the gods and believed their own heroic nature to be a mixture of divine and human".<sup>79</sup> But even if this 'error' could (with a bit of a wrench) be construed as 'class ideology', Vico makes a great point of showing that it could never be called manipulative or intentionally deceptive, because (1) the nobles believed it about themselves ("false religions were born not of imposture but of credulity")<sup>80</sup>, and (2) social order and maintenance of the breach between nature and culture would have been impossible without some kind of

centralized control. Significant here is the suggestion that although exploitation is 'unnatural', it is not much more 'unnatural' (perhaps less so) than the collapse of social order which would follow from hasty equalization.<sup>81</sup> When Vico refers to human nature, of course, he means man's 'second' or institutional nature. Thus, one might resummariize the anti-foundationalist argument of section one as follows: it is not that there is no 'nature' which can support a normative claim; it is, rather, that there are *too many* 'natures' unreconciled with each other - and one of them can almost always be called on at a pinch.<sup>82</sup>

Vico conceived the organizational embodiment of the heroic 'fiction' (that the nobles were a superior race) as an aristocratic monopoly not merely on solemn marriage rites, but on religion, law, wealth, truth and power in general.<sup>83</sup> Since religion and kinship are the two basic principles which lift men up out of nature and into culture, an ambiguous half-exclusion of the lower strata from access to these principles (combined with a convenient 'forgetting' of their own bestial origins by the original fathers), ensures the generalized legitimacy of the nobility's power and privilege.

Vico often refers to Aristotle's remark that, in the monarchy of heroic ages, "the king was a general and a judge and had the control of religion"<sup>84</sup>. This is important because the same process of secularization which undermines the religious unity of the cosmos eliminates the possibility of that radical (and legitimating) role integration whereby a ruler might be simultaneously the wisest, the richest, the most powerful and the best loved. In primitive societies, one should recall, even home and workplace remain relatively *undifferentiated*. The kinship group is the unit of residence *and* the unit of food gathering and production. This background integrity of life (supplemented, as we have seen, by a narratively unified cosmos) is brought into clear focus by the lack of differentiation in primitive leadership roles.<sup>85</sup> Because, in Vico's age of heroes, economic<sup>86</sup>, political and family-founding power is combined with a monopoly on divine revelation, the aristocrats are universally perceived as 'naturally' superior to the plebs. One of Vico's most persistent interests, among these monopolized social codes, is the systematic exclusion of the early Roman plebs from the right to 'solemn nuptials' (*connubium*) or the power to found families. One of the chief mechanisms at work here, according to

Vico, was the widespread association of bestial ataxia (that which is most repugnant) with the inability to tell who is one's father and who is one's son. Without the right to found families officially, man is incapable of making the definitive (or 'higher) step out of nature, incapable of giving his name to his children's children and leaving a trace in history. The early plebs "left no name of themselves to their posterity"<sup>87</sup>, and to that extent were indistinguishable from pre-cultural beasts. "The Roman patrician", in contrast, "was defined as one *qui potest nomine ciere patrem*, 'who can name his father'."<sup>88</sup> Equally important from the perspective of political power was the fact that their exclusion from sanctified matrimony excluded the plebs from having legitimate heirs to their property. Thus, as Vico works hard to show, the plebs were systematically excluded from accumulating a threatening amount of economic power.<sup>89</sup>

Another special concern of Vico's was the role played by literacy in the initial legitimation and eventual delegitimation of aristocratic privilege and power. In the heroic age, "the nobles, being also priests, had kept the laws in a secret language as a sacred thing".<sup>90</sup> The secrecy of the laws demanded that they remain unwritten, at least in the vulgar tongue. If the plebs could read the laws, they might get the irreverent idea that the 'heroes' should follow them too: "the nobles want to keep the laws a secret monopoly of their order, so that they may depend on their choice and that they may administer them with a royal hand."<sup>91</sup> What is worse, if the plebs could read the laws they might get the even more blasphemous (read 'cognitive') idea that the law can be changed.

This brings us to Vico's third great evolutionary transition, the restructuring of society according to universalistic norms and egalitarian ideals. Of course, no society can be organized *quantitatively*. This would mean that there were no functionally specific or strategic positions within the social nexus - in itself an impossibility. What Vico means when he speaks of the emergence of egalitarian society is not that with the collapse of aristocratic legitimation everyone becomes the 'same', but rather that with this collapse (partially causing it, partially caused by it) people begin to *interpret* themselves as all equally human.<sup>92</sup>

Implicit in this summary account are the two basic strands of Vico's concept of the "advance" of reflection: (1) the simultaneous emergence of

egalitarianism, nominalism and atomistic or competitive individualism, what we have called the splintering of old familial forms of social cohesion; and (2) the shift to a new concept of time, to a concept which allows society to conceive its future as radically different from its past; what we have termed the 'cognitive' affirmation of corrigibility and revisability. That these two strands are inextricably woven together may be quickly understood by reflection on the fact that an appeal to equality is basically a *denial of the relevance of the past*, of family lineage and ascribed status for deciding the distribution of life chances or access to opportunities in education, entrepreneurship, nearness to church funds, political processes and so forth. Equality under law, in other words, since it cannot mean that everyone is 'the same', must be understood as a formula for legitimating breaks with the past. For expository and analytical purposes we must say something about the modern concept of time before delving into Vico's theories about egalitarianism and its interrelations with both market society and the "barbarism of reflection".

## VI

### The Transformation of Time

One of the first things to notice about unwritten laws is that they are hard to change, or at least hard to change with any precision. Indeed, as Vico intuited, it is not so easy even to imagine revising a law unless one has seen it written down and (perhaps) growing out of date. With the emergence of literacy, however, "the people may fix the meaning of the laws."<sup>93</sup> Written texts, in other words, rather than rigidifying a culture, make for a new flexibility in relation to the past. At the very least, as Parsons says, "they permit the *differences* introduced by innovation to be defined more precisely than by oral traditions alone."<sup>94</sup> For Vico, writing the laws in the vernacular shifts the 'ground' of legality from ancient custom and *mores* to popular utility and choice. The spread of literacy, in other words, is crucial to the historical replacement of normative by cognitive attitudes. Social evolution, we might say, is a stepwise dethronement of the archaic 'primacy of the past' and the eventual coronation of modernity's improvisatory 'orientation toward the future'. In religiously bound societies, moreover, even when laws are written down, they

tend to be regarded with an initial piety: "men of limited ideas take for law what the words expressly say."<sup>95</sup> With the 'advance' of reflection, such literal-minded piety is supplanted by a flexible capacity for *ad hoc* reinterpretation on the basis of present needs: "Intelligent men take for law whatever impartial utility dictates in each case."<sup>96</sup> 'Intelligence' here is coextensive with what we have been calling the cognitive attitude.

It is important to see how the concept of time (that is, the social interpretation of reality with regard to the difference between the past and the future) is transformed under the impact of the 'advance' of reflection. The guiding of present life by appeal to the past, of course, seems a universal characteristic of religiously integrated societies. Heroic legitimacy, as Vico describes it, is based on the relevance of 'origins', on the pertinence of the fact that nobles have divinity in their past while plebs have bestiality in their past.<sup>97</sup> The mythical cosmos-integrating and clan-unifying narrative underpinning the social interpretation of reality is beautifully borne out in W. E. Stanner's discussion of the "Dreaming", the Australian aboriginal ontology. In this narrative, the centrality of a "sacred, heroic time long ago" issues in a "metaphysical emphasis on abidingness" and "continuity".<sup>98</sup> As Stanner depicts it, this mythical system is "a kind of narrative of things that once happened; a kind of charter of things that still happen; and a kind of *logos* or principle of order transcending everything significant for aboriginal man."<sup>99</sup> The conflated quality of this primitive time schematization, the lack of differentiation between past, present and future, appears to result quite logically in a "reconciliation with the terms of life."<sup>100</sup> Early class differentials, according to Vico, are stabilized on the basis of an erroneous belief that "it has always been thus." The primitive perceives the past to have pre-selected the present and future in such detail that he has no sense of real alternatives. His attitude toward the unequal distribution of life chances is basically 'normative'. Foundationalist ontology has made him see life, in Stanner's striking phrase, as "a one possibility thing."<sup>101</sup>

With the 'advance' of reflection, life becomes a many possibility thing. The modern emphasis on corrigibility and revisability signals man's increasingly conscious access to a multiplicity of alternatives. As stated earlier, even the criteria by which we choose among these alternatives tend



to be cast upon a horizon of other possible criteria, tend to become themselves choosable. Such a shift toward 'cognitivity', at any rate, is bound to produce a 'crisis' in political legitimacy. When men realize that 'it has always been this way' tells us nothing about how things must be in the present and future then societies really start to undergo rapid transformations. The emergence of universalistic norms, according to Vico, was just such a dissolvent of the past and propulsion into the future. Everything began when the plebians started "to *reflect* upon themselves and to realize that they were of like human nature with the nobles and should therefore be made equal with them in civil rights."<sup>102</sup> *Reflection is the cognitive capacity to repudiate the past and readjust prior habits and beliefs.* Such a capacity is a permanent threat to the political *status quo*. If legitimacy survives the 'advance' of reflection, it survives as a 'permanently precarious legitimacy'.

The sophistic split between *nomos* and *physis* (which will be elaborated upon in future sections) arose largely in response to commercial and economic innovations that compelled some sort of rupture with the 'heroic' value commitments of the old landed aristocracy. The destabilizing of old norms does not entail the stabilizing of new norms, since a break with the past brings with it a lasting possibility of non-compliance. Innocence comes to an end when we see the world around us as 'also otherwise possible'. Once the social interpretation of time changes in such a way that men perceive great discontinuities between the past and the future, then *a priori* ontology has become largely irrelevant to everyday thought and action. Of course, it is precisely in a precarious situation like this that we start hearing about 'doctrines' of divine right, for it is only at this point that the nobles have to go out of their way to convince the plebs (and themselves) of what they might not otherwise believe. Before the emergence of the reflective or philosophical idea of universal human equality, says Vico, "the nations were governed by the certainty of authority."<sup>103</sup> The incorrigible and rigid quality of heroic law was institutionalized in early man's perception that this law was 'natural'. Hence, Vico adds, "if the laws turned out in a given case to be not only harsh but actually cruel, they *naturally* bore it because they thought the law was *naturally* such."<sup>104</sup> Vico does not accept Grotius' interpretation of the universalistic "natural law of the philosophers". Grotius, we have noted, thought universalistic norms to be incipient in all men since the nativity of mankind. For Vico,

this was evidence that Grotius had fallen victim to "the conceit of scholars, who will have it that what they know must have been eminently understood from the beginning of the world."<sup>105</sup> But, even though Vico does not accept Grotius' interpretation of universalistic norms, he believes that this interpretation is symptomatic for the reflective age of men. Philosophers assume that their own insights existed from the beginning of time at the cost of alienating themselves from the past. If universalistic norms are 'timelessly' valid, then *no* regime or social order has even been legitimate and only a few have ever neared the shadow of legitimacy. This would be disturbing for 'philosophers', however, only if the past had a hold over the present, only if genuine norms had to be mediated through (particularistic) *mores* and customs. But this is precisely what an egalitarian age of universalistic norms denies.

At the cultural break with nature, one should recall, religious ontology *conceals* the menacing contingencies of nature. With the parallel advance of technology and reflection, structures and events which had customarily been perceived as 'inevitable' are unmasked as 'also otherwise possible'. As *a priori* ontology is undermined, contingency is disinterred; man begins to orient himself in relation to probable discontinuities between the past and the future. It has been argued many times that the rise of capitalism, with its emphasis on planning, contributed to the undermining of the old 'primacy of the past'. After the structural transformation of societies during the seventeenth and eighteenth centuries, the present was no longer guided by feudal reverence for immemorial custom, but rather by entrepreneurial guesswork about the trends of the future. One might choose to have a past, but one had to *choose* to have it. In the shift to the 'cognitive' age of men, in other words, tradition sinks to the level of a 'tool' which sometimes comes in handy, sometimes not. For Vico's 'heroes', the contours of the past were *covertly* dependent on the realities of the present. For modern men, however, the contours of the past are *overtly* dependent on the utilities of an 'open future'. Something of this sort was anticipated by Bruno, Bacon and Pascal in the modernity-initiating *topos* of *veritas filia temporis*. Prior to the sixteenth and seventeenth centuries, time and history had been largely interpreted in such a way that the ancients appeared to be 'older' than the moderns. With Bruno emerges the innovative twist that modern times are the maturity of ancient infancy. When fathers are seen as 'younger' than sons, the bonds of traditionalism

have been undone. With this opening toward the future comes a possibility of that kind of *instauratio ab imis* Jacobinism which makes modern man seem so arrogant to votaries of tradition like de Maistre and Burke. However, once the modern conception of time (of an 'open future') becomes widespread, it becomes very difficult to either legitimate or de-legitimate the present by an appeal to the past. In societies oriented toward corrigibility, traditionalists are sadly marginal.

We should add here that an 'open future' does not imply an expanding consciousness of time. High discontinuity between past and future can lead to a shrinking of temporal perspectives, since the distant future (like the distant past) becomes irrelevant to the present. Southern Italian peasants will speculate about their grandchildren in the year 2000, while industrial workers may have no future awareness beyond payday.

## VII

### Egalitarianism and the Advance of Reflection

The political focus of Vico's third or 'cognitive' stage of social evolution is the emergence of egalitarianism, of the state where all men "are made equal by the laws."<sup>106</sup> In theocratic and aristocratic ages, Vico says, man's mind was not yet 'refined' or developed enough to understand "universals or intelligible class concepts."<sup>107</sup> Early men were natural poets and hence "insensible to every refinement of nauseous reflection."<sup>108</sup> In a word, the primitive imagination could not perceive the *abstract* sameness of plebs and nobles. Once abstract universals or class concepts like 'man in general' become available, however, the unequal distribution of social power and privilege starts to look random and illegitimate. This elemental crisis in aristocratic legitimacy, according to Vico, follows inevitably from the 'advance' of reflection. The old 'organic' interpretation of society as a body composed of head, stomach, arms and feet served to legitimate a functional differentiation between "an order of a few to command and a multitude of plebians to obey them."<sup>109</sup> But the acceptance of the nobility-legitimizing interpretation of society depends on the reasonableness of a one-over-many which is concrete or pre-nominalistic. At the very least it depends on the idea that man has an essence which may

be realized to greater and lesser degrees. Once the abstraction 'mankind' begins to hang loosely and indiscriminately over all heads, it delegitimizes all the old 'organic' inequalities, inequalities based on differences of 'depth of humanity' and of strategic location within the social organism. Egalitarian justice dissolves the old bonds of a stratified society, but it *seems* to have nothing concrete enough about it to replace these bonds, to provide a functional equivalent for them. Along with a new appreciation for an abstract 'human good', says Vico, egalitarianism promotes a growing indifference to the old communal 'public good', to the arena in which nobles might give evidence of their superior humanity. Universalistic norms issue in an *ignorantia reipublicae tanquam alienae*<sup>110</sup>, in an ignorance of politics as of something alien and hence in an indifference toward noble words and deeds. Perhaps this is the most important embodiment of Vico's idea that all human values are not compatible, that the possibilities of man's mental dictionary do not really fit together and that the solution to one problem always produces further unsolved problems. Solving the problem of ascriptive inequality, Vico comments, produces a society where "each man thinks only of his own private interest."<sup>111</sup> The gain of universalistic norms is balanced by the loss of group solidarity and the shared life as well as by a levelling of all lives to a common worth. Vico christens this new problem "the barbarism of reflection"<sup>112</sup>, a barbarism of indiscriminate egoism and social dissolution. Egalitarians find the value of life by dividing the number of legs they see by two.

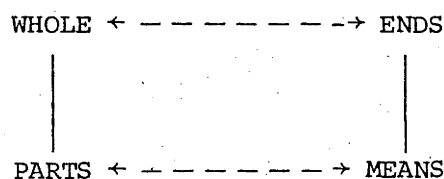
The profundity of Vico's concept of the 'advance of reflection', in other words, lies in the way he sustains the tension between equality and solidarity, between two irreconcilable values of man. For Grotius, one should recall, universalism was the solution to all major problems in politics and law. Vico, by contrast, thinks that there is something lost when man begins to see himself in the context of the "entire human race". The problem can be formulated as follows: personal identity, in earlier societies, is always formed in relation to an overarching group identity. The symbolic boundaries of the 'I' are always secured in relation to a 'member/non-member' classification scheme which allows each individual both to find his "station and its duties" and to 'place' all his fellow men. Now, Vico's point is this: with the emergence of universalistic norms and interpretation schemes, individuals are pushed toward a situation where they must form their identities in relation to a primary reference group

so diffuse and abstract ('mankind') as to be nearly ungraspable. Since there is no determination without negation, the ascent toward 'humanity in general' is a voyage into vagueness. Equality means combining an empty universality ("I am like everybody under the sun") with a pin-point uniqueness ("I am like nobody under the sun"). It excludes the old comforts of clan solidarity where members fall to this side of the line, non-members to that.

Universalistic norms, in other words, leave man naked and exposed, leave the individual with nothing between himself and the (non) community of humankind. The transition to universalism is an inevitability of reflection, says Vico, and yet there is something dreadful and barbaric about it. By placing man in the abstract context of all humanity, it drives him back to a ruthless selfishness. To interpret Vico in modern terms, competitive capitalism (with all its attendant servilities) is the logical correlate of universalistic emancipation.

To make this point more forcefully, we may look at Locke's *Second Treatise*. Of course, Locke saw nothing paradoxical or barbaric about the atomistic 'age of men'. Nonetheless, in most things Locke's depiction of universalistic, individualistic society is quite similar to Vico's. It has the advantage, however, of being worked out in much greater detail. Unlike Locke, of course, Vico combines a sense of the loss of heroic values with a half contempt for the greedy self-seeking of exchange economy. But, even though Locke has no idea of the 'barbarism of reflection', he is not such a bad example of this barbarism. He is a philosopher of *Gesellschaft* and does not remember what *Gemeinschaft* means.

Traditional *Gemeinschaften*, in simplistic terms, interpreted themselves according to the following scheme:



The members of a *Gemeinschaft* see themselves as subordinated to the group. The ends of the whole are *eo ipso* the ends of the parts. Socialization

into a shared religious world view (as well as the threat of social sanctions) guarantees the acceptance of communal goals by every individual. Specifically, the preservation of the community is the *end* for which, if occasion arises, the individual members would be the self-sacrificing *means*.

The emergence of modern universalist/individualist society (to engage in another heuristic simplification) reversed all this. The self-interpretation of *Gesellschaft*, funnelled through Locke, can be schematized as follows:



There is something quite objectionable about this Lockean construal of modern society, to be sure. But what we should note before considering its fallaciousness is the light such a scheme sheds upon the self-interpretation of modernity. The basic idea of Locke's contractarianism is that the state is the means to an end. The end for which a state can be 'used', moreover, lies in the pre-existent individual, in the preservation of his pre-social life, liberty and property. Magically enough, individuals are completely themselves in the 'state of nature', prior to the contractual emergence of civil society. Indeed, on the basis of an inspection of his already fully-developed needs, 'natural man' can decide what sort of 'protection agency' he must establish in order to best secure his interests.

From the *Gemeinschaftliche* perspective the individual is a direct participant in the activities of the social whole and, consequently, cannot shed his moral agency at any time. Mediating structures wedding persons and communities are of secondary importance. The ideal-typical *Gesellschaftliche* outlook acknowledges moral agency only as it arises in the course of certain practices and 'contractual' relationships, stressing the basic purpose of mediating structures as distancing mechanisms facilitating personal autonomy, neatly encapsulated in the maxim: "people are entitled to do as they will providing no one is harmed as a result."<sup>113</sup> The is/ought dichotomy is thus firmly entrenched in the *Gesellschaft* world view

with a tenacity equalled only by its determined exclusion from *Gemeinschaftliche* thought. In other words, the *Gesellschaft* model presents us with a dichotomy between two kinds of agency: (1) agency within broad 'contractual' arrangements under the aegis of *civitas* e.g. buying and selling, standing for political office; (2) private agency: agency outside the purlieu of *civitas*, (what one does in one's chamber). The second form has no (public) moral significance in itself: in order to be cast in a moral light it must be judged in terms of (1). A rough analogy for immorality in this schema would be that of 'unconstitutional' action. (Needless to say, this is the ideal typical *Gesellschaft* point of view - one rarely pursued by its adherents.) So, either value judgements are 'written into *civitas*', so to speak, (as is taken to be the case with the Decalogue, for example) and follow from social arrangements, or they are purely external importations, i.e. something for which the model cannot produce a rationale.

The greater organicism of *Gemeinschaft* thought, however, produces a more substantive moral doctrine, according to which virtually everything one does is essentially social in origin and in consequence. Non-social virtues are not recognized as 'virtues' in *Gemeinschaft* theory, though in a different way to that of *Gesellschaft* theory. Virtue is necessarily social in both schools, but in the former it is so because worth and virtue are fundamentally public notions inexplicable in personal terms, while the latter considers the private realm as outside the field of proper political discourse, explicable but of no significance, unless, of course, it enters the public realm in specific instances of political relevance (as every parliamentarian knows and fears all too well).

The instrumentalization of the state, as Vico saw, spells the end of the classical idea of politics, an idea which in turn had its roots in pre-political clan solidarity. Be desocializing and desacralizing 'natural right', by regrounding it (though not abandoning it) on the secular ideal of individual survival and the calculus of pleasure and pain, Hobbes and Locke set the seal on the newly emergent *irrelevance* of (1) the past, and (2) the social whole.

Search the *Second Treatise* as you may, you will find few references to concepts which are central to Aristotle's analysis of the Hellenic

*Gemeinschaft*. There is no mention of honour, valour, virtue, patriotism, duty, custom, tradition, institutions. There is not even any mention of language. For Aristotle these terms are associated with non-instrumental communication, or 'the good life in common'. The *Gemeinschaft*, as Plato makes even more explicit, is not a tool which the individual might 'use' - the state itself is not a utility. It is, rather, a medium or a space within which the individual first comes to 'realize' himself. Locke and Hobbes replace the Aristotelian values with safety, peace, absence of pain, the preservation of property and industriousness. Taken together, these values make up what Locke calls 'the common reason' (the only *logos* left in a *Gesellschaft*) which he goes on to define as the measure God has set to men for their mutual security.

Protectionist theories of the minimal state assume, against Aristotle, that man's ultimate values and 'reasons for being' are incipient in the pre-political individual. Locke's own commitment to such an atomistic individualism is revealed most strikingly in his idea that it is possible to 'own property' prior to the existence of society. It is not irrelevant in this regard to recall Locke's concept of the epistemological subject as a *tabula rasa* whose ideas are all traceable to sense perception or reflection on mental operations. The implication is that linguistic communication and social interaction in general add nothing essential to experience. In practical life, too, Locke believes, political bonds add nothing that was not already (physiologically) 'implicit' in the individual. Property, which we normally think of as a social institution, is, for Locke, a quality appertaining directly to the individual by virtue of his innate (physiological) capacity to transform nature through labour or even (less social still!) by virtue of his innate capacity to ingest.

Another telling dissimilarity between the age of heroes and the age of men, between Aristotle's *Gemeinschaft* and Locke's *Gesellschaft*, lies in the Lockean reassessment of labour as *the* fundamental dimension of human self-realization. Aristotle, in keeping with the principles of a slave-based economy, believed that labour was essentially subhuman. Freedom or the possibility of self-realization, Aristotle argues, demands that the citizen be unburdened from the time and energy consuming struggle to secure daily subsistence. Such an unburdening was the inglorious achievement of slaves. Security and survival, from Aristotle's perspective, were means to



further ends; they are the necessary but not sufficient conditions for the actualization of ultimate human values. One of the basic ideas involved in Aristotle's argument is that labour is quintessentially *monological*. Even an isolated individual can appropriate consumable goods from nature and survive; even an animal can do so. Man's humanness, by contrast, is only consummated through language and communicative interaction with other men. Labour simply fails the rudimentary dimension of the political life, the dimension of intersubjectivity. Because Locke believed that nothing could be found in society which had not previously been in the individual (by virtue of his 'constitution'), he had no qualms about making labour the foundation stone of civil society. This may be the barbarism of reflection at its most complacent self-assured.

The same contrast between *Gemeinschaft* and *Gesellschaft* can be made by comparing Locke and Aristotle on suicide. For Aristotle, predictably enough, suicide is condemned as a betrayal of the community.<sup>114</sup> The individual owes himself to the polis and cannot simply decide to let his fellow citizens go it alone, as it were. Locke too condemns suicide but, unable to speak of an individual's 'duty' to society, he ends up saying that man's being is 'God's property' and hence not to be tampered with.<sup>115</sup> This remark does not solve the problem, of course, but it does reveal the impossibility of solving it within the framework of a consistently atomistic utilitarianism. The problem about conceiving of society as the 'means' for the individual's 'ends' has to do with the tacit assumption that man sprang fullborn from the 'forehead of Jove'. To say that a society is 'just' when it allows an individual to 'get what he wants' is to presume that 'what he wants' is constituted independently of society. Protestantism (as an 'ontology of privacy') allowed Hobbes and Locke to conceive of the individual as *constituted pre-socially* in his inward relation to God: through predestination man as *imago Dei* and species-being is predetermined and, consequently, contains within his being all that he is and may become. Moreover, through the Word man has within his reach the principles by which to achieve self-realization. Combined, the conceptions of man's self-containedness and ready access to all he need know to properly manifest his civility challenged the worth and legitimacy of world views rooted in tradition, ritual and mediated kerygmatic guarantees (see *Appendix One*). Once the old order collapses, however, universalistic norms may well have barbaric implications. According to Vico, they suggest the latent tyranny of

a Cartesian 'reason' uprooted from *mores* and tradition.

The confluxion of Protestant thought and 'rationalism' in the seventeenth century represented more than the convenient marriage of a theology in search of a methodology and a methodology in search of a theology; it reflected a major change in thinking about natural law and civil society. Among other things, the thrust of this merger was to strike a balance between the view of natural law as simply rational nature, or the order of nature itself, and the view that natural law is nothing other than preceptive divine law. Through a sometimes uneasy blending of Aristotelian scholasticism and nominalism, it was argued that the moral law is binding on all men and in principle knowable to all men, not simply in an intuitive way but as a consequence of common membership of a linguistic community. Natural law, it was claimed, is grounded in nature, but not in the natural order of the physical world. Rather, it is founded in 'integral nature', in an ideal order made knowable to us through the faculty of thinking which, in turn, is possible only in a rational linguistic community. Rationality, in other words, is a function of *dialogue*, and no matter how unique the participants, insofar as they share in common certain ideas, expectations and modes of expression they are subject to the 'mental language' shared by all rational beings. To overcome a hesitant faith in the possibility of abstracting 'law' from the natural order, then, that order was *internalized*: an internal order founded in what is innate in all human minds.

What we see in this development is the transition from scholasticism to early modern philosophy. The basis of natural law had shifted from the order in external nature to the order in what is innate in all rational minds. Grotius, for example, tells us that the idea of natural law or natural right is not based on general ideas of order in nature but on an analysis of human nature. Human beings naturally desire to live in society (which everyone in the mainstream of scholastic philosophy would have acknowledged), but Grotius accounts for this by differentiating mankind from other species by virtue of the fact that language use is a commensurate property of human beings. Society, in other words, is based on linguistic community. Indeed, there is nothing very new in any of this; most of it can be found in various ways in Aquinas. However, it is to be found with much else and in very different proportion. What was new was very old, coming from Aristotle; but the emphasis and, consequently, the predom-

ance of certain ideas changed, and this leads us not only to Cartesian linguistics but much more generally to the characteristics we associate with the rise of contractarianism: the transition from *Gemeinschaftliche* to *Gesellschaftliche* modes of thought reflecting at once that which is common to all and that which is unique in all of us (see *Appendix Two*).

## VIII

Locke and *Gesellschaft*

Quasi-totalitarianisms of both left and right make a great deal of the logical incoherence lying at the root of protectionist and liberal doctrines of the minimal state. An academic Marxist like Macpherson can sound virtuously Aristotelian in denouncing Locke's failure to recognize the "moral claims of society":

"Locke's individualism does not consist entirely in his maintaining that individuals are by nature free and equal and can only be rightfully subjected to the jurisdiction of others by their own consent. To leave it at that is to miss its main significance. *Fundamentally*, it consists in making the individual the natural proprietor of his own person and capacities, owing nothing to society for them."<sup>116</sup>

Since the individual is generated in and through society, so this classicizing objection goes, he has duties toward society and not merely rights from it. Sophisticated fascists like Gentile also stick close to Aristotle in this seemingly cogent anti-contractarian argument.<sup>117</sup>

It is one of the main tasks of political philosophy to show why, even though Locke seems wrong and *Gemeinschaft* theorists seem right, Locke is in some respects more rational than they are. Lockean principles, erroneous as they appear, *have* produced far more free and more humane societies than have holistic *Gemeinschaftliche* principles. This is a fact which requires at least some explanation. Now, the first thing we need in order to adequately present the *Gesellschaft* perspective is a theory of social evolution which allows us to employ the category of *apophrades* against would-be renewers of *Gemeinschaftliche* norms. This, as we have seen, is the great contribution of Vico's *New Science*. The content of society in the 'age of

men' has little to do with familial solidarity or Aristotle's 'good life in common'. The content of *Gesellschaft*, indeed, is that which makes all men equal: natural needs. The gain of 'justice' attendant to this formal equalization is simultaneously a loss of organic communality. The ability to see the emergence of *Gesellschaft* as the irreversible disappearance of *Gemeinschaft* depends on a Vichian recognition that equality and solidarity, Locke and Aristotle, are in irreconcilable tension with one another. Thus, the minimal condition for a theory of modern politics is the realization that conditions for *Gemeinschaftliche* communality are, for most people, no longer at hand. This implies a recognition that political rationality evolves and that what was rational at one time is not necessarily rational today. It is crucial to keep the evolution of rationality clear at a conceptual level, since (given the burden which universalism puts on individuals) the psychological temptation to resurrect *Gemeinschaftliche* values and *Gemeinschaftliche* interpretation schemes is hard to resist.

If we follow Vico, in other words, we do not have to rest content with the idea that Locke is wrong in a beneficent way while totalitarians are right in a malefic way. Totalitarians are *wrong* about modern society (if we take their arguments as genuine), while Locke darkly intuited something they luminously suppressed. To explain what this amounts to, however, we must refer to a more intricate theory of social evolution than any we might find in the *New Science*. The advance of reflection, in point of fact, does not mean that atomic individuals pop loose of the old organic social web - paying their 'cognitive' disrespects to otiose kerygma. What Vico suggests is that the inevitable disintegration of secular and egalitarian society is due to (1) a 'vertical' loosening of the bonds of tradition or increased access to revisability, and (2) a 'horizontal' splintering of social cohesion and the emergence of reciprocal throat-cutting individualism, both of which are affiliate with a loss of shared norms. A subtler theory of the 'advance of reflection' must not lose sight of Vico's achievements, and especially not of his insight that the desirable rise of universalistic norms is inevitably accompanied by the undesirable threat of a returned barbarism. What a better theory of secularization *will* do is abandon the perverse Hobbesian and Lockean emphasis on atomic individuals (present also in Vico's depiction of the age of men). Such an emphasis, one must realize was a functionally profitable self-misinterpretation of early modernity. In order to supersede Vico in this regard, we must re-

place the naive concept of atomization with the idea (borrowed from Kurt Lewin)<sup>118</sup> of 'life-space'. The life-spaces of an individual consist of the person and his psychological environments, as he perceives them. Life-spaces incorporate those frames of reference, other persons and things, symbols and circumstances that together form a totality of coexisting facts which are regarded as mutually interdependent. Modern society is not a heap of anonymous pebble-people. It is a loose nexus of quasi-autonomous yet interacting life-spaces such as family, law, science, education, art, religion, politics, economy and so forth. The Hobbesian and Lockean infatuation with Robinson Crusoe reflects the fact that egalitarian individualism emerged out of an interaction context dominated by economy - a context where all men were said to have, in principle, an equal right to buy and sell on the market. What Locke systematically failed to thematize was the fact that his bartering Crusoe could only 'realize himself' (at least *qua* economic agent) within the market life-space. In his 'state of nature', Locke could not see the enjungling institution for the individual trees. What Locke *saw*, on the other hand, and what Macpherson challenged, is this: simply because a bartering individual owes his "own person and capacities" to an exchange organization, it does not follow that he has a *duty* to society *in toto*. Doubtlessly, state of nature theory would be a complete inanity if it implied that man could literally lead a human life pre-socially (before learning a language and so forth) and, in that remarkably immaculate state, *choose* whether or not to enter society. Such interpretations of contractarianism, however, result from an *apophradic* acceptance of Aristotle's identification of society with polity. The rational core of contractarian theory, instead, lies in the quite intelligible notion that an individual in a *Gesellschaft* can be a *person* within non-political life-spaces (as scientist, believer, artist, entrepreneur, teacher, and even worker) in a way not foreseen for inhabitants of Aristotle's polis.

It seems true, as Aristotle argues, that man can only 'realize himself' (or 'realize his humanity') within a context of communicative rather than instrumental action, within a symbolically organized 'social space' which allows him to 'locate' himself and his interlocutor. 'To live', in the Latin idiom, is *inter homines esse*. Instrumental action, in contrast, is basically monological and hence falls below the elemental dimension of *human* life, the dimension of reciprocity. An obvious consequence of Aristotle's identification of society with polity is that withdrawal from

politics means withdrawal from intersubjectivity in general, that is to say, from the chief constitutive condition of our humanity. For the modern age, at any rate, this is patently a mistake, since leaving the context of politics does not imply leaving other communicative contexts like science, art, education, family and so forth, contexts which, taken together, make up the loose nexus of society. Two main reasons why Hobbes and Locke, and other contractarians failed to make this argument were (1) their commitment to universalistic norms, and (2) the peculiar character of the modern economic system itself. Because universalistic norms require man to interpret himself within the primary reference group of 'humankind', it becomes difficult in the age of men to think coherently about the constitutive function of particular subsystems. Furthermore, although market economy is an interaction context in which individuals are dependent on a pre-existing symbolic and institutional space, this 'dependence' is mediated through a self-interpretation which stresses the separateness and isolation of each competing unit of production, distribution and consumption. For contractarians, as a consequence, life outside politics and 'within economy' often called Robinson Crusoe to mind. Possibly, this Lockean and Vichian (universalistic/individualistic) construal of *Gesellschaft* can be corrected if we simply increase the complexity of our social analysis, taking into account the manifold life-spaces (such as family, science, education, law, art, and so on) that constitute overall social space. It may be that such an analysis will even help thwart the barbarism of reflection, the tendency toward levelling and indiscriminate-ness, implicit in abstract universalism. Modern science and art, for example, allow a significant differentiation between excellence and mediocrity. And this is perfectly consistent with the idea that *opportunity* to try for excellence must be distributed indifferently throughout society.

In describing the break which modernity and capitalism in particular made with the medieval world view, R. H. Tawney emphasizes the importance of increasing life-space differentiation: "The theory of a hierarchy of values, embracing all human interests and activities in a system of which the apex is religion, is replaced by the conception of separate and parallel compartments, between which a due balance should be maintained, but which have no vital connection with each other."<sup>119</sup> In this sense, the emergence of the age of men involves the splintering of the original 'wholeness' of society into a multiplicity of uncoordinated perspectives

or behavioural subsystems with no guarantee of synchronization. The chief *political* consequence of such subsystem differentiation is that the state should lose the overarching and society-integrating status which philosophers in the classical tradition gave it. Politics, like religion, shrinks to the level of just another life-space among life-spaces. Thus, one must say that the polity is no longer, as it was for Aristotle and all theoreticians of *Gemeinschaft*, a whole of which individual men are parts. Instead of being parts within the political whole, modern men are more like occupants of a political subsystem's environment. In sum, what lay behind Locke's seemingly obtuse assertion that man can exist pre-socially and contract into society, was the emergent life-space differentiations of an advanced *Gesellschaft*. What he *meant* was that man can exist pre-politically and contract into the polity. The power of the Aristotelian identification of polity and society is revealed in the fact that Locke never explicitly made such a distinction. Once we make this distinction, however, many things become clear. As we will discuss in future sections, for example, it allows us to understand the vast difference between Epictetus and Mill. When Epictetus identifies 'freedom' with the absence of political interference, he implies that man is only free when withdrawn into the solitude of his *interior domus*. When Mill identifies 'freedom' with the absence of political interference, in contrast, he implies that man is free when *socially engaged* in non-political contexts like science, art and family. This juxtaposition is meant to suggest that political philosophy should never depart too far from a Vichian investigation of social evolution. One should not underestimate the importance for Locke of the idea that an individual is initially constituted in his '*private*' relation to God; liberal democracies may even now depend in part on a residual commitment to the Protestant '*ontology of privacy*'. Yet the content of liberal freedom is not withdrawal into inner silence, but rather a varied engagement in the diverse life-spaces of a pluralistic society. And we can only understand such a freedom after we have clearly distinguished between society and polity.

With the idea of life-space differentiation in mind, we can now re-interpret Vico's suggestion that there is a great psychological burden involved in living in the age of men. The problem is not so much that an individual belongs to no '*groups*' (symbolic units which allow him to '*locate*' himself and employ a '*member/non-member*' schematization of his fellow

men), but rather that he belongs to too many unrelated or at least uncoordinated interaction contexts, and that he does not belong to any of them constantly, exclusively or (perhaps) even primarily. This brings to mind the insight shared by Aristotle, Vico and Radcliffe-Brown that primitive social structures allow for a high degree of role-integration. If you are the best war-dancer, fashion the sleekest canoes, then you may marry the chieftain's daughter. This seems less true in a highly differentiated society, in a society where the old religious and political synchronizations have vanished. In fact, even to have a somewhat 'integrated life', modern man must be fairly imaginative in his improvisations of 'integration formulae' which can, on an *ad hoc* basis, link together the discontinuous stages of his biography and the disjointed roles of his daily life. The point to make is that this precarious and improvised 'integration' is not usually an achievement of shared norms, but rather must be invented in unlikely self-narrations which occur 'behind the scenes' of the various coded interaction contexts. In societies where home and workplace are still undifferentiated, one imagines, these *ad hoc* integration formulae play no such systematic role. In travelling back and forth between home and work modern man has a *chance* to explain to himself how the various aspects of his life fit together. Peculiarly modern about this 'freedom in the traffic' is that there is no guarantee that a man's life will look briefly 'whole', and even if it does, it is almost certain that he will have to make it look that way *again* tomorrow, once more without assurance of success. If I, for example, discover while typing my thesis that my mother has packed me a banana sandwich (something I detest), I have to make an imaginative effort to translate my family fury into a professionally expressible form. I can do this, of course, but translation rules for going from one life-space to another must be largely improvised. Translations of this sort, moreover, usually retain a touch of the facetious about them. Most of the time, in fact, I recognize that there is something inappropriate about de-differentiations such as mixing family and business or science and love. If I try *too* hard for an 'integrated life', I will be making the *faux pas* into a moral imperative.

We can emphasize the evolutionary uniqueness of this state of affairs by recalling Lévi-Strauss' *La Geste d'Asdiwal*.<sup>120</sup> Primitive man does not perceive the world as differentiated into autonomous and (quasi) mutually opaque spheres. In the *Saga of Asdiwal*, the reciprocal transparency of



what we now regard as heterogeneous domains of reality seems to be due to relationships of equivalence which primitives erect between binary structures underlying each 'separate' field. Examining four such structures (east-west, heaven-earth, man-woman, scarcity-surplus), it is possible to see how each offers a 'key' for the others. Geography, cosmology, family and economy seem all of a piece. The translatability of each domain into the others provides a background unity of life which a banana-detesting thesis writer can not help but admire. Yet any attempt to resurrect such a unity in a highly differentiated society is plainly anachronistic. To make a *Gesellschaft* take on the semblance of a *Gemeinschaft* requires something like totalitarian coercion. This is the point of 'ideologically integrated' societies, of Hitler's *Gleichschaltung* and of Lenin's 'democratic centralism'. We will underestimate the attractiveness, and hence the danger, of totalitarianism if we do not comprehend Vico's insight that social evolution involves the painful loss of old moral-emotional community and the old foundationalist guarantees. And we will be unable (theoretically) to resist the nostalgia for *Gemeinschaft* if we do not see that the very structure of *Gesellschaft* is such that the old values themselves can never be retrieved, but only their ideological (and *therefore*) despotic semblance.

If it is 'natural' for man to feel uncomfortable without *a priori* ontological foundations and group solidarity, then Vico's message to modernity is that political rationality must now involve strategies for helping man survive the discomfort affiliate to provisory action and disjointed rules. A democratic election in a mass society, while not emotionally or 'humanly' satisfying, is one such strategy. It helps us tolerate both groundlessness and differentiation by (1) shifting the burden of legitimacy away from incorrigible ascriptions (by lineage and self-appointment) and toward an institutionalization of precariousness whereby a regime is thought legitimate *because* it might not be confirmed in the next election, and (2) by replacing the old myths of *consensus omnium* (which now imply conformism under threat of force) with the idea that legitimacy depends on cleavages of interest in the society and a working dualism of government and opposition within the polity.

## IX

Reflection without Barbarism

Vico's problem is how to be reflective without being barbaric, how to 'think' the loss of the past without repeating Descartes' angelic flight into 'ahistorical truth'. Against all attempts at secular or philosophical foundationalism in politics, Vico presses the notion that man's 'nature' (the ostensible 'foundation') is indefinite. By saying that human nature is *indeterminate*, he means to suggest (as does Pico) that it is *overcomplex*. Humanity's mental dictionary is so complex, in fact, that it contains contradictory entries, utterances and values at war with one another. For Descartes, one recalls, disagreement is due solely to biases inherent in diverging traditions. Cut through this muck of the past, and the *univocal* light of reason will gush down upon our thankful heads. Enlightenment optimism that *the* correct social order can and will be attained was ultimately based on the idea that *bon sens* is equally distributed in all men, providing the basis for a 'rational' *consensus omnium*. This innate guarantee of unanimity released Descartes from the need to understand the differences of opinion which were perspectively (that is, socially) conditioned. Given enough time, at any rate, all problems can be definitively solved, since natural reason is naturally universal and self-consistent. It is precisely this sort of ahistorical naiveté which Vico sets out to demolish in the *New Science*.

Vico's positive aim is to reconcile the necessity of 'binding norms' with the contingency of their genesis and decay, to find reason *within* history, truth *within* social structures and customs. In order to do this, according to the reading we have given of the *New Science*, we must simply abandon the Cartesian thesis that practical reason is a self-consistent and closed totality. For ahistorical philosophers like Descartes, of course, a 'reason' which contradicted itself would be indistinguishable from irrationality. Such a synchronic abridgement of reason, Vico believed, makes it impossible to see the ambiguities and inner tensions of historical life. The *New Science*, in contrast, makes us aware of our troubles, aware that every increase in flexibility is a lapse of order, that the rise of universalistic norms implies a loss of group cohesion, and that this loss, in turn jeopardizes personal identity. One value of such a 'logic of

history' lies in the possibility it provides for using the category 'apophrades' in political philosophy. If we can give cognitive content to this category it will be possible to make normatively compelling arguments without appealing to timeless authorities and transhistorical canons of justice. The widespread (and apophradic) desire to recreate a sense of *Gemeinschaft* in the midst of contemporary *Gesellschaft* has been an important factor - though certainly not the only one - in twentieth century totalitarian movements. At any rate, Vico's 'logic of history' helps us explain some of the things which are patently *irrational* about totalitarianism (as well as to explain what is attractive about it) without forcing us to make arbitrary claims concerning the violation of man's timeless essence. In fact, by suggesting that we always look for reason *within* history, Vico already points the way for an analysis of the *social structures* underlying Locke's commitment to universalistic/individualistic norms. By showing how democratic-liberal ideals are rooted in the life-space differentiations of modern society, we can explain the coercively barbaric character of totalitarian 'integration' or *Gleichschaltung* in a way which philosophers of 'eternal reason' and the 'inviolable individual' could never hope to do (see *Appendix Three*).

There is, finally, an obvious gap in the schematic depiction of social evolution as a transition from inflexible tradition to traditionless flexibility, from a barbarism of rigid custom to a barbarism of dissolute reflection. It immediately comes to mind that something like flexible tradition or traditional flexibility should find its place between the two extremes. Not only does the *New Science* itself fall into this middle zone, but so does our normal concept of the 'good life'. We all want to be both exploratory and secure, open and coherent, playful and serious, wanton and restrained. We do not want our fathers to dictate our lives, but we desire the kind of responsibility toward the future which implies some sort of respect for the past. We want, in sum, to avoid the crude choice between normative and cognitive attitudes, between conviction and flexibility. I want to surprise myself, but I want to recognize that *I* am doing the surprising; I want to 'learn', but not with every gust of social wind.

It is our tentative claim that this precarious balance of opposing values was originally Hellenic. It seems that something of the sort was realized in fifth century Athens. It is quite certain that its echoes can

be heard throughout Aristotle's *Politics*, especially in the conception of the 'polity' as an ideal balance between authority and liberty, oligarchy and democracy. According to the *Politics*, the mean between domination and servility, between contempt and envy, is the *political* reciprocity of ruling and being ruled in turn. This requires both a talking and listening, a 'synthesis' of piety and reflection. Perhaps its traditional flexibility (or flexible tradition) is what distinguishes the Hellenic polis from its more stereotyped tribal origins. What the polis shares with all *Gemeinschaften*, in any case, is the holistic integration of life into one coordinated system, or at least the ideal of such an integration. For our purposes, this is the decisive fact. Aristotle's assertion that the subtlest human values can be realized in the society-encompassing system of politics has had an unsurpassable impact on political philosophy in the West. With the collapse of the Hellenic polis, however, this assertion became anachronistic. Of course, a 'trivial fact like this could not stop it from inspiring generations doomed to live less integrated lives in less integrated worlds.

In *Appendix Three* we explore the Hellenic background of what may be termed 'totalitarian apophrades'. With the help of Vico's 'logic of history' we hope to show how, improbable as it may seem, the dream of the moral polis engendered the totalitarian state.

Many categories with which modern thinkers approach the problem of legitimacy are still essentially Hellenic. For this reason they are also essentially apophradic. Almost without our noticing it, they have been worn out by time. The two theses of classical Greek political philosophy which concern us most are (1) that the state can be 'subjectified' as a family or 'colloquy', and (2) that the individual can 'realize' himself through political participation. Plausible for the polis, both of these ideas lead to personal and governmental deformations when applied to highly differentiated modern societies. Although they may make sense for a *Gemeinschaft*, they are clearly out of step with the structural realities of a *Gesellschaft*. Still, their continuing influence on (and attractiveness for) modern political theory can hardly be denied.

Verbally, of course, it is possible to defend the 'modernity' of Aristotle and Plato. It may even seem decisive that both of them believed the source of political legitimacy to lie in 'participation' and 'representation'. Yet the *prima facie* modernity of these ancient ideas is really quite deceptive. Each concept (including 'legitimacy' and 'politics' as well as 'participation' and 'representation') has specific Hellenic connotations in the tradition-defining works of Plato and Aristotle. These polis-bound connotations, moreover, are quite incongruous with the core meanings of politics, participation, representation and legitimacy as they developed in eighteenth century democratizing bourgeois contexts. This conceptual displacement has caused a lack of focus in the philosophy of politics. It is argued that the Vichian category 'apophrades' can help us find our way out of this murky situation; for example, it will now be possible to show (with Vico's theory of social evolution in the background) that the totalitarian schematization of society as a 'whole' made out of 'parts' is erroneous simply because it depends on the - now apophradic - refusal of the Greeks to differentiate between polity and society.

The first two sections of *Appendix Three* explore some general characteristics of Hellenic social theory while concentrating on (a) the classical identification of ethics and politics, and (b) the way this identification clashes with modern ideas about moral individualism. The third section then contains a brief discussion of Plato's 'whole/part' schematization of the polis; the main argument here revolves around the twin ideas of *homonoia* and *paideia*. In the fourth section we turn to Aristotle's much subtler identification of ethics and politics, focussing specifically on his concepts of freedom, custom, language and praxis. In the fifth section we explore Vico's suggestion that the rise of universalistic norms is attended by a dissociation of ethics from politics. Our chief interest throughout is to show how these developments are coupled to the structural obsolescence of the Hellenic conflation of polity and society.

PART TWONotes

1. Hayden White, Metahistory: the historical imagination in nineteenth-century Europe, Baltimore, 1975, p.190
2. Thomas Sprat, History of the Royal-Society of London, London, 1667, p.42 (original emphasis)
3. Sir Isaiah Berlin, ed., The Age of Enlightenment, New York, 1956, introduction.
4. Peter Gay, The Enlightenment: An Interpretation, 1: The Rise of Modern Paganism, London, 1973, p.3
5. John Redwood, Reason, Ridicule and Religion: the age of Enlightenment in England, 1660-1750, London, 1976, p.9
6. J.G.A. Pocock, Politics, Language and Time, Op Cit, p.162
7. Caroline Robbins, "Faith and Freedom (c.1677-1729)", Journal of the History of Ideas, V.36, n.1
8. Kenneth Burke writes of synecdoche as: "part for the whole, whole for the part, container for the contained, sign for the thing signified, material for the thing made (which brings us nearer to metonymy), cause for effect, effect for cause, genus for species, species for genus, etc. All such conversions imply an integral relationship, a relationship of convertibility, between the two terms.

"The 'noblest synecdoche', the perfect paradigm or prototype for all lesser usages, is found in metaphysical doctrines proclaiming the identity of 'microcosm' and 'macrocosm'. In such doctrines, where the individual is treated as a replica of the universe, and vice versa, we have the ideal synecdoche, since microcosm is related to macrocosm as part to whole, and either the whole can represent the part or the part can represent the whole. (For 'represent' here we could substitute 'be identified with'.) One could thus look through the remotest astronomical distances to the 'truth within', or could look within to learn the 'truth in all the universe without'. Leibniz's monadology is a good instance of the synecdochic on this grand scale. (And 'representation' is his word for this synecdochic relationship.)

"A similar synecdochic form is present in all theories of political representation, where some part of the social body (either traditionally established, or elected, or coming into authority by revolution) is held to be 'representative' of the society as a whole. The pattern is essential to Rousseau's theory of the *volonté générale*, for instance. And though there are many disagreements within a society as to what part should represent the whole and how this representation should be accomplished, in a complex civilization any act of representation automatically implies a synecdochic relationship (insofar as

the act is, or is held to be, 'truly representative')." Kenneth Burke, A Grammar of Motives, Berkeley, 1969, pp 507-508

9. Stephen G. Salkever, "Virtue, Obligation and Politics", in American Political Science Review, March, 1974, V.68, n.1, p.88
10. Harold Bloom, The Anxiety of Influence: a theory of poetry, New York, 1975, pp 24-25
11. Hugo Grotius, Prolegomena to the Law of War and Peace, New York, 1957, p.6
12. Ibid., p.10
13. Ibid., p.25
14. Ibid., p.26
15. The New Science of Giambattista Vico, trans. T. G. Bergin and M. H. Fisch, Ithaca, New York, 1968, para.313
16. Ibid., para.127
17. Ibid., para.331
18. Ibid., para.176
19. Ibid., para.518
20. Ibid., para.230
21. Ibid., para.120
22. Ibid., para.339
23. Ibid., para.340
24. Ibid., para.179
25. Ibid., para 179
26. "Oration on the Dignity of Man", in The Renaissance Philosophy of Man, eds. E. Cassirer, P. Kristeller, J. Randall, Chicago, 1948, pp 224-225
27. New Science, Op Cit, para.524
28. "Oration", Op Cit, p.225
29. Prolegomena, Op Cit, p.6
30. An anticipation of this idea can be found in Seneca's On Benefits, Book IV, ch.xviii
31. New Science, Op Cit, para.135

32. Ibid., para.201
33. A phrase borrowed from Talcott Parsons, but applicable to Vico.
34. Here is an example of how, according to Vico, sexuality *underdetermines* marriage: "the opinion that the sexual unions which certainly take place between free men and free women without solemn matrimony are free of natural wickedness, all the nations of the world have branded as false by the human customs with which they all religiously celebrate marriages, thereby determining that this sin is bestial, though in a venial degree. And for this reason: such parents, since they are held together by no necessary bond of law, will proceed to cast off their natural children. Since their parents may separate at any time, the children, abandoned by both, must lie exposed to be devoured by dogs. If humanity, public or private, does not bring them up, they will have to grow up with no one to teach them religion, language or any other human custom." New Science, Op Cit, para.336
35. New Science, Op Cit, para.36
36. Leo Strauss, Natural Right and History, Chicago, 1974, p.vii
37. New Science, Op Cit, para.331. A far more sophisticated notion of social evolution than Rousseau's.
38. Ibid., para.145
39. Ibid., para.311
40. Ibid., para.318
41. Ibid., para.123
42. A much more realistic conception of human origins than Rousseau's - men are born into families, not as isolated beings.
43. New Science, Op Cit, para.1106
44. A term suggested by Harold Bloom, who takes "the word from the Athenian dismal or unlucky days upon which the dead returned to reinhabit the houses in which they had lived." The Anxiety of Influence, Op Cit, p.15
45. Ibid., para.1102
46. Ibid.
47. Ibid., para.161. A precursor of Chomsky's theory of deep grammar, perhaps.
48. Ibid., para.35
49. Ibid., para 185
50. Ibid., para.292



51. Ibid., para.288
52. It is impossible to *ignore* Vico's cyclical theories; but it is possible to view them as a rather minor and uninteresting aspect of his more lasting contributions to the theory of social evolution. In any case, Vico's 'cycles' do not jeopardize the irreversible character of social evolution, since (as R. G. Collingwood points out in his Idea of History, Oxford, 1970, pp 63-71) what Vico called 'cycles' are really 'spirals', for *ricorsi* are always *corsi* transformed.
53. New Science, Op Cit, para.346
54. Ibid., para.503
55. Ibid., para.119
56. Ibid., para 338
57. Ibid., para.377
58. Ibid., para.340
59. Burial of dead relatives, says Vico, is absolutely essential for stabilizing the cultural break with nature: "(to realize) what a great principle of humanity burial is, imagine a feral state in which human bodies remain unburied on the surface of the earth as food for crows and dogs. Certainly this bestial custom will be accompanied by uncultivated fields and uninhabited cities. Men will go about like swine eating the acorns found amidst the putrefaction of their dead." Ibid., para.377
60. Ibid., para.333
61. Ibid., para.374
62. "So it came about that each of them would drag one woman into his cave and would keep her there in perpetual company for the duration of their lives. Thus the act of human love was performed under cover, in hiding, that is to say, in shame; and they began to feel that sense of shame which Socrates describes as the color of virtue. And this, after religion, is the second bond that keeps nations united, even as shamelessness and impiety destroy them." Ibid., para.504
63. Ibid., para.186
64. To back-up Vico (as well as to show the extra-philological relevance to the present analysis), it will be helpful to select at least one example from the plethora which offer themselves in twentieth century anthropological literature. Consider this fairly representative depiction of an aboriginal New Zealander:

"The whole cosmos of the Maori unfolds itself as a gigantic 'kin' in which heaven and earth are the first parents of all things and beings, such as the sea, the sand on the beach, the wood, the birds and man. Apparently he does not feel quite comfortable if he cannot

- preferably in much detail - give an account of his kinship whether to the fish of the sea or to a traveller who is invited to enter as a guest. With real passion the high-born Maori studies the genealogies, compares them with those of his guests, tries to find common ancestors, and unravels older and younger lines." J. Prytz Johansen, The Maori and His Religion and Its Non-ritualistic Aspects, Copenhagen 1954, p.9

65. The patternlessness of the world would probably prohibit meaningful orientation through memory. For example, in a primitive society when my child is eaten by a crocodile, the mythical world view shared by my social group and internalized by me during socialization constrains me into interpreting the accident as the intentional act of some malicious spirit or revenant.
66. Bronislaw Malinowski, Magic, Science and Religion, New York, 1954, p.31
67. New Science, Op Cit, para.562
68. To call another witness for Vico's case, here is Radcliffe-Brown's account of why ritual avoidances tend to coagulate round the mercurial foci of the life-cycle:

"In the Andaman Islands when a woman is expecting a baby a name is given to it while it is still in the womb. From that time until some weeks after the baby is born nobody is allowed to use the personal name of either the father or the mother.... In the Andamans the name of a dead person is avoided from the occurrence of death to the conclusion of mourning; the name of a person mourning for a dead relative is not used; there is avoidance of the name of a youth or girl who is passing through the ceremonies that take place at adolescence.... For the Andamese the personal name is a symbol of social personality, i.e. of the position that an individual occupies in the social structure and the social life. The avoidance of a personal name is a symbolic representation of the fact that at the time the person is not occupying a normal position in the social life. It may be added that a person whose name is thus temporarily out of use is regarded as having for the time an abnormal ritual status."

(A. R. Radcliffe-Brown, "Taboo", in Structure and Function in Primitive Society, New York, 1965, pp 146-147)

Such ritual avoidance is part of the overall cultural strategy for insulating and thus absorbing the potentially damaging repercussions of biological precariousness. Name-suppression amounts to a selective application of "local anaesthesia" to weak points in the social fabric. Symbolic immunity helps preserve a normative order (one which is resistant to destabilizing 'learning') in the face of surprise and disappointment. This again tends to support Vico's thesis that a social homogeneity of perspectives compensates for man's helplessness in the face of unmastered contingency. It extends what has been said thus far by introducing a concretely *organizational* expression of ontological 'truth'.

69. New Science, Op Cit, para.31

70. Ibid., para.216
71. Ibid., para.1098
72. Emile Durkheim, Elementary Forms of Religious Life, trans. J. W. Swain New York, 1915
73. New Science, Op Cit, para.264
74. Ibid., para.1098
75. Ibid., para.1097
76. Ibid., para.1099
77. Ibid., para.1099
78. Ibid., para.1100
79. Ibid., para.446
80. Ibid., para.191
81. "Finally the family fathers, having become great by religion and virtue of their ancestors, and through the labors of their clients, began to abuse the laws of protection and to govern the clients harshly. When they had thus departed from the *natural* order, which is that of justice, their clients rose in mutiny against them. But since without order (which is to say without God) human society cannot stand for a moment, providence led the family fathers *natural-ly* to unite themselves with their kindred in orders against their clients. To pacify the latter, they conceded to them, in the world's first agrarian law, the bonitary ownership of the fields, retaining for themselves the optimal or sovereign family ownership. Thus the first cities arose upon reigning orders of nobles." Ibid., para.1100
82. c.f. Karl Popper, The Open Society and Its Enemies, Vol.1, London, 1973, p.69. "Biological naturalism has been used not only to defend egalitarianism, but also to defend the anti-egalitarian doctrine of the rule of the strong."
83. "The heroes or nobles, by a certain nature of theirs which they believed to be of divine origin, were led to say that the gods belonged to them, and consequently that the auspices of the gods were theirs also. By means of the auspices they kept within their own orders all the public and private institutions of the heroic cities. To the plebeians whom they believed to be of bestial origina and consequently men without gods and hence without auspices, they conceded only the use of natural liberty." New Science, Op Cit, para.414
84. Aristotle, Politica, ed. W. D. Ross, Oxford, 1957, 1285b 20-22
85. Without citing Aristotle or Vico, Radcliffe-Brown observes the following: "In Africa it is often hardly possible to separate, even in thought, political office from ritual and religious office. Thus in some African societies it may be said that the king is the execu-

- tive head, the legislator, the supreme judge, the commander-in-chief of the army, the chief priest or supreme ritual head, and even perhaps the principal capitalist of the whole community. But it is erroneous to think of him as combining in himself a number of separate and distinct offices. There is a single office, that of king, and its various duties and activities, and its rights, prerogatives and privileges make up a unified whole." 'Preface', in M. Fortes and E.E. Evans-Pritchard, eds., African Political Systems, Oxford, 1940, p.xxi
86. "The aristocratic commonwealths keep the wealth within the order of the nobility, for wealth adds to the power of this order." New Science, Op Cit, para.275
87. Ibid., para.716
88. Ibid., para.530
89. Most agrarian laws, says Vico, should be understood in the light of the double fact that (a) the plebs wished to escape from namelessness, while (b) the nobles wished to avoid enriching the crude plebeians: "because by the law of the gentes aliens were not capable of civil ownership, and the plebeians were not yet citizens, they were still unable to leave their fields intestate to their kin, because they did not have direct heirs, agnates, or gentiles, which relations were all dependent on solemn nuptials. Nor could they ever dispose of their fields by testament, for they were not citizens. Hence the lands assigned to them soon returned to the nobles, to whom they owed their titles of ownership." Ibid., para.598
90. Ibid., para.32
91. Ibid., para.284. Immediately afterwards Vico adds: "When the first cities were established on the basis of the families, the nobles, by reason of their native lawless liberty, would not tolerate checks and burdens.... Later they are forced by the plebs, greatly increased in number and trained in war, to submit to laws and burdens equally with the plebeians." Ibid., para.293
92. "But with the passage of years and the far greater development of human minds, the plebs of the peoples finally became suspicious of the pretensions of such heroism and understood themselves to be of equal human nature with the nobles, and therefore insisted that they too should enter into the civil institutions of the cities." Ibid., para.1101
93. Ibid., para.32
94. Talcott Parsons, Societies: Evolutionary and Comparative Perspectives Englewood-Cliffs, New Jersey, 1966, p.27
95. New Science, Op Cit, para.319
96. Ibid., para.323
97. Lauriston Sharp gives a supportive account of the 'primacy of the past' discovered among the Australian aboriginal Yir Yorants:

"A man called Dog-chases-iguana-up-a-tree-and-barks-at-him-all-night had that and other names because he believed his ancestral alter-ego had also had them; he was a member of the Sunlit Cloud-Iguana clan because his ancestor was; he was associated with particular countries and totems of this same ancestor; during an initiation he played the role of a dog and symbolically attacked and killed certain members of other clans because his ancestor... really did the same thing to the ancestral alter egos of these men; and he would avoid his mother-in-law, joke with a mother's distant brother, and make spears in a certain way because his and other people's ancestors did these things. His behaviour in these specific ways was outlined, and to that extent determined for him, by a set of ideas concerning the past and the relation of the present to the past." ("Steel Axes for Stone-Age Australians", in Human Organization, Vol.II, Summer, 1952, p.20)

Sharp goes on to say that when the facts of the past fail to justify the present state of affairs, the Yir Yorant will blindly 'rewrite' the past and immediately suppress the unthinkably blasphemous experience of rewriting. Just so, Vico's heroes 'forget' that they were originally as low as the lowest in order to 'make sense' out of their present superiority. Hence, even when there is a *de facto* change in patterns of behaviour it does not play much of a role in the self-interpretation of early man. This is just another way of formulating our point about the interrelation of ontology and social resourcelessness. The Yir Yorant, like Vico's early men, always experience the present as 'inevitable'. They always perceive it as another repetition of the past which, simply as past, could not have been other than it was.

98. W.E.H. Stanner, "The Dreaming", in W. Lessa and E. Vogt, eds., Reader in Comparative Religion: An Anthropological Approach, New York, 1958, p.270, 276
99. Ibid., p.270
100. Ibid., p.275
101. Ibid., p.275
102. New Science, Op Cit, para.414
103. Ibid., para.350
104. Ibid., para.38
105. Ibid., para.330
106. Ibid., para.39
107. Ibid., para.209
108. Ibid., para.516
109. Ibid., para.264

110. Ibid., para.1008
111. Ibid., para.1106
112. Ibid., para.1106
113. Definitions of 'harm' vary radically, from the monarchism of Hobbes to the 'pure' capitalism of Mortimer Adler and Louis Kelso, who carefully delimit in their Capitalist Manifesto (New York, 1958, ch.5) the realm of personal responsibility in public matters as determined by property 'rights'. However, all *Gesellschaft* theorists share in common the view that 'harm' is a 'contractually'-derived notion arising from the 'agreement' of men to recognize some aspects of life as 'personal' (therefore liable to invasion by others) and some public (owned by all, so to speak, but administered by the 'sovereign' (however depicted) ). Typically, 'property' serves as the dividing line separating private and public realms.
114. Aristotle, Nichomachean Ethics, ed. I Bywater, Oxford, 1898, 1138a 5-14
115. Locke, Second Treatise of Civil Government, Op Cit, para.6
116. C. B. Macpherson, The Political Theory of Possessive Individualism: Hobbes to Locke, Oxford, 1972, p.255
117. Giovanni Gentile, Genesis and Structure of Society, trans. H.S. Harris, Urbana, Illinois, 1963
118. Kurt Lewin, Field Theory in Social Science: selected theoretical papers, ed. D. Cartwright, London, 1967
119. R. H. Tawney, Religion and the Rise of Capitalism, New York, 1954, p.15
120. Claude Lévi-Strauss, "La Geste d'Asdiwal", Annuaire de l'E.P.H.E. (Sciences religieuses), 1958-59, Paris, 1960, trans. Avril Baskind, Canberra C.A.E. monograph.

### PART THREE

#### HOBBS AND LOCKE

"As traditional moral and political philosophy was, to some extent, based on traditional metaphysics, it seemed necessary, when traditional metaphysics were replaced by modern natural science, to base the new moral and political philosophy on the new science. Attempts of this kind could never succeed: traditional metaphysics were, to use the language of Hobbes's successors, 'anthropomorphistic' and, therefore, a proper basis for a philosophy of things human; modern science, on the other hand, which tried to interpret nature by renouncing all 'anthropomorphisms', all conception of purpose and perfection, could, therefore, to say the least, contribute nothing to the understanding of things human, to the foundation of morals and politics."<sup>1</sup>

Thomas Hobbes is generally regarded as the first 'modern' social contract theorist; that is to say, he is seen as the first notable post-Hellenic scholar to explore the parameters of the contract metaphor in the course of developing a doctrine of civil obligation. Assuming that we can grant Hobbes 'genetic' primacy over such seminal thinkers as Manegold of Lautenbach, Marsilius of Padua, and Marius Salamoni, can we automatically consider Hobbes to be the first 'contractarian', or, indeed, a 'contractarian' at all? Needless to say, this appears to be an extraordinary question of an author whose works are no less than congested with references to all manner of contracts, compacts, covenants and bargains. The very idea of the social contract seems to be the lynchpin on which the bulk of Hobbesian political philosophy is articulated. Yet, as is often the case, appearances may be misleading, and, as has been argued by some commentators,<sup>2</sup> Hobbes' so-called contractarianism is in many respects peripheral to his treatment of the problem of civility.

On the other hand, there are those, such as Brian Barry, who contend that Hobbes' theory of obligation is both an adequate account of civil obligation *and* that contractarianism is central to his explication.<sup>3</sup> In arguing that Hobbes provides a satisfactory contractual solution to the problem of civil obligation, Barry focuses on two pertinent questions. Firstly, is the social contract central to Hobbes' theory of obligation?; and, secondly, does Hobbes, regardless of his use of the social contract,

offer an adequate account of civil obligation? In order to set the stage for a criticism of Barry's interpretation, we shall survey the three principal interpretations offered by Hobbes scholars and the manner in which they address these questions.<sup>4</sup> All these interpretations concur on the superfluosity of the social contract, although they differ on the adequacy of the theory itself. Largely in keeping with these interpretations, it will be argued that Barry's interpretation ultimately comes unstuck because of what Hobbes himself says about civil obligation. However, before proceeding with a detailed analysis of Hobbes's theory of civil obligation and its contractarian status, we must first place Hobbes in context and highlight an aspect of his political philosophy that in many ways prefigured contemporary analyses of contractarianism, namely, the atomistic implications of Hobbes' nominalism.

The experimental study of nature identified with the Renaissance in many ways reflected the widespread adoption of the principal tenets of nominalism. The belief in the sole reality of physical particulars and its corollary, the disbelief in the 'reality' of universals, were largely responsible for the doctrine of philosophic empiricism in which modern science historically found its beginnings. According to empiricism, the investigator into the nature of reality was no longer allowed to remain at his desk and, working only with logical possibility as a basis, record the laws of existence. The pendulum had swung to the other extreme; the so-called laws of nature were discredited unless it could be shown as a certificate of validity that they were answerable to physical particulars. No preconceived theories were admitted into the examination of "irreducible and stubborn facts".<sup>5</sup> This movement, which had its flowering with Francis Bacon, Kepler, Galileo and Copernicus, was entirely nominalistic. Copernicus challenged the theologic-anthropomorphic order of the Church by overthrowing the conception of a geocentric universe; Bruno paid with his life for the right to believe in a cyclical theory of history. Bacon, the spokesman for early empiricism, insisted that the deductive method of the later scholastics was invalid for science; science, he said, depended upon induction and experimentation. But the greatest of these empiricists was Galileo who, in dividing sense qualities into subjective and objective groups, began the contradiction between scientific theory and practice which was to have so long a life and to be the source of so much confusion outside physical science.



While these developments were taking place in 'natural' philosophy, the Church, beset on all sides by the triumph of nominalism, suddenly had to counter the challenge of a nominalistic schism within. As mentioned earlier, according to the Reformers, the individual is at liberty to commune with God regardless of the intermediation of the Church. Theoretically, at least, those who believe themselves to be acting in good conscience may unite to worship as a group of complete, unbound individuals. Thus the Church is a whole greater than the sum of its individual parts, whereas the Protestant ecclesia is a collection of individuals. By implication, if physical particulars alone are real, then they alone can reflect the *image Dei*; the world of physical particulars is ultimate, the historical order is to be accepted as the only one, and there can be no justification for the imposition of any other order. While the claim of the Reformers to the right to abandon the whole baggage of Catholic dogma, ritual and authority had its 'realistic' side, it arose historically as a nominalistic affair.

On all sides, then, it was clear that European man was breaking his medieval bonds; on all sides he was being given new freedom, being subjected to new insecurities, and opening up new vistas to individual accomplishment. Yet as an individual he lived among his fellows and shared all manner of intangible relations with them. Thus, in the light of the intellectual ferment welling up all around, it remained for the problems of order and civility to be treated nominalistically. It was the work of men like Machiavelli and Hobbes which had the broadest and most lasting effect, *The Prince* and *Leviathan*, and not the Platonic *Utopia* of More. Machiavelli set himself against such medieval institutions as the Church in favour of the new (or, rather, revitalized) institution of the State; he was a Ghibelline and not a Guelph. Under the State, considered as a convenient fiction rather than a romantic reification, the individual could retain the personal authority denied him by the medieval Church. Hobbes, of course, carried the emphasis further, employing a contractual metaphor to emphasize the uniting of particular interests for the mutual well-being of discrete individuals. The State, merely because it is a social instrument and not entirely an affair of individuals, was regarded by Hobbes as a necessary evil, so extreme was his nominalism. Both Machiavelli and Hobbes were influential, however, precisely because their social philosophies were reflections of the same nominalism which saw the Church weaken-

ing and the State emerging triumphant.

Hobbes' theory of obligation represents an attempt to fashion a theory of prudential reasoning according to which a person's voluntary renunciation or 'transfer' of a right provides an especially powerful reason for acting in a particular way, namely, in accordance with obligations.

"Hobbes's nominalist theory of the state might be summarized thus," writes J.W.N. Watkins,

"a multitude of men becomes a body politic when each of them gives to one (or a number) of them the free use of his name, so that the sovereign thereby created may, in the name of them all, allocate such names as *just* and *unjust*, *good* and *evil*, and cause men, by threat of punishment, to conduct themselves toward each other in accordance with the civil principles of justice thereby created."<sup>6</sup>

The conception of obligation that emerges from *Leviathan* combines a view of morality as structured, mutually-advantageous relations between persons, with a view of practical rationality which presupposes no objective values or principles, but only the prudential reasoning of acting effectively to realize one's ends. Obligations are not derived *a priori* from the concept of practical rationality; only within a civil society and as a consequence of the empirical circumstances of civil intercourse do persons have obligations to one another. The individual, as a discrete bundle of interests, wants, capacities, and foibles, stands for Hobbes as a Democritean atom in a mechanistic world, a world informed by a strict ontological homogeneity. Hobbes may not have sired what C.B. Macpherson has called "the political theory of possessive individualism", but perhaps more than any other philosopher before him, with the outstanding exception of Machiavelli, Hobbes shattered the harmony of feudal organicism; and in so doing set the intellectual groundwork for the transition from an image of civil society premised upon a pact of government between estates to a fundamentally mercantilist conception of *civility* as *privity*, that is, legally sanctioned contractual relations between persons founded in a mutuality of interests.

"(Hobbes') reduction of human beings to self-moving and self-directing systems of matter, enabled (and required) him to assume that the continued motion of each was equally necessary. His acceptance of the assumption of the new science, that continuous motion did not require the appli-

cation of continuous outside force, enabled him to dispense with any postulate of moral purpose imposed from outside, and to assume that moral values, rights, and obligations were entailed in the capacities and needs of equally self-moving mechanisms. Since motion is equally necessary to each mechanism, and since there is nothing else but motion, the only morality there can be must be deduced from that motion. Morality is what is most conducive to continued motion. Hence, at a primary and simple level, each has a right to its continued motion. And each, being a rational, calculating, self-correcting machine, is capable of obligating itself to those rules which can be shown to be necessary to ensure the maximum chance of continued motion. Since their motions, if not self-corrected, would bring them into continual collision, with resultant loss of motion, the correction (i.e. a moral system of obligation) is necessary as well as possible."<sup>7</sup>

The atomistic, mechanistic metaphysics underpinning Hobbes' political philosophy not only established the groundwork for his own particular theory of obligation, but, more importantly, expanded and moulded the vocabulary of subsequent political discourse. While in some respects sympathetic with Macpherson's analysis of Hobbes, the following discussion is not so much concerned with Hobbes as a rough-hewn prototypical liberal as it is with Hobbesian nominalism as a watershed in the "politics of language". "This impact was formal and structural rather than substantive", remarks Thomas Spragens, "more mythological than logical."

"The model of motion provided a principle of limitation, not content, but this contribution was extremely significant. Strauss is quite correct, however, in pointing out the logical flaw which Hobbes never escaped - the impossibility of finding any human, political content in the model of reality which he adopted. This dilemma is one of the characteristic impasses of objectivism, and Hobbes resolved it in a manner which is also fairly characteristic. He simply resorted to his own observations and beliefs about human psychology and drew upon them to provide the substance of his model."<sup>8</sup>

In the following sections the metaphysical setting of Hobbes' political philosophy will be explored, leading into a discussion of his theory of obligation in particular. It will be argued that in some respects Hobbes may be considered to be the first 'modern' political philosopher - to Machiavelli goes the distinction of being the first 'modern' political 'scientist', so-called - and that in many ways his modernity resides in his atomistic conception of humanity and its civil expression. The true

import of Hobbes' 'contractarianism' therefore does not lie in the faithful expression of a particular doctrine, but in the development of a metaphor which, when used in concert with a number of related notions, made possible new ways of reasoning about civility and order. Ultimately, these new modes of commentary captured the essence of seventeenth century 'individualism' - the idea that *persons* are psychological, civil and biological *individuals* identifiable as largely self-sufficient clusters of concerns and capacities; and that what can truly be said of politics can be reduced to statements about individuals. The 'boundaries' or 'limits' of each individual and his 'life-spaces' thus serve to locate each atom within its molecular environment, as it were, and thereby establish possible realms of interaction. Contractual relations, according to this scheme, are explicit statements of genuine (or legitimate) limitations. Individual limitations in effect represent the limitations of human powers. Our psychological, physical and spatio-temporal limitations determine and prefigure our political limitations and modes of cooperation. In this sense, the idea of 'limit' - or articulation and definition - means a sense of *end*; not, that is, an end to the search for knowledge, but an end to the qualities that are to be explored in an attempt to fully know a subject. The basic issue with respect to the limit is not what is known, but what is knowable about something; conversely, that which is unlimited is not merely unknown, but is conceptually unknowable. The issue is as much one of concepts as it is of states of affairs. The whole logic of the limit, as first expressed in the preSocratics and then in Hobbes, is the assumption that a thing can be fixed; it is not necessarily a given fix - that is, this one or that, and whether man has knowledge thereof - but it is intended to exclude any conceptual calling that evades the function or capacity of fixing the articulation of something. Thus, as with the logical positivists of the twentieth century, the idea of the occult involves not the unknown, but the unknowable.

In many respects, man's intrinsic egoism is the crucial issue for Hobbes. If, *contra possibilitatem*, man could function self-sufficiently then he would, because dependence on one's fellows is always the least-favoured option of true men. So, as it were, the conditions of civility grow out of human inadequacies (or limitations) against our own inclinations. The sense of inadequacy, in other words, predisposes us towards civil life. The social contract metaphor in Hobbes, therefore, does not

so much address the problem of civility by way of positing answers to the enigmas of obligation and obedience, but, rather, aids in the definition of the limits of civility as a *reflection* of order. That is to say, Hobbes' principal concern lay with specifying the crucible within which, so to speak, the spontaneous reaction of civility would take place, and in so doing lend a crypto-scientific air of predictability to civil affairs - the physics of public life.

Locke elaborated upon this development of nominalism but in a far more subtle fashion, paying attention to the implications of the new outlook rather than its mechanics. Moreover, he realized that once the focus and meaning of the political is taken to be the materially wilful individual - that is, the *person* - bounded by the limitations of life-spaces, opportunities, capacities and motivations, the same logical qualities apply to politics, and the political individual thus conceived, as apply to atomism and the atom. The *indivisibility*, *uniformity* and *autonomy* of the atom carry over into political discourse, rendering politics as a subject a 'fractured' discipline, having no real being except in constituent individuals. The individual is seen as the limited particular of the subject, whose being consists of certain universal qualities, basically given, which merge with circumstantial experience to structure any unique political situation. The standard for fixing the indivisibility of the political in the person is liable to vary from one theory to the next but, in general, it is associated with the notion that *personality* is a cognitively self-aware and basically self-serving entity, and is thus the locus for the coalescence of the *individual will*.<sup>10</sup> That is, the sequence of circumstances giving rise to political phenomena is seen as more or less uni-dimensional, having its genesis in the autonomous rationality of the individual, without recourse to more fundamental factors (such as, for example, society itself). The basic limit implicit in the indivisibility of the individual also gives *structure* to the understanding of political phenomena in that if the individual will were not taken for granted - if, that is, the individual will were infinitely divisible into finer and finer sub-ordinal parts - the whole meaning of politics would be lost in an infinite regress, and no definite theory of comprehension and order could evolve. The individual and his will, understood in terms of a few externally conceived qualities, comprise the fixed unit factor of politics.

With this common premise between the atomistic inflexion of nominalism and political ideas, other correlated points begin to take shape. The individual, like the atom, is seen as discrete and autonomous in the context of political affairs; he is *fundamentally separate*, and this takes the shape of disclaiming the natural interrelatedness that would otherwise construe political society as fundamentally whole and organic. Within this autonomy, the factor of efficiency or motion becomes the 'rationality' of the individual, grounded in a premise of self-interest. The autonomous individual, acting basically on his own behalf, reasons his own condition and its possibilities, and from there constructs a format and impetus for action. The implementation of such action, aggregated with other such realizations of action, creates a given political situation, and these together comprise the whole of the subject of politics. While the concept of self-interest is variable, generally formulated to account for the grounding of politics in individual wills, the rest of this scheme is basically atomic in nature. The autonomy of the individual, the discrete uniqueness of its impetus and motion, the idea that political phenomena are reducible to constituent elements, all conform to the basic scheme of atomism. Additionally, the notion that political man exists in a state of autonomous detachment, without any natural links to his fellows means that he is in a state of natural *freedom*, or independence, precisely correlative to the notion that atoms exist in a basic void. Thus, the idea that political order is an artificial and derivative condition, superimposed upon the 'natural' condition of man, is one and the same as the notion that atoms in free space engage in combination only in their experiential existence, and not as a function of natural relatedness.<sup>11</sup> It is in these precise conformities between atomism and the political theory of methodological individualism that the claim is made that the Hobbesian and Lockean political theories are no more than a development of nominalism.

With the possible exception of Rousseau, no philosopher is more closely identified with the theory of the social contract than John Locke. Indeed, Locke's *Second Treatise of Government* is generally acknowledged to be the classic statement of the contractual position. It is much more unusual, consequently, to question Locke's credentials as a contractarian than it is to suspect Hobbes'. But it is not at all unusual to question the success of Locke's attempt to solve the problem of civil obligation. Most commentators agree that the social contract metaphor is essential to

his theory but the theory itself is unsatisfactory. And many would go beyond this to claim that the difficulties and flaws in Locke's argument are difficulties and flaws to be encountered in *any* contract theory. If the best statement of the contractarian position is unacceptable, then why not reject contractarianism altogether?

If we grant that Locke's theory is unacceptable, three responses can be made to this objection. One is to deny that Locke's is the best exposition of contractarianism. This obliges the respondent to point to a better one. A second response is to admit that the *Second Treatise* is the best statement of contractarianism there is, but to deny that it is the best there can be. This puts the respondent under the burden of doing better than Locke. Finally, we may undercut the objection completely by denying that the idea of the social contract is essential to Locke's theory. This is the course taken in this thesis. Locke, it is argued, offers a theory of civil obligation grounded in natural law, not in contract, and we may reject (or accept) Locke's argument without rejecting (or accepting) the contractarian solution to the problem of civil obligation.

Although it is argued here that both Hobbes and Locke fail to develop adequate contractarian theories of obligation, it is not the intention to assimilate Locke to Hobbes as some scholars have done<sup>12</sup>, nor to minimize their differences. As political philosophers, Hobbes and Locke certainly have much in common; but from the perspective of a study of the social contract, their differences outweigh their similarities.

## I

### The Atomistic Implications of Nominalism

The concept of circumscription is in many ways the most significant notion in philosophical atomism. The 'limit' determines the atomic morphology inasmuch as it demands a fixed and inviolable being to be immanent in a divided universal substratum; but it also compels the iron-clad determinism that is associated with motion and the dynamics of atoms. Consequently, within the theoretical confines of atomism, one is forced to assume a kind of fixed, rigid, and inert programme in the situational dynamics of

the subject, whether it be a chemical molecule or citizen of a state. That is, one is forced to assume the explicit absence of such tenets as spontaneity, as, for example, in the traditional model of so-called 'rational' man as a utility-maximizing efficiency expert. We can see this quite clearly in Democritus' theory of psychology, which presumed the mechanical interaction of very special kinds of 'soul' or 'mind' atoms - especially fine particles which had a remarkable capacity for moving and being moved. There was, in his psychological theory, no element of an unknowable human factor, and, in fact, no element of free-will. As with Democritus' theory of psychology, social theories involving atomistic characterizations - and, of course, to the extent that atomism is the controlling premise - human spiritual factors become indefinite and meaningless, and the entire understanding is given over to only the primitively knowable and the palpable - ultimately of matter, void, and motion. The point is that atomism, as a paradigm theory of human qualities and/or human dynamics, compels a sense of mechanical determinism upon its subject matter. To the extent that we may see in the seventeenth century the same kinds of philosophical forces at work as underlay the evolution of atomism in the preSocratic tradition, we may begin to understand and explain the emerging and increasing quality of determinism associated with political thought and civil life, and, of course, the accompanying normative perspective on political man - that of a primarily materialistic, somewhat insecure stimulus/response mechanism.

Hobbes and the preSocratic tradition shared two rather abstract but nevertheless effective philosophical premises. The first of these is the claim that the nature of existence is in some sense accounted for in terms of a fundamental unity, and that all that is a part of the world, as reported by veritable sense apprehension (in spite of diversity and apparent disjunction) is a part of that unity. The second is the casting of the nature of the universe in terms that are certain and determinable, according to the standards dictated by the quality or capacity of human knowledge - in other words, the concern to 'limit' the world, and give it a precision that merges with the most fundamental terms of knowledge. It is in the very basic nature of these premises that the two distinct philosophies develop substantially approximate ontological structures, leading both to a doctrine of atomism.



Because we are discussing two distinct philosophies, we must establish the grounds of correlation. The comparison between Hobbes and the pre-Socratics involves the former's political theory as against the latter's universal ontology. Hobbes' political atoms are the individual wills of men in the context of civil life. Civil society and its constituent elements are isomorphic, according to Hobbes; the composition of society as a cluster of individual wills is, as it were, metaphysically guaranteed. Thus, the touchstone of the indivisible *minima* of his theory is the human psychology. It is arguable that this factor was underlain by material atoms - indeed, Hobbes' construction of psychology was certainly material-like, if not altogether materialistic - just as it is arguable that Hobbes' theory of the universe was one basically of atomism.<sup>13</sup> But this is not the point of the argument. Whatever was the truth about Hobbes' natural philosophy in this respect, his political philosophy, as a result of its metaphysical matrix, culminated in atomism. Moreover, the fact that an atomistic doctrine was the outcome of Hobbes' political theory was not the result of his drawing on a metaphor based upon, say Epicurus or Democritus, nor was it an attempt to create a theory of atoms within the scope of political phenomena as a result of a pre-concluded philosophy of atomism. Hobbes' arrival at a theory of political atomism was probably as unanticipated as the theory of philosophical atomism had been for the preSocratic tradition. It was simply that the logical effect of Hobbes' philosophical argument necessitated the evolution of atomism in his political theory. Hobbes had enclosed himself in certain (nominalistic) philosophical mandates, derived from his methodological and epistemological metaphysics, that could lead him nowhere but toward some construction of phenomena that conformed in every essential detail to the atomic theory. Indeed, Hobbes' writings represent the first significant expression of political atomism in the modern western political tradition, and in this he laid down the groundwork for a paradigm of thought and political action that was to exist and pervade up to present times: an image of political man as an indivisible, autonomous, and homogeneous being, existing in a free void of political space and having a motion identical only with his own circumstantial history and fate.

The theme of unity and 'separateness' is the dominant concern in Hobbes' writings. As with the artist who creates recurrent compositions and movements in his works, Hobbes plays with this theme on many different

levels in his discussions of physics, psychology, and politics. It is manifest in his method in terms of composition and resolution; it is basic to his materialist theory as matter and its manifestations; it is found in his theory of psychology in terms of human nature counterpoised against the nominal autonomy that characterizes the individual personality; and, most importantly, it is manifest in his political theory in terms of individual wills<sup>14</sup> and the rational basis of civil life. In each of these instances, Hobbes is forever moulding his subject in terms of the transcendent and singular conjoined with the various and plural. Hobbes was, first and foremost, a systems builder. He was concerned with the interrelatedness of things: the connection of ideas, the connection of modes of experience, as well as the conjunction of ideas with modes of experience. That all these relationships are resolvable with one another is both the thrust and definition of Hobbes' philosophy.

To a large extent, Hobbes took for granted the first principles and simplest elements of the body politic, and most of the development of his political philosophy was a deduction from this axiomatic point forward. He was aided somewhat in this by the fact that the elementary components of the subject, the political, were already most evident: individual persons as the 'cellular' constituents of the body politic. It remained for him merely to characterize the basic disposition of these fundamental parts - the basic principles thereof, as it were - and work deductively forward to a correct formulation of civility. Even in this, the task was nearly complete: "Whosoever looketh into himself, and considereth what he doth, when he does *think, opine, reason, hope, fear*, etc., and upon what grounds: he shall thereby read and know, what are thoughts and passions of all other men upon the like occasions."<sup>15</sup> This was the evidentiary condition from which he worked; consequently, for Hobbes, society, being for the most part already 'decomposed', needed only a clarification of its parts and thereafter a compelling demonstration of its right order.

Unity and disunity take their shape in the experience of reason, as against the experience of the senses. The essential qualities that unify an existentially pluralistic world of entities are apprehended in the experience of reason, and, apart from the extraordinary care that Hobbes takes to attend to the epistemological question, this is precisely the theoretical configuration developed by the preSocratic atomists. Hobbes'

political theory, grounded as it is in his metaphysics, represents the contrast between disunity and unity by way of the two dimensions of experience: on the one hand, it casts the political in terms of the autonomous individual and the unique perspective held by each such person; on the other hand, it views the political in terms of certain commonalities, or universals, that bear upon all men and have political relevance. In each instance the subject is the same, only the medium for its apprehension and understanding have changed. In the context of disunity, each individual exists in mental isolation; his thoughts are his own, and even if he wished to he could not transfer their precise nature to another. He is, as with any 'effect', the aggregate of 'accidents' shaped by the unique conjunction of 'antecedent causes'. But as a unity, all men have certain uniform qualities that determine their humanity, qualities that, as it were, vector the causes of those accidents manifested in each and every individual. What is evident here is that Hobbes is dealing with two divergent perspectives on the same subject. Admittedly, the medium for each perspective is different, and for reasons grounded in the context of the times in which he wrote, he was apt to stress one perspective over the other; but, in the final analysis, the premier consideration of Hobbes' political theory is the 'existential' perspective as against the 'essential': the psychologically unique individual rather than ubiquitous human nature.

The presentation of unity and separateness in Hobbes was initially what compelled a form of political atomism in his doctrine. His basic depiction of the civil condition as a unity - not to be confused with the theoretical dynamics which led him to culminate civility in a singularized sovereign - resided in the universal qualities that he attributed to all men, and which warranted the establishment of political authority. On the other hand, the civil condition as 'separateness', as variety and plurality, was to be found in the several and diverse psychological particulars that each physical individual represented. In other words, Hobbes, like the preSocratics, devised a split in the phenomenology of his subject between its *essential* presence, and thus a unity, and its *existential* presence: a recognition of plurality and variety. He needed, above all, an organizing principle to, first, draw together the strands of his conception of the political, and, second, to place in a common matrix the individuals constitutive of the civil condition. On the other hand, his theory had to account for the circumstances of civil strife. Hobbes' doctrine of civility, then,

had to reconcile those universals characteristic of formal, 'political man' with the disunited, existential particularity of each political being; and only a form of political atomism could consistently portray the diverse and plural circumstances of civil life.<sup>16</sup>

Yet, atomism represented the culmination not merely of the goal of unity and an accounting of separateness, but also a conception of the world as a limited entity; that somehow, amid a process of division there was some basis for focussing on a specific *unity*, settling on a fixed point of *being*. Hobbes characterized his world, and perception and reflection thereupon, in terms that incorporated a sense of the 'end of the qualities and magnitudes' of things. He was constantly mindful that the limit of his subject was the confinement in which he must move, in natural, social, or political arenas. The attempt to limit the subject and the particulars of civility added yet greater momentum to the drive towards atomism. Moreover, this had implications far beyond the mere articulation of the parts of the political whole - the descriptive quality of civility penetrated the prescriptive nature of Hobbes' doctrine, carrying with it the notion of the limit, with all the undertones of theoretical precision and absolute determinism embedded in the basic inertness of the subject. Political theory was, for Hobbes, not a detached and independent enterprise such as we might consider it today, especially under the burden of a 'value-neutral' sense of the term. Rather, it was an involved activity, incorporating the realms of reason and experience. Hobbes knew full well that thought and action are inseparable in man: "For the actions of men proceed from their opinions; and in the well-governing of opinions, consisteth the well-governing of men's actions, in order to their peace, and concord".<sup>17</sup> Hobbes recognized that civil philosophy, like geometry, and unlike physics, is a created kind of enterprise. That is, whereas physics entails the factual foregone-ness of the subject, the presence of a civil philosophy is one and the same as the apprehension of it: "The *matter* thereof, and the *artificer*; both of which is man."<sup>18</sup> Like geometry, which is also, as it were, the created apprehension of a subject, civil philosophy is the product of man: "Geometry therefore is demonstrable, for lines and figures from which we reason are drawn and described by ourselves; and civil philosophy is demonstrable, because we make the commonwealth ourselves."<sup>19</sup> Therefore, knowledge of the commonwealth is knowledge of ourselves, and our own senses:

"For the causes of the motions of the mind are known not only by ratiocination, but also by the experience of everyman that takes the pains to observe those within himself. And, therefore, not only they that have attained the knowledge of the passions and perturbations of the mind, by the *synthetical method*, and from the very first principles of philosophy, may by proceeding in the same way, come to the causes and necessity of constituting commonwealths."<sup>20</sup>

Thus, it is not altogether necessary to know from the outside, as one knows the things of physics, the nature of the political; man the 'artificer' need only look within himself - the 'material' of the political - for he is the creator of his own condition: "*Power* be derived from the *wills* of men that constitute such power."<sup>21</sup> But it was Hobbes' intention to cause men to recognize their own status in the whole process, and from this to consider the correct manner by which they may manage their station. He wanted to construct a treatise that would "well-govern" the ideas of men so as to permit them to reason rightly a civil condition:

"The cause, therefore, of civil war is, that men know not the causes neither of war nor peace, there being but few in the world that have learned those duties which unite and keep men in peace, that is to say, that have learned the rules of civil life sufficiently. Now, the knowledge of these rules is moral philosophy. But why they have not learned them, unless for this reason, that none hitherto have taught them in a clear and exact method."<sup>22</sup>

To Hobbes, reason is an experience<sup>23</sup>, so that to construct a political theory is one and the same as to share with one's listener an event or set of circumstances, which will *become* a part of the individual in much the same way that an event or circumstance of sensory experience might become part of one. His political theory was nothing less than a purposeful intrusion into the affairs and considerations of politics of what he held to be the rational 'truth' of the human condition. Hobbes' political theory therefore implied the construction of limits on two different levels, the acceptance of one kind of limit leading to the motivation for the other. First, political theory is a limitation of the thoughts and opinions that are associated with political action. For Hobbes, a political theory must be more than mere persuasion, it must be an act of teaching. Insofar as theory limits the consideration, or knowledge of the terms of a subject, it is an experience of reason which shapes the thoughts of men prior to their

actions. The right reasoning of the civil condition, in Hobbes' view, compels men to limit their activities; and since human perception is shaped by experience, participation in the affairs of the commonwealth generates a continuous reconstitution of states of mind. The subsequent constitution of mind then further motivates men to limit their actions by imposing restraints upon themselves, firstly, with regard to respecting the established commonwealth, and, secondly, with respect to embracing civil laws:

"But as men, for the attaining of peace, and conservation of themselves thereby, have made an artificial man, which we call commonwealth; so also have they made artificial chains, called *civil laws*."<sup>24</sup>

The thrust of Hobbes' political theory was to take men, in the experience of reason, from their own parochial perspectives, to an awareness of the universal underpinnings of the civil condition, and thence to the reasonable justification of the commonwealth; it was, in other words, a discursive journey from the existential perspective to the essential, and from there to a consideration of the right ordering of civil existence. Initially, postulates Hobbes, men were autonomous stimulus/response mechanisms, each unique in his experiences, which, in turn, gave individual meaning to ever-present appetites and aversions. The product of such basic drives filtered through the unique history of experiences that located each individual in political time and space. Basically, men were viewed as aggregates of politically relevant formal accidents or causes, the effect of which was a generalized, fundamentally *apolitical* individual, that is, a largely unintegratable, discrete cluster of experiences and interests. If men are not naturally political, argued Hobbes - taking the political to entail a sophisticated mutuality of interests - then political union must be achieved by some superstructural means. But men are also essentially rational beings, capable of perceiving the advantages of cooperative endeavour, or, at the very least, collective bargaining in accordance with coalitions of common interest. The problem, then, as Hobbes framed it, was how to import into the existential panorama an awareness of the politically-relevant basic causes in man, and from this develop the rational, if eclectic synthesis of a "well-governed" civil condition. Man becomes, as it were, a self-created political organism: civilization, therefore, is a *product* of civility, not its precursor.

Hobbes' commitment, on the one hand, to a certain uniformity and systematic working of the universe, and, on the other hand, to the absolute validity and veracity - not merely of the senses, but of the taxonomy of the human apprehension of existence - led him to split the phenomenalization of the universe in terms of the two dimensions of knowledge and experience: the function of reason and the experience of the senses. His subject had a manifest diffusion in terms of its actual existence, reported and known by the senses, and it had a fundamental wholeness and unity in the essential constituents of the universe, and in their interaction in the milieu of cause and effect. But while these defined the theoretical tendencies leading to atomism, they did not provide the system with the necessary structure for articulation and permanence in the philosophical sense. What was required was a certainty and clarity of the subject, not now as theoretical forces, but as a thing or things of existence and being. Hobbes achieved this by ascertaining the epistemological terms of human awareness and preconception, and building a theoretical model of the universe strictly confined to these terms. Such terms provided the format for the existence of things in the world, no more, no less, rendering all that is the case comprehensible to human awareness; and each of these terms conveys a sense of the termination of the qualities and magnitudes that describe each thing of the universe, so that such things, each alone, are subject to a limit and articulation. Thus the tendencies of unity and separateness have an objective station in the finite and limited terms of Hobbesian epistemology, whether as existence or as essence in reason: things are either bodies (as matter) and their motions, or they are names, subject to the strict delimitation of definitions.

With these factors Hobbes was prepared to fashion a model of political being. His task was to arrive at a limited unity, as it were - limited in the sense of the terms of the world (epistemology), and thus the world itself (mechanical determinism), and thereby limited in the sense of the civil condition (politics); leading to a unity resident in reason, culminating in covenantal relationships, and hence an existential unity. While, as Hobbes tells us in *De Cive*, he was interrupted in the progress of this ambition, he was not deterred from the logic it spelled: his doctrine was in three stages, and each stage flowed into its successor. Hobbes was one who preferred the synthetic side of the resolute/composite method. For the most part, he was not the analyst that, for example, Galileo was, and

his words are a directed demonstration, motivated by the ends to which they were deductively paced, and not the more-or-less autobiographical report of a detached enquirer. The starting point for Hobbes is man himself, as a wilful individual. The fact that Hobbes' political atoms are themselves patently visible does not mean that Hobbes sidestepped the question of discreteness. On the contrary, it merely becomes more apparent in the composite function, the putting together of already divided parts. In fact, *Leviathan* itself is the product of synthesis. Hobbes' political atom - wilful man - is an autonomous entity, contained by the material body that also incorporates the materiality of mind, so that psychological life is localized to the experience of the individual, autonomous person. Here, then, is the limit, substantiating the whole in the *being* of the particular. Thus the political for Hobbes, being divided and limited, began to take atomic shape.

If the individual is limited to the confines of his own experience, he is also limited in another direction: the 'corporate individual', and the entire psychological process from sense to endeavour, *as an individuated whole*, is the only unit that can be meaningful to Hobbes' sense of 'politics'. To delve beneath this point in the analysis of the political is to disrupt the integrity of the only relevant particular of the political whole: the 'output', as it were, of the chain of dynamics that constitute the individual psychology, namely, *individual will*. The individual as a *nexus* is the precise composite of all the factors and forces that lend him *individuality* (or idiosyncrasy). To the extent that the individual is a reflection of various public phenomena, such as language and *conduct inter homines*, his individuality is bounded, or limited, by its possible modes of expression. The individual is, in a way, bifurcated: he is the 'patient', who receives the forces and motions of other bodies as agents; likewise, he is the agent who through his own body, affects other bodies in the universe. The factor of human psychology sits squarely between these two extremes such that it is difficult to determine the relative loci of the psychological individual and the corporeal person. That is, in one sense, the corporeal person is the product, or effect, of psychology: all endeavour is intended to serve ego-centric interests.

The whole dilemma of civil life was, for Hobbes, the interplay of unity and separateness. While possessing common mental attributes, (an



essential psychological unity), men perceive the world in various and vastly different ways which, nevertheless, in the narrow confines of civil intercourse, paradoxically result in fairly uniform behaviour - competition: the common pursuit of limited resources to be differentially applied to mutually exclusive ends. To the extent that the *self* is the basic ingredient of politics, so the object of the self - the individual person - is the indivisible limit of politics. In both the passions of man and his reasoning ability lies the heart of the theme of unity and separateness, typified by the phrase "all men are different, alike". All men manifest differences based on a common human nature, and bear an essential similarity in the qualities by which these differences are determined; each man is a distinct and categorically separate entity, having a disposition of mind and an array of life experiences that are all his own. Yet, there is a unity of essence, derived from an undergirding commonality that lends each individual a sense of wholeness that transcends mere corporeal integrity: a sense of autonomy founded in shared forms of life. Although Hobbes' political individual is truly psychologically autonomous, the social setting in which an individual finds himself will greatly narrow the range of possible alternative solutions to any given problem. Mere sociability is itself a confining and complex situation, permitting only a narrow range of action. Indeed, when considered in terms of the scope of human action afforded by man's "natural setting", the only 'solution' is the maintenance of the commonwealth, and this is Hobbes' point. Men reach a common conclusion with regard to their political situation through an appreciation of a common experiential and, as it were, environmental feature: society itself.

## II

### Leviathan and Obligation

Hobbes' version of the social contract, and particularly his argument for the institution of a commonwealth, begins by describing the world of men devoid of government. There would be no rules, since there would be nobody with the decisional power to make them. In this respect, at least, all men would be perfectly free. But, far from being an agreeable condition, it would be the worst imaginable. There has never been enough food or other resources to satisfy everyone's needs; there has always been com-

petition for what there is, though, in more 'civilized' circumstances, this competition has been limited by the power of government. The ideal typical state of nature, then, according to Hobbes, is characterized by unrestrained competition, not for the amenities of 'civilized' life, but for the very means of subsistence. Each man could rely only upon his own strength and cunning to secure the necessities of life; there would be nobody to whom he might appeal to protect his person or property or to punish those who invade his personal territory. Yet, this is not the worst of it. Not only would un-civilized man have to be watchful and defensive, he would have to launch preemptive strikes against others as well, even when they pose no immediate threat to his welfare. Simply, the best way to provide for future defense is to attack at the most propitious moment, irrespective of immediate justifications. The subjection of others, in other words, would be necessary to guarantee one's own security.

No reasonable person would want to live in this fearful and unstable condition and so, Hobbes argues, reasonable persons seek to establish or, properly speaking, enhance the institution of government. (It is easy to slip into the 'false chronology' of the 'state of nature' metaphor and take it literally as a piece of historical reconstruction. Hobbes' point is not so much that government arose out of a state of nature in response to the concerns of reasonable men, but that reasonable men in civilized circumstances - i.e. in a civil condition - must be aware of the fragile veneer of civility that separates them from the heart of darkness resident deep within us all. In many respects, Hobbes' uncompromising call for reflection upon human nature and its civil expression parallels Freud's recognition of the multi-tiered construction of human personality.) Each individual, then, once aware of the precipitous and finely-balanced position of his civility, acknowledges the transfer of his 'right' to the use of force to one man or body of men, who has the sole authority to make laws or issue commands, and to punish disobedience. Each must, at least notionally, give up the use of force to secure his interests and to settle conflicts. Each must accept the principle of arbitration, the principle that conflicts are to be settled peacefully by appeal to a third party, and each must agree that he is under an obligation, bound by all of the decisions and decrees of the 'sovereign'. If each surrenders his 'natural right' to do as he sees fit and submits to the sovereign, then all will benefit. There will be peace, order, and security where otherwise there would be war, chaos,

and continual fear. Cooperation for mutual benefit can replace the unrestrained competition of the state of nature.

The benefits derived from civil organization are obviously of the greatest importance to Hobbes. Some governments may offer greater benefits than others, but vitually all of them provide the fundamental benefits of order and protection. Some writers have based an obligation to obey the law directly upon the gratitude due for the receipt of such benefits. A tacit consent to the laws of Athens is not the only basis of civil obligation mentioned in the *Crito*. Socrates personifies the laws and imagines them holding him to account for the benefits they have bestowed upon him. "We have brought you into the world and reared you and educated you, and given you and your fellow-citizens a share in the good things at our disposal .... "25 Socrates obviously agrees and is grateful for all the benefits of his Athenian citizenship. Other more recent thinkers have suggested similar theories of civil obligation. W. D. Ross follows Socrates in combining these two lines of argument:

" ... the duty of obeying the laws of one's country arises partly ... from the duty of gratitude for the benefits one has received from it; partly from the implicit promise to obey which seems to be involved in permanent residence in a country.... "26

While explicitly rejecting the Hobbesian social contract, J. S. Mill nevertheless accepts a version of the benefits argument:

"Though society is not founded on a contract, and though no good purpose is answered by inventing a contract in order to deduce social obligations from it, everyone who receives the protection of society owes a return for the benefit .... "27

Despite the superficial appeal of this argument, it loses its plausibility once we construe the obligation to obey the laws of some government as an obligation owed to that government for the benefits it has bestowed upon us. In the first place, obligations deriving from benefactions are typically uncertain and ill-defined. There is usually no specific act or line of action that is owed, and one is frequently unsure whether there is 'some obligation' or no obligation at all. This basis of obligation seems on the face of it ill-suited to carry the burden of such a precise and im-

portant obligation as an obligation to obey the law.

This defect appears more clearly when one reflects upon the varied reasons a government might have for conferring some of its benefits upon its subjects. It is sometimes out of a genuine regard for their welfare, but it is frequently the result of less benevolent motives. If a government confers benefits upon its subjects in order, let us say, to secure its ill-gotten power, it is at least questionable whether such a benefaction would call for repayment. A rather lengthy case-by-case examination would seem to be necessary to establish whether benefactions place the citizenry under an obligation, considering such things as the nature of the benefits, whether they are 'standard' or 'extraordinary', their underpinning motives, and so on. Moreover, in a modern democracy the government of the day is to a large extent dependent on the 'good will' of its electorate and interest groups, resulting in the distribution of benefits in order to secure approval or votes. The argument for gratitude falls away in direct proportion to the efforts of politicians to ingratiate themselves with their public. But apart from such an examination, it is not obvious that obedience to all the laws of the state would in any event be the appropriate way to discharge such an obligation. M.B.E. Smith contends that, on the contrary,

" ... it is clear that the mere fact that a person has conferred on me even the most momentous benefits does not establish his right to dictate all of my behaviour; nor does it establish that I always have an obligation to consider his wishes when I am deciding what I shall do. If, then, we have a prima facie obligation to act gratefully towards government, ... (this) surely does not establish that we have a prima facie obligation to obey the law."<sup>28</sup>

The idea that one has an obligation to the government to obey its laws rests upon a mistaken conception of the nature and role of government. It is erroneous to regard a government as an entity in its own right which trades off tit-for-tat with its subjects, benefits for obedience. The paradox is that the gratitude argument presupposes a personification of the state, an altogether illicit anthropomorphism. We need not feel beholden to our government for the goods and services that it provides, for the government is not a separate party with legitimate interests of its own to sacrifice on our behalf. Rather, it is an organ of the larger society

whose interests it exists to serve. The goods it bestows upon us are our goods. Indeed, this conception of the status of government was one of the great advances in political thought arising out of the social contractarian reaction to the medieval pact of government. The whole thrust of the contract metaphor is towards individuals combining in order to enhance their mutual well-being - the material expression of which is government and regulated civil intercourse - not, as with the feudal metaphor of civility, an organic relationship between three distinct and coeval entities: sovereign, church, and citizenry.

It is true, of course, that the individuals who hold office in a government have their own interests, and that they may use their positions of power to serve those interests. They may confer special benefits upon some citizens and thereby place them under an obligation to reciprocate. On the other hand, a citizen or group of citizens may place members of parliament under an obligation by conferring 'benefits' upon them. We are all too painfully aware of such favours and pay-offs in government, and we also know full well that it has nothing to do with an obligation to obey the law.

There is nothing in *Leviathan* which indicates that civil obligation is premised upon gratitude for the benefits of government. It is a matter of considerable debate, however, just what Hobbes' view is. He begins with the notion of a law of nature, which is "a precept or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life or take away the means of preserving the same and to omit that by which he thinks it may best be preserved".<sup>29</sup> The first and fundamental law of nature instructs men to seek peace as a means to their own preservation. From this first law of nature is derived the second: "that a man be willing, when others are so too, as far forth as for peace and defense of himself he shall think it necessary, to lay down his right to all things, and be contented with so much liberty against other men, as he would allow other men against himself."<sup>30</sup> The mutual transference of this right of nature to a sovereign constitutes, for Hobbes, the social contract, and as a result of the agreement each becomes bound to obey the commands of the sovereign.

One of the fundamental issues in interpreting Hobbes is whether the obligation to obey the sovereign derives directly from the mutual agreement, or whether (to use the language of Part I) this is merely a conventional obligation which needs in turn to be grounded in a further obligation to keep one's commitments. Stuart M. Brown, Jr. maintains that "Hobbes never doubts the general validity of covenants and thus never requires any guarantee of their obligatory character."<sup>31</sup> J. R. Pennock claims to the contrary that the notion of a covenant "...must imply an obligation independent of, and prior to the covenants."<sup>32</sup> This obligation would be supplied by the third law of nature, "that men perform their covenants made."<sup>33</sup> Hobbes speaks of the laws of nature obliging men even in a state of nature, and he adds that "...the true doctrine of the laws of nature is the true moral philosophy."<sup>34</sup>

Now, this is an important issue only if there *is* such a thing as a social contract. Certainly, Hobbes does not believe that at some time in the remote past everybody came together and concluded such an agreement. He does seem to think, though, that civil obligation derives from some kind of commitment. "The way by which a man ... transfers his right is a declaration or signification by some voluntary and sufficient sign...."<sup>35</sup> If one has not made an express commitment to obey, then one's obligation must be inferred from some other act, "...there being no obligation on any man which ariseth not from some act of his own."<sup>36</sup>

We have discussed, in part, the difficulties surrounding any theory of tacit commitment, and Hobbes does not escape them. He speaks in a difficult passage of obligation being derived from submission to the sovereign. An obligation may be 'inferred' either from express words "...or from the intention of him that submitteth himself to his power, which intention is to be understood by the end for which he so submitteth... namely the peace of the subjects within themselves and their defense against a common enemy."<sup>37</sup> There is no doubt something interesting and important here, but it is not clear just how we are to construct a theory of obligation out of it. If it is to be understood as a voluntary commitment (which certainly seems to be the way Hobbes intended it to be understood), we have the same problem that we have with Locke's theory: obeying the law is just not what the plain man would regard as voluntarily undertaking a commitment. And if 'submission' means more than obeying the law, then it is not clear that

everybody has submitted to the sovereign. It may well be that anyone who considered the matter would realize that the point of obeying the law is to preserve the peace and secure their defense, and that this end is to be served in future cases just as surely as it is in the present case, and he might think of this as very much like a commitment to obey the law in the future; but true as this may be, we still cannot infer anybody's *actual* will or intention from such facts.

That civil obligation derives from the social contract is the most obvious, but by no means the only interpretation of Hobbes' views. He also speaks of the laws of nature obliging men to seek peace and to preserve it once it is achieved. Obeying the law is the way to fulfil this injunction; so, one has an obligation to obey the law. Civil obligation may thus be based directly upon the laws of nature rather than upon an uncertain agreement. If we accept this interpretation we find ourselves faced with another issue: are the laws of nature generative of obligations because they are rules of reason or because they are divine commands? One may find support for both views - indeed, in the same paragraph:

"These dictates of reason men used to call by the name of laws, but improperly: for they are but conclusions, or theorems concerning what conduceth to the conservation and defense of themselves; whereas law, properly, is the word of him, that by right hath command over other. But yet if we consider the same theorems as delivered in the word of God, that by right commandeth all things; then are they properly called laws."<sup>38</sup>

The correct view here would seem to be that the laws of nature are binding upon men in both these ways, but that it is as rules, precepts, or theorems of reason that they are of most significance in Hobbes' account of civil obligation.<sup>39</sup> The contrast between the laws of nature and the laws of God is really the contrast between two sources of prescription.

This point, however, raises yet another question: in what respect are these rules rationally binding - as moral rules or as rules for the advancement of one's own good? Hobbes refers to the laws of nature, as we have seen, as "the true moral philosophy", and he thinks it would always be in one's own interest to follow them. This would be inconsistent if it were true that "nothing could be called a moral obligation which in principle

never conflicted with self-interest".<sup>40</sup> Howard Warrender argues that the laws of nature are moral rules (and so give rise to moral obligations) only if they are regarded as commands of God. Otherwise they "...cannot be taken to be more than prudential maxims for those who desire their own preservation", in which case "political obligation would turn out like natural law to be no more than another prudential maxim...."<sup>41</sup>

But how important is this issue? One may doubt that Hobbes would have much cared whether his laws of nature were to be taken as moral or as "merely prudential" rules. The important question is whether they provide a good reason for obedience. If the theory can be grounded in self-interest, if it can appeal to "that reason which dictateth to every man his own good"<sup>42</sup>, then so much the better, "seeing all the voluntary actions of men tend to the benefit of themselves, and those actions are most reasonable, that conduce most to their ends."<sup>43</sup> We need not accept a complete psychological egoism to agree that this sort of reason would be a good reason. Whether it would give rise to a moral obligation is of interest but of relative unimportance. Leaving the contract out of the picture, then, the argument can be reduced to this: if there is no government there will be chaos and every man's survival will be in jeopardy. If there is a government and if its rules and commands are obeyed, then all will benefit by the consequent order and security. It is in every man's interest that the law be obeyed; so every man ought to obey the law. This radically condensed version of Hobbes' argument (to be amended in the next section) is simple and attractive, appealing as it does to the fundamental interest which all men presumably have in their own self-preservation. Questions could be raised whether this would be a moral obligation, but the more interesting question is whether the argument is convincing. Does it supply a person properly concerned with his own welfare with a solid reason for obeying the law?

There is still room for someone to reply that his survival does not really depend on his own obedience, and that he may be better off if he does not always obey the law. "It is to my advantage, as it is to everyone else's advantage, that the law be obeyed in general", the Thrasymachean sceptic might reply, "but that does not mean that it must always be to my advantage to obey the law. If we were faced with only two possible worlds, one in which everybody obeyed the law and one in which nobody did, then



clearly it would be to my advantage to belong to the first world. But there is a third possibility which must be considered: a world in which everyone obeyed the law except me, and I always act in such a way as to maximize my own benefit regardless of whether I break the law or not."<sup>44</sup>

Hobbes is aware that this question could be raised. In his discussion of the third law of nature, that men perform their covenants made, he defines injustice as "the not performance of covenant", so that it would be unjust to break the law since that would mean violating the social contract. But might it not be to my advantage to do this on occasion?

"The fool hath said in his heart, there is no such thing as justice; and sometimes also with his tongue; seriously alleging, that every man's conservation, and contentment being committed to his own care, there could be no reason, why every man might not do what he thought conduced thereunto: and therefore also to make or not make; keep or not keep covenants was not against reason, when it conduced to one's benefit."<sup>45</sup>

Hobbes' reply to the fool is that his "specious reasoning" is false for two reasons. The first is that, though breaking covenants might by some unforeseen happenstance "turn... to his own benefit", it would be unreasonable to act on this possibility, since breach of trust "tends to his own destruction". The second is that nobody who gets a reputation for such things will be "received into any society that unite themselves for peace and defense, but by the error of them that receive him."<sup>46</sup>

Let us look at the first part of the answer. Hobbes may be saying either that it is never likely that disobedience will turn out to be to my disadvantage, or that even though the chance of success seems good, the consequence of failure would be so awful that it is never a reasonable risk to take. On either interpretation the argument is not fully convincing. In the first place, the chance of punishment or other sanctions varies from time to time and from place to place, as well as with the nature of the illegal act. Nevertheless, if the result of disobedience is, or tends to be, one's own destruction, the chance of success would have to be very great to "make it reasonable or wisely done". But we must ask in what respect disobedience would tend to one's own destruction. There are several possible answers. Firstly, one's disobedience may be met with

severe punishment. This would be a perfectly proper sense in which disobedience would tend to one's destruction. But, as noted, the chance of punishment and its probable severity may vary in a number of ways. It is not uncommon for the periodic punishment for a certain activity (such as selling untaxed alcoholic beverages) to be only a small drain on its large profits. Not all crimes, then, would tend to one's own destruction in this straightforward sense.

Secondly, one's disobedience may set an example for others and so tend to the destruction of the political order. Since one's preservation is dependent upon this order, one's disobedience would thereby tend to self-destruction. This argument is more difficult to evaluate, partly because we know so little about the effect which one person's disobedience has on others. But it seems obvious that a society will put up with some disobedience before it falls apart, and adding one more lawbreaker will not make much difference. If it is in this way that disobedience tends to my own destruction, then it may seem reasonable to choose the direct and tangible benefits I expect from disobedience over the indirect and less obvious benefits which come from obedience.

Thirdly, we have already mentioned Hobbes' second reply to the fool, and it can be read as complementing his first reply by specifying the destruction he has in mind. If he breaks faith with other men he will be considered untrustworthy and so will be excluded from the society which protects him. Hobbes has a point here, though it seems to be somewhat overstated. An untrustworthy person may be watched more closely than others, and he may suffer penalties for his acts of bad faith, but only rarely would he be expelled from society altogether. Besides, it may be possible to avoid detection. Hobbes' argument supplies a good reason for keeping an acceptable reputation, but might not a clever enough fool be able to keep a public image of integrity, even preaching the virtues of law and order, while being prepared to ignore the law when it serves his ends? Not everyone could, for one must "have a mind disposed to adapt itself according to the wind"<sup>47</sup>, but some people are very good at this.

Fourthly, one must of course run the risk that one's duplicity would be discovered, and it might be very difficult to maintain the deception. This gives rise to a fourth way in which disobedience might tend toward the

destruction of the individual: the constant switching back-and-forth from the 'public' to the 'private' person and the constant vigilance required to keep each in its proper place could be a very heavy psychological burden. The mental strain could be so great that it would tend towards one's eventual emotional ruin.<sup>48</sup> Much depends at this point upon the constitution of the individual, whether he would be clever enough and able to withstand the stress, and it is to be doubted that anything general could be said one way or the other.

Let us stand back and take a broader perspective on Hobbes' argument. He is not really saying that an individual would in every instance gain from obeying the law. He is arguing, rather, for the adoption of a certain principle to govern one's conduct. This is one reason that the language of commitment and submission is so prominent in his theory. Calculation of advantage on each occasion is just the sort of thing that is ruled out by a commitment to act in a certain way. Granted all the difficulties in thinking of civil obligation as deriving from an actual commitment, may we not think of Hobbes as arguing this way: "Though it may seem to your short term advantage to ignore the demands of the civil order, and though it might even *be* to your short term advantage on occasion to do so, you will be better off in the long run (or at least the odds are that you will) if you ignore such short term gains and make it a rule always to obey the law." Why is this so? For the reasons already enumerated, Hobbes' 'rule-prudentialism': one cannot be sure of escaping detection, and the consequences should not be dismissed lightly: an individual will no longer be considered trustworthy, he may be deprived of some of the benefits of citizenship, and he may be considered a menace to public order. Furthermore, he will probably influence others to undermine the political order in which he has as great a stake as anybody else. One must also consider the psychological stress involved in keeping one's actual dispositions a secret, and here something very much like a commitment is necessary: a person must, in a sense, decide what kind of person he will be. Either he accepts the legal order as binding or he is ready to disobey when it will gain him some important advantage. The man who is a law-abider is just not ready to do certain things, and if he is too easily tempted we shall say that he was ready after all.<sup>49</sup> Hobbes' remark along this line is rarely noticed by his commentators: "That which gives to human actions the relish of justice, is a certain nobleness or gallantness of courage, rarely found,

by which a man scorns to be beholden for the contentment of his life, to fraud, or breach of promise."<sup>50</sup>

Each of these lines of argument taken singly could be rejected by a tough sceptic, but they are quite powerful in their cumulative effect. It would take a high opinion of one's own powers and a low opinion of others to think that opportunism would be the best bet for the long run. And though disobedience on occasion could well be advantageous, one must consider that it is not just a single act, but a way of life which one is choosing. Whether or not one could successfully conduct the kind of double life required of the opportunist, it would certainly involve some kind of inconsistency.

In what sense is one being inconsistent in granting the desirability of general obedience to the law yet being prepared to violate it himself? One's behaviour would be inconsistent with one's public professions, but this is nothing new, for as we have seen, this may consciously be adopted as part of one's strategy. One's policy or principle of action could not be made public, but one's behaviour could be consistent with one's policy: a person consistently professes obedience in public and consistently calculates his advantage in private. But is there not something inconsistent in the policy itself? Is it not inconsistent to will that everybody *except me* should obey the law regardless of his own disadvantage? One would not be willing something logically inconsistent - it would be quite possible for everyone but me to follow a certain course of action. But I would be acting in a different way from the way in which I want and need others to act. I would be exempting myself from the general uncalculating obedience from which we all benefit. From the Kantian perspective, in the absence of some special justifying reason it is wrong of me to make an exception of myself. I would be taking unfair advantage of the willingness of others to obey the law even when it might be to their advantage to break it. Here we have an additional reason of a different sort for obeying the law. It is frequently said that Hobbes' line of argument has nothing to do with morality and that it establishes an obligation only in the broadest sense of the term. But if obedience to the law is also a matter of justice or fairness to others, then the obligation to obey would resemble more closely a moral obligation in the narrower sense of the term.

We would not be distorting the idea of a social contract out of all recognition if we interpreted it metaphorically as making this kind of point. Each of us ought to behave as if he had agreed with all the rest to obey the law even when doing so might involve some sacrifice. It is as if each had an obligation to the rest based upon an explicit agreement. We should think of the state as though it were a joint venture based upon a contract creating mutual expectations and obligations. The model of a contract is particularly fitting since it also expresses the fact that civil society is beneficial to those who participate in it - it is something that rational persons who considered the alternative would voluntarily accept and support. But we need not take the metaphor literally and think of the fictional contract as the actual *source* of the obligation to obey. Of course, this interpretation has been submitted in different ways and with varying emphasis by Rousseau, Kant and Rawls, all of whom will be discussed in later sections. The point here, however, is that what irks us most in Hobbes is the lack of commitment to moral obligation in the narrower sense of the term, and that no matter how pleasing and sensible his account of the benefits of civility may be, of itself it does not provide sufficient justification for a genuinely moral obligation to obey the law.

### III

#### Hobbes' Contractarianism

Most scholarly discussion of Hobbes' theory of obligation has been in reaction to what Stuart Brown has called the "traditional interpretation".<sup>51</sup> According to this view - which counts a number of adherents<sup>52</sup> - Hobbes actually has no theory of obligation. While there is a good deal of disagreement over the details, these commentators agree that what Hobbes offers in his political works is a prudential account of why we *ought* to obey the laws, not an explanation of why we are under an *obligation* to obey them. The argument of the exponents of the traditional view is straightforward. They begin by taking Hobbes' psychological egoism seriously: man is a self-interested creature concerned primarily with satisfying his own desires. They also take Hobbes at his word when he defines a law of nature as "a precept or general rule, found out by reason, by which a man is for-

bidden to do that, which is destructive of his life, or taketh away the means of preserving the same; and to omit that, by which he thinketh it may be best preserved."<sup>53</sup> So regarded, the laws of nature are no more than prudential maxims - precepts which carry no moral force, although self-interest may 'require' us to obey them.

As a consequence, the traditionalists claim, Hobbes' third law of nature, "that men perform their covenants made", is reduced to the precept, "keep your promises when it is in your interests to do so". Hobbes admits as much when he declares that "covenants without the sword, are but words, and of no strength to secure a man at all".<sup>54</sup> We may be compelled to keep our promises, but we are never under an obligation to do so. This, of course, puts Hobbes in a difficult position. On the one hand, according to this reading of Hobbes, he argues that we are under an obligation to obey the sovereign because we have covenanted to do so; but on the other hand, he tells us that we only need to honour our covenants when we are compelled to do so - when, in fact, we are in the civil state. The problem confronting a literal reading is: how do we enter the civil state if we cannot contract our way into it? The answer is that we enter the civil state when we are forced into it by someone who has the power to command our obedience. In the end, it is the sovereign's ability to command obedience, his coercive power, which explains both why we usually do obey and why we ought to obey him: to do otherwise would be dangerous and foolish.

This, then, is the traditionalist interpretation. In summary, two points need to be emphasized. First, as discussed in the previous section, Hobbes tells us why it is prudent to obey the sovereign, not why we have an obligation to obey him. As J.W.N. Watkins puts it, Hobbes' "prescriptions are not *moral* prescriptions - they are more like 'doctor's orders' of a peculiarly compelling kind."<sup>55</sup> And, secondly, the social contract is completely unnecessary to Hobbes' prudential account of obedience.

Another interpretation is that presented by Michael Oakeshott in his introduction to *Leviathan*.<sup>56</sup> Oakeshott agrees with the traditional view that the state of nature is a moral vacuum, but he goes on to claim that Hobbes does account for one's having an obligation to obey the sovereign in the civil state. Oakeshott's exposition of Hobbes' theory of obligation centres on a distinction of four separate kinds of obligation. According

to Hobbes, Oakeshott says, "to be *obliged* is to be bound, is to be forbidden, to suffer impediment."<sup>57</sup> From this definition of obligation Oakeshott traces four different ways in which we may be obliged: physically, rationally, morally, and politically. Physical obligation may come about, for example, when someone is obliged to hand over his money to a gunman; similarly, we are physically obliged to obey the laws of gravity. Hobbes also considers us to be, at times, under a rational obligation, as when "a man may be prevented from willing a certain action because he perceives that its probably consequences are damaging to himself."<sup>58</sup> Both kinds of obligation are present in the state of nature - but this is actually to say no more than that coercion and prudence may both exist in a moral vacuum as well as in the civil situation.<sup>59</sup>

Unlike physical and rational obligation, however, moral and political obligation are found only in the civil state. There is reason to question Oakeshott's decision to count political obligation as a distinct kind of obligation, since it is simply "a mixed obligation consisting of physical, rational and moral obligation"<sup>60</sup>, but this is unimportant here. Our concern is with Oakeshott's claim that Hobbes introduces a moral obligation to obey the sovereign. Does Oakeshott establish a link between the social contract and this moral obligation? The answer, for two reasons, is no. To begin with, we have Oakeshott's testimony that "the covenant itself does not create a moral obligation: it is not itself morally obligatory and, not being a law (the will of the Sovereign), it does not itself make any conduct morally obligatory."<sup>61</sup> Moral obligation is established by a voluntary act of *authorization* on the part of those who are bound, not by covenant. And although there is, as Oakeshott says, a rational obligation to make the covenant, this simply means that it is prudent to do so. Oakeshott's interpretation, it seems, leads us to conclude that Hobbes accounts for our obligation to obey the sovereign, but the social contract is not necessary to his account.

The second reason why Oakeshott does not forge a link between the social contract and obligation is that, if we accept his reading of Hobbes, Hobbes' theory makes no sense. Oakeshott states that "the only sort of action to which the term moral obligation is applicable is obedience to the commands of an authority authorized by the voluntary act of him who is bound."<sup>62</sup> But he immediately declares that: (1) the covenant does not

create this moral obligation; (2) moral obligation is not based on self-interest; (3) moral obligation does not derive from superior power; and (4) moral obligation is not rooted in the laws of nature, which are only rational precepts until the sovereign commands them. What, we may ask, is left? If all these possibilities are ruled out, how did the sovereign acquire his authority? How do we even identify the sovereign whose laws (or will) we have a moral obligation to obey? Oakeshott tells us that "The answer to the question, Why am I morally bound to obey the will of this Sovereign? is, Because I have authorized this Sovereign, 'avouched' his actions, and 'am bound by my own act'."<sup>63</sup> But he fails to show how the sovereign is authorized because he has eliminated all the possible avenues for such a demonstration. This interpretation, as Warrender has pointed out, reduces Hobbes "either to a dogmatic assertion that the citizen is obliged, or to a merely circular argument to the same end."<sup>64</sup> In effect, if not intent, Oakeshott's analysis collapses into the traditional interpretation of Hobbes' theory of obligation.

Oakeshott - and perhaps Hobbes himself - goes astray because he tries to elicit moral obligation from a moral vacuum. His difficulty takes this form: if there are no moral obligations in the state of nature, then we are under no obligation to keep promises; we may find it prudent to enter into a social contract, or covenant, and to observe its conditions, but this does not entail an obligation to do so. Even if a sovereign is appointed, and even if he is powerful enough to command obedience, we are still not under an obligation to obey him. Put simply, Oakeshott argues that Hobbes arrives at moral obligation by adding rational obligation (i.e. prudence) to physical obligation (i.e. coercion). It does not sum.

Those who follow the third path of Hobbes interpretation avoid this difficulty by refusing to accept the distinction Oakeshott and the traditionalists draw between the state of nature and the civil state. Thus Howard Warrender, who presents the fullest exposition of this third position, maintains that Hobbes' theory does provide for moral obligation in the state of nature.<sup>65</sup> Warrender denies, in other words, that there is a moral vacuum in Hobbes' theory.

Warrender's argument rests on his interpretation of Hobbes' use of the laws of nature. Contrary to the first two interpretations, Warrender



believes that these laws are more than rational precepts or prudential maxims. As a proponent of the "command theory of law", Warrender points out, Hobbes can call the laws of nature *laws* only if they are commanded by a sovereign who has the right to command - which in the case of nature must be God. This, in fact, seems to be just what Hobbes does.<sup>66</sup> The laws of nature are the commands of God and, as His subjects, we are under an obligation to obey them. From the perspective of a study of the social contract, the most significant aspect of the Warrender thesis is that the contract or covenant is not the ground of obligation: rather than create an obligation to a sovereign, covenants themselves are obligatory only because we are commanded to keep them by God in the third law of nature. In Warrender's words, "The immediate answer then to the question of why I should keep valid covenants, is that this principle is natural law and a commandment of God - a place that it must share with a number of other laws of nature."<sup>67</sup> Warrender goes on to claim that the social contract plays an important, if subordinate, role in Hobbes' theory by determining or fixing specific applications of the general requirements of the laws of nature. The laws of nature are both highly formal and remarkably vague: they place us under an obligation to seek peace, to give up the rights of nature where others will do likewise, to keep covenants, and so on. But when, where, and how are we to obey these laws? According to Warrender, the situation is analogous to that of automobile drivers: we all know that, as a matter of safety, we must drive on the same side of the road, but which side is this? It is the social contract, on Warrender's account, which supplies the answer to questions of this sort, for it *fixes* our obligations even though it does not *create* them. As Warrender says,

"Even if the law of nature enjoining us to seek peace therefore implies... the institution of civil society, reason cannot indicate which person or persons we should obey, and the determinate obligation to obey a man or group of men as sovereign requires an agreement to recognize a particular man or group for this office. Thus in virtue of the equality of men, an obligation from one man to obey the commands of another, always depends upon his covenant."<sup>68</sup>

But even with this subordinate role it remains true for Warrender, as for Oakeshott and the traditionalists, that the social contract does not establish the obligation to obey the sovereign.

Warrender's version of Hobbes' theory of obligation, then, resembles Oakeshott's in that both accept the conclusion that Hobbes' account of obligation is satisfactory, but the device of the social contract does not serve as the ground of obligation. Yet again we must raise the question, is Warrender's exposition of Hobbes acceptable? This has been the subject of a good deal of contention, and it would take us too far afield to attempt a full answer here; but the evidence weighs against Warrender.<sup>69</sup> While there are some passages in Hobbes' writings which may support Warrender's thesis, it still seems that Warrender's interpretation of the laws of nature runs counter not only to Hobbes' definition of those laws, but to the whole sweep of Hobbes' argument.<sup>70</sup> Warrender's account, in the end, is once again like Oakeshott's.

We come, finally, to Brian Barry's interpretation. Barry's position is the most challenging because his reading of Hobbes stands somewhere between the traditionalists and Warrender: he promises, in effect, an explanation which demonstrates that Hobbes' theory of obligation is satisfactory and which also manages to avoid Warrender's difficulties. Is this promise fulfilled? We shall have to look closely at his argument to find out.

Barry outlines five theses which are put forward by Warrender and rejected by Warrender's traditionalist critics. These theses are:

- "(a) there can be obligation in the state of nature;
- (b) no new kind of obligation is added when the state is formed;
- (c) the laws of nature do not rest on self-interest either for their demonstration or for their effectiveness;
- (d) the laws of nature are obligatory in the state of nature and *a fortiori* under a sovereign; and;
- (e) the obligation to keep the covenant which establishes a sovereign (or any other covenant) depends on, and is merely a special case of, the obligation to obey the laws of nature."<sup>71</sup>

Both Warrender and his critics, as Barry point out, regard these as logically interdependent claims, to be accepted or rejected *in toto*. But Barry maintains that (a) and (b) are logically independent of the others, which leaves him in a position to accept Warrender's claims about obligation in the state of nature - (a) and (b) - and to dismiss, with the traditionalists, Warrender's claims that the laws of nature are obligatory because

they are the commands of God - (c), (d), and (e).

According to Barry, then, Hobbes' laws of nature are precepts of reason, not divine commands, and the state of nature is not a moral vacuum. But if this is the case, how does Hobbes account for obligation in the state of nature? Barry's answer is surprisingly simple. He turns to Hobbes' definition of obligation in *Leviathan*:

"Right is laid aside either by simply renouncing it; or by transferring it to another.... And when a man hath in either manner abandoned, or granted away his right; then he is said to be OBLIGED, or BOUND, not to hinder those, to whom such right is granted, or abandoned, from the benefit of it...."<sup>72</sup>

He then applies this to the state of nature. After all, the definition does not specify that the transfer of a right from one party to another in the state of nature does not generate obligations or bind the parties involved. But this is not enough, of course, to rebut the traditional objections to Hobbes' theory, for it is not how Hobbes defines obligation, but how he uses the concept, which presents problems. No matter what Hobbes says in his definition, we must still deal with such declarations as "the validity of covenants begins not but with the constitution of a civil power, sufficient to compel men to keep them...."<sup>73</sup>

Again, however, Barry is prepared to reconcile seemingly contradictory positions. This time he argues that, although many promises, contracts and covenants made in the state of nature may, according to Hobbes, be invalid, others are obligatory even when there is no threatening sovereign's sword. Specifically, Barry holds that when two parties have covenanted with each other - a covenant in Hobbes' theory is a contract to perform at some time in the future - and one party has already performed his part, the second party is obliged, even in the state of nature, to meet his end of the bargain:

"Hobbes is quite explicit about this - in these circumstances the second party is obliged to do his part, too. Covenants are binding, he tells us, 'either where one of the parties has performed already; or where there is a power to make him perform'. The absence of a common power is, of course, a defining characteristic of the state of nature; thus Hobbes is saying here that even in

the state of nature there is an obligation to perform your side of a covenant if the other party has already performed his."<sup>74</sup>

As an example, Barry cites the following passages from *Leviathan*:

"if I covenant to pay a ransom, or service for life, to an enemy; I am bound to it: for it is a contract, wherein one receiveth the benefit of life; the other is to receive money, or service for it; and consequently, where no other law, as in the condition of mere nature, forbiddeth the performance, the covenant (i.e. the promise to pay) is valid."<sup>75</sup>

This means, Barry says, that "(o)nce the enemy has released me, I can obviously no longer plead mistrust of his good faith, and this would be the only acceptable excuse for not carrying out my part of the bargain. I am therefore obliged to do so."<sup>76</sup>

Even on this reading it must be admitted that many, perhaps most, contracts are not obligatory in the state of nature. When two parties in "the condition of mere nature" enter into a contract which requires that both perform some action in the future - what Hobbes calls a "covenant of mutual trust"<sup>77</sup> - neither party is obliged to perform, "for he that performeth first, has no assurance the other will perform after; because the bonds of words are too weak to bridle men's ambition, avarice, anger, and other passions, without the fear of some coercive power...."<sup>78</sup> And this insecurity or ineffectiveness of contracts is one of the major reasons for abandoning the state of nature for civil society. But this also provokes one of the major objections to Hobbes' account of obligation: how is it that coercive power provides for obligation where none existed before? Does Hobbes confuse "being obliged" to fulfil a contract with "having an obligation" to do so? The traditional interpretation, as we have seen, says that he does: the sovereign's power may oblige us, either physically or prudentially, to perform what we covenant to do, but this is all it does; and, as a result, Hobbes' theory of obligation is no theory of *obligation* at all. Barry (like Warrender) takes the opposite view. No new kinds of obligation are *created* by the establishment of a sovereign; all that happens is that the sovereign *secures* contracts and renders valid what would otherwise have been invalid. The sovereign does this not by

coercing me, but by removing any reasonable suspicion I might have that performing my part of a covenant first will betray me to the other party's ambition and avarice. Barry puts it this way:

"the sovereign operates in such a way as to remove the excuses for not performing which can so easily be maintained in the absence of a coercive power. It is not so much that the sovereign makes it pay to keep your covenant by punishing you if you don't, but that it always pays anyway to keep covenants provided you can do so without exposing yourself, and the sovereign ensures that you will not be exposing yourself by keeping your covenant."<sup>79</sup>

Barry admits that Hobbes does not show in detail how this works out, but he does produce this passage from *Leviathan* as evidence:

"But in a civil estate, where there is a power set up to constrain those who would otherwise violate their faith, that fear (of being double-crossed by the others) is no more reasonable; and for that cause, he which by covenant is to perform first, is obliged to do so."<sup>80</sup>

Barry's explanation is that,

"Hobbes does not argue that the covenant obliges you because 'there is a power set up to constrain' *you*; he says that the covenant obliges you because 'there is a power set up to constrain' the *other* parties to it, thus taking away the 'reasonable suspicion' of being double-crossed that would otherwise invalidate such a covenant."<sup>81</sup>

Once this "reasonable suspicion" is eliminated, we are obliged to follow through on our contractual agreements. If Barry is right, the sovereign's role is actually to remove the conditions which nullify our contracts and, by doing so, to make contracts - and obligation - possible.

Barry's next move is to apply this explanation to Hobbes' two kinds of civil states, "commonwealth by institution" and "commonwealth by acquisition". The application to a "commonwealth by institution", which is created by a covenant of mutual trust between individuals in a state of nature, is straightforward. Neither our persons nor our promises are secure in the state of nature, so we covenant to obey the commands of the sovereign we establish. We are under an obligation to keep this covenant -

unless, of course, we are threatened with "death, wounds, or imprisonment"<sup>82</sup> - because we are no longer endangered by double-crossers. The sovereign will see that each fulfils his contractual obligations. The explanation must be stretched a bit, however, to account for an obligation to obey the "sovereign by acquisition". This seems to be the purest case of Hobbes' attempt to derive obligation from coercion. In order for me to have an obligation to obey a conqueror two conditions must be met: first, the conqueror must allow me my life and my physical liberty in exchange for my (tacit) promise to obey him; and, second, the conqueror must provide conditions which make it safe for me to perform my part. This first condition is crucial, since the second applies also to "sovereignty by institution". Barry relates the first condition to the ransom example. When the victor spares my life and allows me physical liberty he "performs at once and for all"<sup>83</sup>. This is "precisely analogous", Barry says, to the situation of men released by a captor in return for a promise of a future ransom - only in this case the ransom is our obedience to the commands of the conqueror/captor. And Barry reminds us that "even 'in the condition of mere nature' that promise was held to be obligatory, because the other party had already performed its part of the bargain."<sup>84</sup> So in the case of "sovereignty by acquisition" the obligation to obey the sovereign rests, first, on our obligation to fulfil a covenant when the other party has already performed, and, second, on the condition that the sovereign removes the excuses which prevent contracts from generating obligations.

In sum, Barry's reading of Hobbes is the only one of the four principal interpretations which concludes that the social contract is essential to Hobbes' theory of obligation, and the theory itself is adequate. This is why we must consider it to be the most challenging and a more plausible response to the traditional interpretation than those offered by Oakeshott and Warrender. But, however ingenious Barry's argument is, his position too is ultimately untenable.

This is because Barry's explanation fails in two key areas: he does not actually show that there can be obligations in the state of nature or that "sovereignty by acquisition" is based on consent rather than coercion. With regard to the first problem, Barry, as has been noted, cites Hobbes' statement that covenants are binding "either where one of the parties has

performed already; or where there is a power to make him perform'."<sup>85</sup> But, if we place this quotation in its context, we see that Barry uses it improperly. '(T)he question", Hobbes says,

"is not of promises mutual, where there is no security of performance on either side; as when there is no civil power erected over the parties promising; for such promises are no covenants: but either where one of the parties has performed already; or where there is a power to make him perform; *there is the question whether it be against reason, that is, against the benefit of the other to perform, or not.* And I say it is not against reason."<sup>86</sup>

What Hobbes says here is that it is *unreasonable* to keep a promise "where there is no security of performance on either side;" but it is *reasonable* to do so "either where one of the parties has performed already; or where there is a power to make him perform". Obligation is not mentioned here or in the rest of the long paragraph of which this is a part. In fact, the point of this particular paragraph seems to be that "he which declares he thinks it reason to deceive those that help him, can in reason expect no other means of safety, than what can be had from his own single power."<sup>87</sup>

Barry's position is similarly shaky with respect to the ransom example. This is what Hobbes says:

"Covenants entered into by fear, in the condition of mere nature, are obligatory. For example, if I covenant to pay a ransom, or service for my life, to an enemy; I am bound to it: for it is a contract, wherein one receiveth the benefit of life; the other is to receive money, or service for it; and consequently, where no other law, as in the condition of mere nature, forbiddeth the performance, the covenant is valid. Therefore prisoners of war, if trusted with the payment of their ransom, are obliged to pay it: and if a weaker prince, make a disadvantageous peace with a stronger, for fear; he is bound to keep it; unless, as hath been said before, there ariseth some new, and just cause of fear, to renew the war."<sup>88</sup>

Barry considers this to be an example of how we can have an obligation to perform covenants in the state of nature. And Hobbes clearly uses the language of obligation here: "obligatory", "bound", "obliged". Yet the problem with Hobbes' theory of obligation is that he uses this language in a manner which reduces obligation to prudence. One of the reasons

the *Leviathan* is so often startling is that Hobbes claims that we have an obligation in circumstances in which we normally say we have none. The ransom example is a good case: we have no *obligation* to a kidnapper to meet his demands, even if we 'promise' to do so. Hobbes may say that "(c)ovenants entered into be fear... are obligatory," but his reasoning is prudential. If any captor releases me on my promise to pay him a ransom in the future it *may* be prudent for me to keep my promise - especially when there is no sovereign to protect me. The prudential basis of this passage is also brought out by the remark about the weaker prince who is 'bound' to observe the conditions of a disadvantageous peace. In both cases the obligation is what Oakeshott designates "rational obligation"; which is to say that it is not obligation at all. It is not enough for Barry to point to passages where Hobbes speaks of obligations in the state of nature: he must also demonstrate that Hobbes has not stripped the concept of its usual meaning.<sup>89</sup>

This difficulty carries over to the question of obedience to a "sovereign by acquisition". Are we under an *obligation* to obey the conqueror or are we *compelled* to obey him? Hobbes' answer, according to the traditional view, is that we are obliged because we are compelled. Barry, on the other hand, maintains that our obligation here is contractual, just as is our obligation to obey a "sovereign by institution". Again, there is testimony in *Leviathan* to support this contention:

"It is not therefore the victory, that giveth the right of dominion over the vanquished, but his own covenant. Nor is he obliged because he is conquered; that is to say, beaten, and taken, or put to flight; but because he cometh in; and submitteth to the victor; nor is the victor obliged by an enemy's rendering himself, without promise of life, to spare him for this yielding to discretion; which obliges not the victor longer than in his discretion he shall think fit."<sup>90</sup>

But let us look closer at this argument. Hobbes does not, of course, require that the covenant with the conqueror be "in express words"; "other sufficient signs of the will" will do as well.<sup>91</sup> These "other sufficient signs", or this tacit covenant, apparently boil down to submission to the conqueror, to obeying his commands. This, as John Plamenatz says, is surely "a curious argument". Hobbes tell us that we are obliged to obey the sovereign because we have covenanted to do so, but he also tells us



that, in this case, we covenant *when we obey*. "In other words, whenever we obey, we promise to obey, and this promise makes obedience a duty. Which is absurd."<sup>92</sup> If we resist rather than submit to the conqueror, we do not covenant with him and, presumably, we therefore have no obligation to obey him. But this amounts to saying that those who obey are obliged to obey (no matter why they obey?) and those who disobey are not obliged to obey (no matter why they disobey?) the conqueror.

The only defense Barry can offer against this objection is to point to the obligation we have even "in the condition of mere nature" to keep our covenants when the other party has already performed. But this move, as we have seen, fails because Hobbes tells us that we (prudentially) *ought* to fulfil our part of the bargain when the other party has performed his and not that we are *obliged* to do so. Hobbes simply does not account for any obligations in the state of nature. We obey the victor, as it happens, either because we are forced to do so or because we recognize that it is prudent to do so - but not because we are obliged to obey him.

Finally, Barry's account of "sovereignty by institution" does not fare any better. For in order to accomplish the move from the state of nature to the civil state by way of the social contract, Barry must show that the natural state is not a moral vacuum. Since he does not bring this off, for reasons already mentioned, Barry is in no better position than Oakeshott, although his account of Hobbes' theory seems to be closer to Hobbes' intentions. This failure to rescue Hobbes is evidenced even by Barry's own synopsis of Hobbes' theory:

"If we have to reduce Hobbes to a slogan, it must be something like this: 'Obey even when there isn't a policeman, because this contributes to peace: only provided that there are enough policemen around to give you more security than you would get in a free-for-all.' And it may be added that since a free-for-all is very, very insecure, the critical level of police protection need not be very high to make it preferable for you to cast your vote for peace by obeying the government's commands."<sup>93</sup>

This is quite acceptable as a 'slogan'; but it is acceptable because it refers to obedience, security, and prudence rather than contracts and obligations. Barry's interpretation, like the other three, ultimately

devolves to the conclusion that Hobbes' theory of obligation does not require the social contract and the theory itself is not successful.

The reason why Hobbes cannot be rescued is nowhere shown more clearly than in chapter 21 of *Leviathan* quoted in section II, where Hobbes argues that there is

"no obligation on any man, which ariseth not from some act of his own; for all men equally, are by nature free. And because such arguments, must either be drawn from the express words, *I authorize all his actions*, or from the intention of him that submitteth to his power, which intention is to be understood by the end for which he so submitteth, the obligation, and liberty of the subject, is to be derived, either from those words, or others equivalent; or else from the end of the institution of sovereignty, namely the peace of the subjects within themselves, and their defence against a common enemy."<sup>94</sup>

Hobbes begins by stating a voluntarist conception of obligation, but by the end of the paragraph it makes no difference what the subject does so long as the sovereign protects him. "The end of obedience," Hobbes says, "is protection."<sup>95</sup> Perhaps it is this concern with security which, in the end, accounts for Hobbes' failure to distinguish between protection and extortion - a failure which leads him to conclude that we have an obligation to obey anyone who can command our obedience.

#### IV

#### Locke's Contractarianism

There are three important respects in which Locke differs from - and improves upon - the Hobbesian position. In each of these three respects Locke avoids one of the problems which beset Hobbes' theory. In the first place, Locke allows for the validity of promises in the state of nature:

"The promises and bargains for truck, etc., between two men in the desert island, mentioned by Garcilasso de la Vega in his history of Peru; or between a Swiss and an Indian, in the woods of America, are binding to them, though they are perfectly in a state of nature in reference to one another. *For truth and the keeping of faith*

*belong to men as men, and not as members of society.*"<sup>96</sup>

Hobbes created a moral vacuum when he held that promises made in the state of nature are not binding, and he had no answer to the question, "How can society be established by a social contract when only those contracts and promises made in civil society are valid?" But there is no moral vacuum in Locke's state of nature, so it is at least possible, on his account, for a group of individuals to contract their way into civil society.

Secondly, Locke recognizes only one of Hobbes' two forms of commonwealth, that which Hobbes calls "commonwealth by institution". There is no "commonwealth by acquisition", according to Locke, because conquest produces no right to command. This is stated plainly in chapter XVI, "Of Conquest". "That the aggressor," Locke says,

"who puts himself into the state of war with another, and unjustly invades another man's rights, can by such an unjust war never come to have a right over the conquered, will be easily agreed by all men, who will not think that robbers and pirates have a right of empire over whomsoever they have force enough to master, or that men are bound by promises which unlawful force extorts from them."<sup>97</sup>

By refusing to reduce right to might, Locke preserves the distinction between "being obliged" and "having an obligation" - a distinction which, as we have seen, Hobbes can not make. Locke does not rob 'promise' and 'consent' of their meaning (at least, not at this point): for 'promises' which are coerced from us are not really promises and obedience to a conqueror does not constitute consent to his rule.

The third respect in which Locke differs from Hobbes follows from the first two. Since there is neither a moral vacuum nor any rights or obligations deriving from coercion in his theory, Locke is able to claim that the kinds of government which may be founded by a social contract are limited. Specifically, Locke maintains, contrary to Hobbes, that we can never consent to establish and obey an absolute monarch. Absolute monarchy "is indeed inconsistent with civil society," Locke asserts, "and so can be no form of civil government at all." Absolute rule is not only contrary to the ends of civil society, it is also no better than the state of nature:

"For the end of civil society being to avoid and remedy those inconveniences of the state of nature which necessarily follow from every man's being judge in his own case, by setting up a known authority to which every one of that society may appeal upon any injury received or controversy that may arise, and which every one of the society ought to obey; wherever any persons are, who have not such an authority to appeal to and decide any difference between them, there those persons are still in the state of nature. And so is every absolute prince, in respect of those who are under his dominion."<sup>99</sup>

Thus, the only kind of government which can be established by contract is a limited government, one which respects the lives, liberties, and property of its subjects. No government which grants to one man "an absolute, arbitrary power... over another to take away his life whenever he pleases" is justifiable, for "this is a power which neither nature gives... nor compact can convey...."<sup>100</sup>

The notion that government is limited by the terms of the social contract is, for Locke, a two-edged sword which he also uses to justify the right of revolution. Men enter into societies and create governments, he says, in order to achieve certain goals. When the government no longer contributes to the achievement of these goals, whether through negligence or tyranny, then the members of the society have the right to overthrow the government and to institute a new one. If they fail to do so, they will find that they have returned to the state of nature. Locke sets all this out in a lengthy synoptic passage:

"The reason why men enter into society is the preservation of their property; and the end why they choose and authorize a legislative is that there may be laws made, and rules set, as guards and fences to the properties of all the members of the society, to limit the power and moderate the dominion of every part and member of the society. For since it can never be supposed to be the will of the society that the legislative should have a power to destroy that which every one designs to secure by entering into society, and for which the people submitted themselves to legislators of their own making; whenever the legislators endeavour to take away and destroy the property of the people, or reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any farther obedience, and are left to the common refuge which God hath provided for all men against force and violence. Whensoever, therefore, the legislative shall transgress this fundamental rule of society, and either by

ambition, fear, folly, or corruption, endeavour to grasp themselves or put into the hands of any other an absolute power over the lives, liberties, and estates of the people, by this breach of trust they forfeit the power the people have put into their hands for quite contrary ends, and it devolves to the people; who have a right to resume their original liberty, and by the establishment of the new legislative... provide for their own safety and security, which is the end for which they are in society."<sup>101</sup>

In those cases where the government exceeds its authority, it is the governors who "do *reballare* - that is, bring back again the state of war - and are properly rebels...."<sup>102</sup> They violate the terms of the contract, and their violence justifies the revolt of the citizenry.

To say, then, that Locke improves upon Hobbes in each of these respects is to say that Locke's theory is a significant advance from Hobbes': it is both more coherent and more palatable. However, this is *not* to say that Locke's theory is successful. The major problem for Locke is that, when push comes to shove, he too stretches the concept of consent beyond recognition. A brief explanation of his argument should make this clear.

Early in the *Second Treatise* Locke announces a rather unequivocal position on the relationship between civil authority and individual consent. No one is under an obligation to obey the laws of a civil society unless he has consented to do so. "Men being", as Locke says,

"...by nature all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty and puts on the bonds of civil society is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it."<sup>103</sup>

Locke then moves to preclude an extreme interpretation of his position. Such an interpretation would hold that the individual is under an obligation to obey only those laws to which he consents, so that one might consent to some of the laws of a civil society and refuse to consent to others. This virtually requires, in effect, that all laws be approved un-

animously. But Locke maintains that unanimous consent is necessary only to establish civil society and, further, that this social contract entails a promise to follow the will of the majority in future decisions. When one consents to enter into a civil society, in other words, one consents to be governed henceforth by the majority of one's fellow subjects, or by the majority of the members of the representative body.<sup>104</sup>

Next, Locke attempts to counter two objections to contract theory. These objections, in Locke's words, are:

"First: That there are no instances to be found in history of a company of men, independent and equal one amongst another, that met together, and in this way began and set up a government.

"Secondly: 'Tis impossible of right that men should do so, because all men being born under government, they are to submit to that, and are not at liberty to begin a new one."<sup>105</sup>

Locke draws on his knowledge of the Bible, ancient history, and the anthropology of his day to defend himself from the first objection. Little rests on this question, however, for even if it can be shown that somewhere, sometime a group of individuals created a civil society by mutual consent, the contract theorist must still show what bearing this has on all those individuals who have never explicitly consented to the institution of any state. The fact (if it is a fact) that one of my distant ancestors was a charter member, so to speak, of the civil society in which I now live cannot place me under the same obligation he incurred unless his consent is construed to be the consent of all his progeny as well - and this clearly will not do. This seems to put Locke on the horns of a dilemma: either he must acknowledge that only those who have actually consented to obey the laws of government (i.e. virtually no one) are under an obligation to do so, or he must hold that we all gave our consent in the long forgotten past when our ancestors spoke for us.

In his reply to the second objection Locke escapes the dilemma by loosening the notion of consent. Locke agrees that no one can consent for someone else; not, at least, when the second party is capable of reason. "'Tis true", he says, "that whatever engagements or promises any one has

made for himself, he is under the obligation of them, but cannot by any compact whatsoever bind his children or posterity."<sup>106</sup> Nevertheless, he goes on to argue that the child who inherits property from his parents thereby agrees to accept that property on the same terms as his parents did - that is, by joining the civil society. The child appends his signature, as it were, to the contract signed by his parents; and this procedure is so common that we are likely to fail to see it for what it really is: an act of consent. As Locke puts it,

"the son cannot ordinarily enjoy the possessions of his father but under the same terms his father did, by becoming a member of the society; whereby he puts himself presently under the government he finds there established, as much as any other subject of that commonwealth. And thus the consent of freemen, born under government, which only makes them members of it, being given separately in their turns... people take no notice of it...."<sup>107</sup>

Locke thus joins Hobbes in basing his answer to the question, "what shall be understood to be a sufficient declaration of a man's consent to make him subject to the laws of any government", on a distinction between express and tacit consent. But the introduction of tacit consent, as Locke recognizes, leads immediately to another, similar question: "what ought to be looked upon as a tacit consent, and how far it binds, *i.e.*, how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all." Locke's answer, which has gained some notoriety among students of political thought, is that

"every man that hath any possessions, or enjoyment of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government during such enjoyment as any one under it; whether this his possessions be of land to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect it reaches as far as the very being of any one within the territories of that government."<sup>108</sup>

This extension of 'consent', however, renders the concept meaningless and useless. It also contradicts Locke's own purposes, for it not only allows that one may consent to be ruled by an absolute monarch - it also implies

that people have done so.<sup>109</sup> John Plamenatz puts the point neatly:

"Locke, in attempting to found rightful government upon consent, imagined that he was attacking the foundations of tyranny. His attack was made with the bluntest of weapons. If consent can be *implied* by some of the things that he maintains *imply* it, then there never existed any government but ruled with the unanimous and continuous assent of all its subjects."<sup>110</sup>

Certainly this is trouble enough for Locke; but there is also an important difficulty with his notion of express consent. Locke declares that anyone who expressly consents to obey the laws of a commonwealth thereby becomes a "member" of that commonwealth, and membership is a status that cannot be renounced:

"he that has once by actual agreement and any express declaration given his consent to be of any commonwealth is perpetually and indispensably obliged to be and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved, or else by some public acts cuts him off from being any longer a member of it."<sup>111</sup>

Here again Locke undermines his own position: for if our consent cannot be withdrawn, then we remain under an obligation to obey the government no matter how the character of that government changes. This clearly is at odds with Locke's claims that we cannot consent to obey some kinds of governments and that the people have the right to revolt when the government becomes despotic. Locke's notion of express consent, as well as his conception of tacit consent, fails to provide him with a means of escaping the Hobbesian conclusion that we are under an obligation to obey any ruler who can command our obedience.

What are we to make of this? Some commentators have argued that the *Second Treatise* is written in code and that Locke's use of the social contract is merely a subterfuge to prevent the authorities from seeing his Hobbesian premises and conclusion.<sup>112</sup> But this interpretation can only be sustained if one neglects those passages which, as has been shown, distinguish Locke's position from Hobbes'. Another alternative is to dismiss the *Second Treatise* as a carelessly written, incoherent work. This is



sometimes a tempting view - especially when one is considering those parts of the book in which Locke advances his account of contractarianism - but it does not square with the clarity of Locke's reasoning and writing in most of the book. This points to a third possibility: since it is Locke's use of contract theory which presents the problems, both in terms of its own intelligibility and its fit with the rest of the *Second Treatise*, perhaps it is best to regard the work from some perspective other than that of the social contract. Perhaps the *Second Treatise* is not the classic of the contractarian tradition after all.

Hanna Pitkin has argued persuasively that Locke's political theory is best understood as a theory of 'hypothetical consent'. Locke obviously cannot hold both that we can consent to any form of government and that we are never under an obligation to absolute monarchies and other despotic governments. Pitkin concludes that Locke's notion of consent must be re-interpreted, for the advocacy of limited government and the right to revolt are at the heart of Locke's political thought. In the end, she says, personal consent, whether express or tacit, is irrelevant to Locke's theory:

"not only is your personal consent irrelevant, but it actually no longer matters whether this government or any government was really founded by a group of men deciding to leave the state of nature by means of a contract. As long as a government's actions are within the bounds of what such a contract hypothetically *would have* provided, would have *had* to provide, those living within its territory must obey.... The only 'consent' that is relevant is the hypothetical consent imputed to hypothetical timeless, abstract, rational men."<sup>113</sup>

It is the character or nature of the government which is all-important to Locke's position, then, not whether or not anyone at any time ever actually entered into a contract to obey it. In fact, the legitimacy of the government and the obligation to obey it both follow from the character of the government. How, then, do we determine if the government is or is not legitimate? Pitkin says that Locke tells us to look to the law of nature, for it is this which sets the standards which governments must meet; it is, to put it another way, the law of nature which establishes the terms of the original social contract. As Pitkin points out, "the original contract

could not have read any otherwise than it did, and the powers it gave and limits it placed can be logically deduced from the laws of nature and conditions in the state of nature."<sup>114</sup>

All this indicates that Locke's political thought relies more on a conception of the law of nature than on the idea of a social contract. As an examination of the *Second Treatise* reveals, Locke refers from beginning to end to the limits placed on the conduct of men and governments by the law of nature.<sup>115</sup> The core of the entire theory is stated near the beginning of the book. In an often cited passage Locke asserts that, "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." The sentence which follows it is not often referred to so frequently, but it is perhaps even more important:

"For men being all the workmanship of an 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, whose workmanship they are, made to last during his, not one another's pleasure; and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior rank of creatures are for ours."<sup>116</sup>

In this paragraph Locke paradoxically (given his Calvinist leanings) evokes a hierarchical ontology reminiscent of the Great Chain of Being. God is the creator, master of all He has created. Men, His creatures, are endowed with reason, which affords those who consult it the knowledge that they are equal and independent with respect to one another and that only He who has created them has the right to dispose of their lives. Subordinate to men are the irrational creatures, the beasts who serve us. Any man who harms another in his life, health, liberty, or possessions commits a transgression against God and degrades himself to the status of a beast, "and therefore may be destroyed as a lion or a tiger, one of those wild savage beasts with whom men can have no society nor security."<sup>117</sup>

Of greatest importance, however, as mentioned in *Part Two*, is the idea that men are the property of God, "made to last during his, not one

another's pleasure." From this premise Locke derives the conclusion that we have an obligation to God to preserve ourselves.<sup>118</sup> And since we are at His disposal, as His property, we cannot place ourselves at the disposal of other men:

"For a man not having the power of his own life cannot by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another to take away his life when he pleases. Nobody can give more power than he has himself; and he that cannot take away his own life, cannot give another power over it."<sup>119</sup>

This line of reasoning extends through the *Second Treatise*.<sup>120</sup> It explains why men cannot enter into a social contract to create and obey an absolute, arbitrary government: we cannot transfer to others a power over our lives which we do not have. The reason men establish civil societies in the first place is that the state of nature is inconvenient, at best, and hazardous, at worst. Governments are formed and laws are passed to serve as "guards and fences to the properties of all the members of the society"<sup>121</sup>, to protect us from those degraded men who will not observe the laws of nature and to provide us with disinterested judges to settle our controversies. It cannot be supposed, therefore, that men will relinquish the liberty of the state of nature for a civil condition which is just as harsh and inconvenient. The only governments which men are under an obligation to obey - the only governments to which they *can* consent - are those which rule in accordance with the laws of nature, those which further the goals of protecting life, liberty, and property. "Thus", Locke says,

"the law of nature stands as an eternal rule to all men, legislators as well as others. The rules that they (i.e., legislators) make for other men's actions must... be conformable to the law of nature, i.e., to the will of God, of which that is a declaration, and the fundamental law of nature being the preservation of mankind, no human sanction can be good or valid against it."<sup>122</sup>

A contractual element *is* present, however, in circumstances where the laws of nature are inadequately or incompetently applied; for when this is the case, the citizen may invoke the notion of a *broken* contract. Nevertheless, the contractual elements of Locke's theory are subordinate to his

natural law doctrine. Both the legitimacy of civil societies and the obligatory nature of promises and contracts depend, as it turns out, on the law of nature. Locke makes this quite clear in this passage from the *Essays on the Law of Nature*:

"Certainly, positive civil laws are not binding by their own nature or force or in any other way than in virtue of the law of nature, which orders obedience to superiors and the keeping of public peace. Thus, without this law, the rulers can perhaps by force and with the aid of arms compel the multitude to obedience, but put them under an obligation they cannot. Without natural law the other basis also of human society is overthrown, i.e. the faithful fulfilment of contracts, for it is not to be expected that a man would abide by a compact because he has promised it, when better terms are offered elsewhere, unless the obligation to keep promises was derived from nature, and not from human will."<sup>123</sup>

If we will consult the law of nature, then we will know whether or not we are under an obligation to obey the government: for it is the law of nature which sets out the terms of the social contract to which we hypothetically consent.

A further question remains. If Locke's 'solution' to the problem of civil obligation is at bottom a natural law solution, why did Locke incorporate the idea of a social contract into his theory? It does seem, after all, that his discussion of express and tacit consent is at cross-purposes with the rest of the *Second Treatise*. There are several possible answers to this question - contract terminology might have best suited Locke's polemical purposes, for example - but one that Patrick Riley has recently suggested is particularly interesting. Riley argues that natural law and contract theory, "far from being simply antithetical in Locke, necessarily involve each other - at least given human imperfection and 'corruption'."<sup>124</sup>

Riley's argument, briefly, is that men could safely remain in the state of nature, with the law of nature as their standard, were they not imperfect and subject to corruption. The fact that they are flawed, however, compels them to enter civil society to protect their lives, liberties, and property. The law of nature tells those who consult it that they must establish and obey a government which will further this goal. But the law of nature is not specific enough in this respect: it tells us what kind

of government we are under an obligation to obey, but it does not tell us *whom* we should obey. Locke uses contract theory, Riley claims, to provide this specific information. "It is not 'only' consent", he says, "...which Locke says creates a duty of obedience; the general duty arises from natural law, and consent only tells one which actual *persons* to obey."<sup>125</sup> The social contract, then, does not *create* the obligation to obey the government, but it does *fix* the obligation by specifying who is to be obeyed. And in this way the contractual elements of Locke's political theory supplement his basic natural law doctrine.

The textual evidence for Riley's reading of Locke is a bit thin, but it does seem to be a plausible account of the relationship between contract and natural law in Locke's theory.<sup>126</sup> Such a reading, however, still leaves the social contract in a subordinate position: the law of nature is the foundation on which Locke's political philosophy rests.

Locke's political theory, in conclusion, does not supply an adequate contractarian account of civil obligation because it is not a contract theory at all. But this does not mean that Locke's attempt at a solution to the problem of civil obligation, like Hobbes', must be dismissed altogether; for the theory may be satisfactory even if it is not a contract theory. Those who accept Locke's theistic, natural law premises should indeed find it a satisfactory theory, although they may disagree with some of its details. There is at least the basis in Locke's theory, that is, for fulfilling the two conditions necessary and jointly sufficient to validate a civil obligation claim. There is, first, a conception (albeit a somewhat diffuse conception) of what it means to be a member of or a participant in a civil society.<sup>127</sup> And there is, secondly, a conception of a moral order, one which deserves our obedience and, hypothetically, our consent.

Nevertheless, Locke's is not a contract theory, and its adequacy or inadequacy is not important here. It is not a contract theory because the legitimacy of the government - the conception of a moral order which Locke develops - is derived from natural law rather than from a social contract, real or imagined. Locke does improve upon Hobbes by tying his solution to the problem of civil obligation to a conception of a just state, but it remains for Rousseau and Rawls to tie the conception of a moral order to the device of the social contract.

PART THREENotes

1. Leo Strauss, The Political Philosophy of Hobbes, Chicago, 1963, p.ix, quoted by T. A. Spragens Jr. in The Dilemma of Contemporary Political Theory, New York, 1973, p.39
2. See J. W. Gough, The Social Contract, Op Cit, p.107; and J. Plamenatz, Man and Society, London, 1963, volI, p.127
3. Brian Barry, "Warrander and His Critics", in M. Cranston and R. S. Peters (eds), Hobbes and Rousseau, New York, 1972, pp 37-65
4. These three interpretations are essentially the same as those Howard Warrander discusses in The Political Philosophy of Hobbes: His Theory of Obligation, Oxford, 1957.
5. William James, quoted by A. N. Whitehead in Science and the Modern World, New York, 1931, p.3
6. J. W. N. Watkins, Hobbes's System of Ideas, London, 1973, p.118
7. C. B. Macpherson, The Political Theory of Possessive Individualism, Op Cit, p.78
8. Spragens, The Dilemma of Contemporary Political Theory, Op Cit, p.39
9. In general, the idea is that the concept of a 'self' is a given, and it is unfathomable within the limits of human knowledge and empirical epistemology. Consider, for example, that the self is the experience of knowledge: if it were also the content of the knowledge itself what would be the nature of the knower and thus the knowledge known? Would experience be merely experiencing experience? This rather absurd claim indicates the necessity for a separate medium of cognition, unknowable itself in terms of its own capacity to know.
10. This was Hobbes' thesis. But it was generally accepted in some degree, and often with less of the quality of egoism that Hobbes propounded, by such as Locke and Mill, and others down to Russell. Rousseau attempted to explain politics by means of an analytical relationship to *individual will*.
11. That is to say, atoms are naturally free and autonomous, and their aggregation is a result not of their 'natural' condition but of their situational experience. Likewise, political man, being essentially free and autonomous, takes to civil aggregation as a result of situational factors and not as a consequence of his natural condition. The fact that political man reasons his condition is a function of the claim that political indivisibles are basically a matter of *wills*, having a capacity to reason; this does not affect the basic 'atomic' nature of the theory since wills merely depict the qualities of the

political atoms but do not alter the fundamentally atomic nature of their existence - they are free and autonomous in that they reason.

12. See Leo Strauss, Natural Right and History, Op Cit, and Richard Cox, Locke on War and Peace, Oxford, 1960. These readings of Locke as a Hobbesian, coupled with the Taylor-Warrender thesis on Hobbes, have prompted J.W.N. Watkins to propose "the following compromise: Hobbes was a moralizing natural lawyer in the Hooker tradition, while Locke preached a mixture of egoism, fear and authority; and Hobbes wrote *The Second Treatise* while Locke wrote *Leviathan*." Hobbes's System of Ideas, Op Cit, p.68, n.76
13. See R. H. Kargon, Atomism in England from Harriot to Newton, Oxford, 1966, ch.IV
14. For Hobbes the will is the mechanism of self-gratification; it is not transcendent, but merely the expression of libido.
15. Leviathan, ed. M. Oakeshott, Oxford, 1955, p.6
16. However, Hobbes' error in this regard was to presume that atomic individualism necessarily entails *political disunity*, not just mere separateness: a fallacy of equivocation premised upon man's 'natural' rapacity.
17. Leviathan, Op Cit, p.116
18. Ibid., p.5
19. Watkins, Op Cit, p.45
20. De Corpore, in R. S. Peters, ed., Body, Man and Citizen, New York, 1962, 6:7
21. Ibid., p.6:7
22. Ibid., p.1:7. This passage illustrates the enormous differences between what might be termed 'illumination' - the view that human beings can better their condition - and cognitivism.
23. Human Nature: Or the Fundamental Elements of Policy, in R. S. Peters, ed., Body, Man and Citizen, Op Cit, 6:1
24. Leviathan, Op Cit, p.138
25. Plato, Crito, in E. Hamilton and H. Cairns, eds., The Collected Dialogues of Plato, New York, 1969, p.36
26. W. D. Ross, The Right and the Good, Oxford, 1930, p.27
27. J. S. Mill, On Liberty, in M. Lerner, ed., Essential Works of John Stuart Mill, p.322
28. M.B.E. Smith, "Is There a Prima Facie Obligation to Obey the Law?", in Yale Law Journal, Vol.82, n.5, 1973, p.954
29. Leviathan, Op Cit, p.84

30. Ibid., p.85
31. S. M. Brown Jr., "The Taylor Thesis: Some Objections", in K. Brown, ed., Hobbes Studies, Cambridge, Mass., 1965, p.68.n.
32. J. R. Pennock, "Hobbes's Confusing 'Clarity' - The Case of 'Liberty'", in K. Brown, Op Cit, p.112.n.
33. Leviathan, Op Cit, p.93
34. Ibid., p.104
35. Ibid., p.86
36. Ibid., p.141
37. Ibid., p.141
38. Ibid., p.104
39. This is roughly the conclusion of S. M. Brown Jr. in his criticism of the voluntaristic interpretations of A. E. Taylor and Howard Warrender, "The Taylor Thesis: Some Objections", Op Cit, p.71
40. Thomas Nagel, "Hobbes's Concept of Obligation", Philosophical Review, Vol.68, 1959, p.74
41. Howard Warrender, The Political Philosophy of Hobbes, Op Cit, pp 99, 100. "Prudential" here means "concerning only one's own interests", as opposed to "moral", which implies that the interests of others are at stake.
42. Leviathan, Op Cit, p.95
43. Ibid., p.95
44. c.f. J. C. Thornton, "Can the Moral Point of View Be Justified", in Australasian Journal of Philosophy, Vol.XLII, 1964
45. Leviathan, Op Cit, p.94
46. Ibid., pp 95-96
47. Machiavelli, The Prince, in Somerville and Santoni, eds., Social and Political Philosophy, New York, n.d., p.123
48. This argument is suggested by Philippa Foot, "Moral Beliefs", in W. Hudson, ed., The "Is-Ought" Question, London, 1969, pp 212-213
49. As Foot says about the morally upright man, "Moral Beliefs", Op Cit, p.213
50. Leviathan, Op Cit, p.97
51. Stuart Brown, "The Taylor Thesis", Op Cit



52. See, *inter alia*, R. S. Peters, Hobbes, Harmondsworth, 1967; David Gauthier, The Logic of Leviathan, Oxford, 1969; J. P. Flamenatz, "Mr. Warrender's Hobbes", in Brown, Hobbes Studies, and ch.4 of Man and Society; Thomas Nagel, "Hobbes's Concept of Obligation", Op Cit; S. Brown, "The Taylor Thesis"; J.W.N. Watkins, Hobbes's System of Ideas, Op Cit; J. Gough, The Social Contract, Op Cit. Although it is certainly not true that all these commentators agree on all matters concerning Hobbes' theory of obligation, it is true that they do agree as to what the substance and direction of that theory is.
53. Leviathan, Op Cit, p.84
54. Ibid., p.109. c.f. also p.94: "but the validity of covenants begins not but with the constitution of a civil power, sufficient to compel men to keep them..."
55. Watkins, Op Cit, p.51
56. Leviathan, Op Cit, pp lviii-lxi
57. Ibid., p.lix
58. Ibid., p.lix
59. Indeed, that Hobbes regards these as obligations at all is a sign of what he confuses - although this *may* be a confusion only in light of distinctions we *now* make. As H.L.A Hart has shown, as discussed in *Part One*, it is the conflation of 'being obliged' with 'having an obligation' which places those, like Hobbes, who adhere to the command theory of law in serious difficulties. We may be obliged to obey the gunman, but we certainly do not 'have an obligation' to do so.
60. Leviathan, p.lxi
61. Ibid., p.lx
62. Ibid.
63. Ibid.
64. Warrender, The Political Philosophy of Hobbes, Op Cit, p.6, see also p.67
65. Warrender is representative of this third class of interpretations because of the thoroughness of his analysis and the attention, usually critical, it has received. Again, it is not our intention to minimize the differences between Warrender and others who take this path, but there is little doubt that they are all on the same path. See also A. E. Taylor, "The Ethical Doctrine of Hobbes", in S. Brown, Hobbes Studies, Op Cit, and S. Lamprecht, "Hobbes and Hobbism", in I. Kramnick, ed., Essays in the History of Political Thought, Englewood Cliffs, New Jersey, 1969
66. Leviathan, pp 104-105

67. Warrender, Op Cit, pp 231-232
68. Ibid., p.244
69. For detailed criticisms of Warrender and Taylor, see, *inter alia*, S. Brown, "The Taylor Thesis"; J. Plamenatz, "Mr. Warrender's Hobbes"; D. Gauthier, The Logic of Leviathan; J. Watkins, Hobbes's System of Ideas, and Brian Barry, "Warrender and His Critics", Philosophy, April, 1968, reprinted in M. Cranston and R. S. Peters, eds., Hobbes and Rousseau, New York, 1972.
70. See Watkins, Op Cit, pp 61-68
71. Barry, "Warrender and His Critics", Op Cit, p.47
72. Barry, Op Cit, p.38; Leviathan, p.86
73. Leviathan, p.109
74. Barry, Op Cit, p.51; his reference is to Leviathan, p.95
75. Barry, Op Cit, p.51; Leviathan, p.91
76. Ibid., p.51
77. See Leviathan, pp 89-90
78. Ibid., p.89
79. Barry, Op Cit, p.53
80. Ibid., p.54; Leviathan, p.90
81. Ibid., p.54
82. Leviathan, p.91
83. Barry, Op Cit, p.55
84. Ibid., p.55
85. Ibid., p.51; Leviathan, p.95
86. Leviathan, p.95
87. Ibid., p.96
88. Ibid., p.91
89. To be sure, there may be a historical problem here: the ordinary use of 'obligation' may have changed significantly since Hobbes' era. In any event, Hobbes' theory cannot be an adequate account of obligation now unless he uses the concept in basically the same way it is now used.
90. Leviathan, p.132

91. Ibid., p.132
92. J. Plamenatz, "Mr. Warrender's Hobbes", Op Cit, pp 84-85
93. Barry, Op Cit, p.56
94. Leviathan, p.141
95. Ibid., p.144
96. John Locke, The Second Treatise of Government, Op Cit, para.14
97. Ibid., para 176. See ch.XVI, "Of Conquest", generally, but especially paras. 186 and 187, 192. See also Essay VI of Locke's Essays on the Law of Nature, W. von Leyden, ed., Oxford, 1954, where (p.185) Locke states that "all obligation binds conscience and lays a bond on the mind itself, so that not fear of punishment, but a rational apprehension of what is right, puts us under an obligation...."
98. Ibid., para.90
99. Ibid., para.90
100. Ibid., para.172
101. Ibid., para.222; and ch.XIX, "Of the Dissolution of Government" generally.
102. Ibid., para.226. On Locke's distinction between rebellion and revolution, see Terence Ball, Civil Disobedience and Civil Deviance, London, 1973, pp 7-8
103. Ibid., para.95
104. Ibid., paras. 95-99. Locke's discussion raises some problems, of course, concerning the relationship of individual consent to (the choice of) social decision rules, but it is not necessary to pursue this point here. For an antidote to Locke's hasty conclusion that consent entails majority rule, see James Buchanan and Gordon Tullock, The Calculus of Consent, Ann Arbor, Michigan, 1962
105. Ibid., para.100
106. Ibid., para.116
107. Ibid., para.117. See also para.73
108. Ibid., para.119
109. There is an important definitional question here. It may be, given Locke's remark that "absolute monarchy... can be no form of civil government at all" (para.90), that Locke's broad construction of tacit consent may not apply to such regimes. But Locke shortly thereafter refers to "absolute monarchies... as well as other governments of the world...." (para.93), so it is clear that the traditional objection holds.

110. John Plamenatz, Consent, Freedom, and Political Obligation, second edition, Oxford, 1968, pp 7-8. See also his chapter on Locke in Man and Society, Op Cit, vol.I
111. Second Treatise, Op Cit, para.121
112. c.f. Strauss and Cox, see note 12
113. Hanna Pitkin, "Obligation and Consent", in P. Laslett *et al*, eds., Philosophy, Politics and Society, 4th Series, Oxford, 1972, p.57
114. Ibid., p.56
115. The account that follows owes a good deal to John Dunn, The Political Thought of John Locke, Cambridge, 1969
116. Second Treatise, Op Cit, para.6
117. Ibid., para.11. See also paras. 172 and 181
118. See Essay VI of the Essays on the Law of Nature, Op Cit, p.185, for Locke's discussion of various kinds of obligation.
119. Second Treatise, Op Cit, para.23
120. See, for example, Ibid., paras. 149, 168, 172
121. Ibid., para.222
122. Ibid., para.135
123. Essays on the Law of Nature, Op Cit, Essay I, p.119
124. Patrick Riley, "On Finding an Equilibrium between Consent and Natural Law in Locke's Political Philosophy", Political Studies, December, 1974, p.438
125. Ibid., p.449
126. Certainly it is more plausible than Warrender's nearly identical interpretation of this relationship in Hobbes' theory.
127. On Locke's conception of membership see Second Treatise, Op Cit, paras.116-122, and Michael Walzer's essay, "The Problem of Citizenship", in his Obligations, New York, 1971.

PART FOUR

ROUSSEAU: "THE MORAL VIEW OF THE WORLD"

Boswell: But, Sir, does not Rousseau talk such nonsense?

Johnson: True, Sir, but Rousseau *knows* he is talking nonsense, and laughs at the world for staring at him.

Boswell: How so, Sir?

Johnson: Why, Sir, a man who talks nonsense so well, must know that he is talking nonsense.

Boswell, *Life of Johnson*

"It will not be neglected because it is chimerical; but because the world is absurd, and there is a kind of absurdity in being wise amongst fools."

Rousseau, *Project for a Perpetual Peace*

The precise nature of Rousseau's theoretical consistency is an endless source of argument. Peter Gay's introduction to Ernst Cassirer's *The Question of Jean-Jacques Rousseau* presents an extensive survey of the many different positions<sup>1</sup> which, for our purposes, roughly divide into three groups.

The traditional argument is that Rousseau's purported 'individualism' is inconsistent with his later 'authoritarian' or 'totalitarian' solutions. Commentators such as Sabine, Barker, Vaughan, Talmon and Watkins conclude that Rousseau's theory is both confused and inconsistent. A variation of this contention is pursued by Crocker and Babbitt. They trace the 'confusions' in his political theory to the contradictions of his 'distorted' or 'paranoid' mind as Rousseau "projects his own illness" onto society and develops similarly "sick conclusions".<sup>2</sup>

A more sympathetic group of interpreters have contended that Rousseau's political theory is not meant to be psychologically or logically consistent. They suggest that his theory derives from different sets of contradictory principles and its conclusions reflect this tension and contradiction. Judith Shklar argues that Rousseau depends upon the expansion of two dichotomous images, 'Sparta' and 'the Golden Age', and there is no need to expect a reconciliation. Grimsley, Cobban and Burgelin suggest that Rousseau's philosophy is a radically consistent attempt to synthesize different "principles of Existence", such as individual unity versus psychic division, or the requirements of order and the flux of social and natural existence. The contradictions and tensions found in Rousseau, it is argued, reflect the basic existential tensions between his major metaphysical premises.<sup>3</sup>

The last group of interpreters have suggested that the unity of Rousseau's thought is more complex than simple theoretical canons allow. Hendel, Cassirer, Guéhenno and Grimsley all contend that the consistency and coherence of Rousseau's philosophy is primarily personal: it can most fruitfully be discussed as a theory which sets a basic problem for itself and then consistently examines the same problem from different perspectives and under varying conditions. This problem can either be a basic moral concern or Rousseau's continuous concern with his own moral identity and, by implication, moral agency in general.<sup>4</sup> Our approach has been influenced most by the last group, especially Hendel. With the exception of Burgelin, the majority of commentators aim to excuse Rousseau's theorizing from classical canons of logical consistency or parsimony. Rousseau, however, argues for the veridicality of his 'system' and makes it quite clear that problems of logical and psychological coherence within his philosophy are legitimate questions for analysis. For the purposes of a study of contractarianism, however, there is no need to join the debate about whether Rousseau is a totalitarian, democrat or liberal; our concern lies principally with ascertaining whether or not the idea of a social contract is at the heart of his theory of politics. Rousseau's totalitarian or libertarian credentials will be discussed as a *consequence* of his contractarianism and not as its possible motivation. It will become obvious, however, especially in *Part Seven*, that Rousseau's 'party-political' status is of importance to us insofar as it reflects certain tensions within contractarianism, in particular, the search for *Gemeinschaftliche* unity and homo-

geneity within *Gesellschaft* society.

Not all of Rousseau's commentators accept the view that the idea of a social contract is central to his philosophy; Shklar, for example, asserts that, "in spite of the title of his most celebrated book, the social contract itself plays an insignificant part in his political thought."<sup>5</sup> But the judgement that the social contract is a major element of Rousseau's political philosophy is, as will be shown, quite defensible. For Rousseau's use of the contractarian metaphor is not only one of the most significant aspects of his political thought: it is also *the* major contribution to social contract theory in general. Indeed, in the moderate nominalism of the *Discourses* and the *Social Contract* we find a nominalism (or rather, a 'conceptualism' according to which universals have *esse intentionale* but not *esse naturale*) reminiscent of Abelard's - at once a rejection of both thoroughgoing atomistic individualism and Thomistic realism: a civil philosophy premised upon the individual yet sustained by that which is common to all persons. What was found wanting in Hobbes and Locke, namely, the centrality of the idea of the social contract, became a possibility in Rousseau precisely as a consequence of his abandonment of atomism.

The Enlightenment saw the spread of atomistic nominalism in a manner of the utmost significance for a study of political philosophy. The Encyclopaedists, among others, reduced nominalism to what may be described as its popular social implications. Much was made of human reason (which was identified with the reasoning powers of the individual), of the rights of the individual, and of the authority of common sense. If universals or ideas are created by the mind, as the nominalists supposed and as the common-sense philosophers of the Enlightenment were beginning to believe, then authority is transferred from some objective source, such as the royal prerogative or the revelations of divinity, to the individual mind. For if the mind creates ideas and none has general authority, then each individual is free to create his own, as it were, and all must be equally valid. Here, somewhat paradoxically, we have the origins of both liberal democracy and philosophical anarchism.

Rousseau, of course, rejected atomistic nominalism; and, in adopting an Abelardian position, shifted the emphasis of Enlightenment debate from

atomic man to the 'Idea' of men not just as rational beings but as beings who manifest their reason in mutual engagements.<sup>6</sup>

The point is that Rousseau, like Abelard, implied that while universals may derive only from individuals, "once abstracted they (are) independent of real things".<sup>7</sup> The 'general will', for example, served neither as a mere theoretical fiction nor a metaphysical entity, but as a notion categorically distinct from psychological facts about individuals in space and time, at once derived from, resident within and transcending individual will. Rousseau combatted atomism, then, not by denying the ontological primacy of the individual, but by shifting discussion, as Kant would later do in a more complete way, from ontology to epistemology.

It has been argued by Patrick Riley that Kant must be considered as the most adequate of the social contract theorists, principally because in reformulating Rousseau's "social contract as an Idea of reason which shows what a people could reasonably agree to"<sup>8</sup> Kant transformed Rousseau's literal conception into a hypothetical contractarianism. In the following sections, however, we will challenge this view as a typical misreading, or underrating, of Rousseau and contend that it was Rousseau, not Kant, who first developed hypothetical contractarianism. Naturally, we must be careful not to underrate Kant in turn, but from the perspective of this thesis there is yet a further argument for placing Kant second to Rousseau: the notion of the social contract is not essential to Kant's theory of obligation. That this point is obvious to those familiar with the literature need not be pressed. Kant's development of the contract metaphor may indeed be superior to Rousseau's, but Kant did *not* employ the notion in what could properly be termed a contractarian theory of obligation. Rather, Kant's theory of obligation is most profitably viewed as correlated with a theory of 'rational agency' and 'justified action'. The notions of obligation, of being *under* an obligation and of an action being obligatory (or one's 'duty'), in the Kantian system, rely on a complex metaphysical theory of the nature of a *person* - what it is for a person to act for reasons, what it is for a person to act rationally, and what it is for his actions to (fully) manifest this rationality i.e. to be justified. For our purposes, the critical impact of Kant on subsequent contractarian discourse (Rawls in particular) is that his theory is unified through the notion of a *community of persons*, in the context of which reasons for acting are



given more determinate *content*, i.e., what Kant calls the 'kingdom of ends', in which rational agents (as ends-in-themselves) act rationally in pursuit of personal and common ends. In other words, Kant envisaged people pursuing legitimate personal interests subject to the limitations of the moral law.

Our examination of Kant's theory of civil obligation, then, is to be found in *Appendix Four*, taking the following form: first, a consideration of Kant's understanding of the notions of 'duty' and 'obligation', indicating how these are tied to his conceptions of what it is to be a person and rational agency, and to his general characterization of the principles according to which actions are 'rationally necessary'. Second, the location of these principles within Kant's fuller theory of rational agency and justification in which moral goodness and the moral law, respectively, are the 'supreme conditions'; and third, a discussion of Kant's formulation(s) of the supreme principle of morality, and his derivation of the notion of a kingdom of ends.

The discussion of Rousseau in the following sections will firstly trace what he termed "the Progress of Inequality", integrating the *Discourses* and the *Social Contract*, stressing both the highly metaphorical and radical nature of Rousseau's theory as the first statement of *hypothetical contractarianism*. This point is then taken up with a detailed discussion of the 'general will' and its contractarian implications. The final section relates the analysis of Rousseau's political theory to the problem of civil obligation, and there it is suggested that Rousseau does indeed provide an adequate contractarian solution to this problem. Both analyses, of Rousseau and Kant, will then be integrated in *Part Five*, on Rawls's *A Theory of Justice*, and criticized in *Part Six* and *Part Seven*.

## I

On the Origin of Inequality

Perhaps the best way to gain an appreciation of the role of the social contract in Rousseau's thought is to see how it emerges from the concerns expressed in his earlier political writings. The relationship between the *Social Contract* and the *Discourse on the Origin of Inequality* (*Second Discourse*) is especially important, for one follows the other in the way that a builder follows a wrecker. That is, Rousseau's task in the *Second Discourse* is primarily critical: it is an attempt to dismantle the social theories of Hobbes and Locke, among others. In the *Social Contract*, however, his purpose is to erect a new theory on the ruins - and the contract metaphor is the keystone of the project.

For both Hobbes and Locke civil society is an escape from and an improvement on the dangers and inconveniences of the state of nature. For Rousseau, on the other hand, the movement from the state of nature to civil society is a degeneration - a falling away from the virtues of man in his 'original state'. 'Progress' is actually the corruption of self-regard (*amour de soi*) into petty envy and vanity (*amour-propre*). The advantages of civil society, moreover, are purchased at the expense of the weak and the poor, who are forced to bear the burdens of social life while the rich and powerful enjoy its benefits. What has really happened, according to Rousseau, is that we have exchanged our natural independence for the chains of 'unjustified' inequality.

How and why has this happened? To answer these questions, Rousseau offers a hypothetical narrative - a description of how "the progress of inequality" *must have* occurred. He begins by arguing that others have misconceived the *state of nature* and that this misconception casts doubts on their accounts of the development of civil society. How, Rousseau asks, could men in the state of nature have perceived the dangers of their situation? How could they possibly have entered into a contract to ameliorate their condition? In the state of nature as it truly must have been, argues Rousseau, men were but animals who lacked intelligence, the power of speech, and the ability to transform their existence:

"But who does not see... that everything seems to remove from savage man both the temptation and the means of changing his condition? His imagination paints no pictures; his heart makes no demands on him. His few wants are so readily supplied, and he is so far from having the knowledge which is needful to make him want more, that he can have neither foresight nor curiosity."<sup>9</sup>

It would be impossible, according to Rousseau's analysis, for men in the state of nature to establish a civil society by means of a social contract or any other design. The only possible explanation is that there is an intermediate step, or set of steps, between the state of nature and the formation of civil society. Thus Rousseau imagines a process of development which moves from "mutual undertakings" (for example, the famous stag-hunt) to the "little societies" of the family, to neighbourhood and, finally, to the societies of villages and towns. Somewhere along the way, in some manner which Rousseau cannot explain, language came into use.<sup>10</sup> This, together with the accidental discovery of metallurgy and agriculture, sets the stage for the introduction of civil society. The role of language, of course, was to make communication possible. Metallurgy and agriculture - "the two arts which produced this great revolution"<sup>11</sup> - brought about the inequality of resources which, Rousseau argues, is a necessary condition for the foundation of civil society. The "two arts" enabled men to look beyond their daily needs and allowed them to provide for the future; at the same time, they also led to the division of labour and the introduction of private property. The immediate consequence of the new institution of property was a state of war. Since there was no convention governing the distribution of property, the 'right' of the first occupier and the 'right' of the strongest were constantly at odds. Only at this point, after society and property had given rise to the chaos of the state of war, was civil society finally established. However, before proceeding to a discussion of the establishment and development of civil society we must consider in greater detail Rousseau's conception of the state of nature.

The state of nature, for Rousseau, is both a quasi-historical notion and a 'procedural device'. The confusion of the two categories readily leads to trivialization of the contractarian idea and a comprehensive (one might say, all too easy) dismissal reminiscent of Hume. The historical notion arises in answer to the first two questions posed in the preface to the *Second Discourse*: "... how shall we know the source of inequality

between men, if we do not begin by knowing mankind? And how shall man hope to see himself as nature made him, across all the changes which the succession of place and time must have produced in his original constitution?"<sup>12</sup> Nature, on this view, is what is *original*. The 'procedural device', on the other hand, represents a partial solution to the third, fourth and fifth questions: "How can he distinguish what is fundamental in his nature from the changes and additions which his circumstances and the advances he has made have introduced to modify his primitive condition? .... What experiments would have to be made, to discover the natural man? And how are those experiments to be made in a state of society?"<sup>13</sup> The second group of questions flow from the first, yet Rousseau's priority is clear: to fashion a hypothetical account of history from its distinctly *human* (rather than animal) origins in order to better understand man's fundamental nature. The reconstruction is presented as nothing other than an assemblage of bits of information and inductions within a common-sense framework: in other words, it is a 'historiated', rather than historiographical, model of human evolution. The key to the model's symbolism lies in Rousseau's fascination with the movement from simplicity to complexity, growth to decay, that for him characterizes the course of human development. Since, for Rousseau, 'development' is meaningful only insofar as it connotes enhancement of freedom, 'progress' (as the chronology of increasing complexity in human affairs) is praiseworthy when it fosters development and blameworthy when it does not. Consequently, progress is of itself a negative thing in that it needlessly increases the complexity of life, serving only to destroy the intimacy of human relations. Progress is justified, or at least justifiable, when its end-orientation is the enhancement of freedom. Yet, one may ask, how can the complication of relations and environments foster 'freedom', as the term is commonly understood? Surely, unnecessary elaborations upon reasonably convivial circumstances can only increase the chances of personal subjection to the control of others? The point, of course, is that this assumes, firstly, that freedom consists exclusively in one's not being subject to another's will, and, secondly, that we are talking about much the same kind of people throughout the so-called 'march of progress'.

Freedom *proper* (let us call it freedom<sub>3</sub>) is not merely an external, negative condition or set of phenomena - physical freedom (freedom<sub>1</sub>) - rather, Rousseau implies, it is a combination of freedom<sub>1</sub> and civil free-

dom (freedom<sub>2</sub>); it is what we would regard as having an independent, rational will. That is to say, for Rousseau, a person is free (3) when he is independent of both external constraints *and* the bondage of his passions and susceptibilities to the will of others. Each aspect alone is necessary but insufficient to fully satisfy Rousseau's conception of liberty. Moreover, if it could be shown that the 'first' men were free in one respect (freedom<sub>1</sub>) and not free in the other (freedom<sub>2</sub>), it would be possible to analyze the course of human evolution as the emergence and growth of relations between the two aspects of freedom, and thereby be able to better identify the criteria, circumstances and prospects of social development. The sense of human evolution, whether it be an imputed teleology or actual purposiveness - the moral *why* of history - would thus unfold as the dialectic of liberty. Hence the (logical) necessity of Rousseau's depiction of the state of nature as a static idyll populated by insufferable dullards. If evolution is the movement from simplicity to complexity, the raw material of the process must be elemental yet essentially in keeping with what is to follow i.e. there must be sufficient commonality to permit continuity without the introduction of 'genetically' extraneous material. The infant grows into a man, as it were. In other words, it is assumed that there is within natural and social 'organisms' an internal principle of maturation.

It requires only a small jump from the quasi-historical model to conjecture on what is "original and what is artificial in the actual nature of man"<sup>14</sup> to lay the foundations for what we have termed a 'procedural device', that is, a mechanism or, in this case, an assumption by which we facilitate some procedure. The procedure with which we are concerned is, of course, the *contractarian method*: the hypothetical decisional process by which we may consider the moral dimensions of participation in the activities of the state.<sup>15</sup> The state of nature in this context, is a logical construct which filters the fundamental features of human nature from the plethora of secondary traits acquired in successive stages of social life. The signal characteristic of the state of nature is its lack of what we would regard as *social* life, presenting us, in regard to Rousseau's contractarian method, with a kind of notional experimental 'control'. On the most basic level, then, man's natural condition is, for Rousseau, an 'ideal type' which aids us in, firstly, determining man's condition before he entered society; secondly, locating the basic 'principles' of human nature; thirdly, describing and assessing the human condition

in modern civil society; and, fourthly, constructing an 'original position', or starting point, from which to pursue the contractarian method.

On a more sophisticated level, Rousseau's characterization of the psychology of natural man excludes all possibility of full freedom<sub>(3)</sub>, for although he is physically independent natural man's "soul, which nothing disturbs, is wholly wrapped up in the feeling of its present existence, without any idea of the future, however near at hand; while his projects, as limited as his views, hardly extend to the close of day".<sup>16</sup> The innocent happiness of external independence is not complemented by 'internal' control and, while precious in itself, physical liberty is not enough: "The heart only receives laws from itself", wrote Rousseau in *Emile*, "by wanting to enchain it one releases it; one only enchains it by leaving it free."<sup>17</sup> Had man remained in his natural condition the problem of freedom<sub>(2 and 3)</sub> would not have arisen for, indeed, nothing was problematical in the state of nature. The emergence of society, however, impinged upon physical liberty and, in so doing, generated the possibility of psychological liberty: the seeds of autonomy. For although natural man was physically free, he was not autonomous: he was incapable of rational action other than in the mere satisfaction of his appetites. The growth of social affiliations and the gradual shedding of natural innocence thus presented mankind with the central paradox to which Rousseau addressed himself in all his works: that "man was born free, and he is everywhere in chains". Expressed in terms of the two aspects of liberty (freedom<sub>3</sub>), physical freedom (freedom<sub>1</sub>) and civil freedom (freedom<sub>2</sub>), it may be seen that the paradox readily expands into a crude syllogism. Firstly, man is free<sub>1</sub>, or at least once was free<sub>1</sub> and ought to be free<sub>3</sub>, but, secondly, no man under present circumstances can be free<sub>3</sub> because freedom<sub>1</sub> was lost and the freedom<sub>2</sub> made possible by society has not been properly developed, so, thirdly, in order to achieve freedom<sub>3</sub>, man must endure the loss of freedom<sub>1</sub> while nurturing freedom to a point where freedom is once more possible. The attainment of physical freedom is thus dependent upon the realization of civil freedom, and when the two are merged we have autonomy. Presented in this way, the *dialectic of liberty* transforms into the *dialectic of autonomy*. The revolutionary struggle to break the chains of bondage becomes, when all is said and done, a matter of enlightened, if despotic, education. "There can be no patriotism without liberty," writes Rousseau in *A Dis-*

*course on Political Economy*, "no liberty without virtue, no virtue without citizens; create citizens, and you have everything you need; without them, you will have nothing but debased slaves, from the rulers of the State downwards. To form citizens is not the work of a day; and in order to have men it is necessary to educate them when they are children."<sup>18</sup>

The curriculum of this pedagogic revolution grows out of the search for happiness: "we must be happy, dear Emile: that is the aim of every sensitive being: it is the first desire imprinted in us by nature and the only one which never leaves us."<sup>19</sup> And happiness, Rousseau never tires of telling us, is the fruit of being truly ourselves, identifying with what we are rather than the masks behind which we hide. Society has nurtured a yearning for more than it can provide, for it has created an awareness of morality unknown to primitive man. Yet this awareness remains stunted and frustrated because the conditions of moral agency are unfulfilled - natural freedom is beyond us, because we are no longer 'natural', and 'moral' freedom tantalizes us because we have not tasted autonomy. The *idea* of civil society, then, rather than society itself (as manifest at any one time) is fundamental to the understanding and attainment of autonomy. The moral order is essentially a social concept, for it invites participation in the practical affairs of communal life and establishes, in theory at least, a mode of existence conducive to virtuous, that is, civic-minded, behaviour. Natural man is lost forever. Moreover, the moral order is premised upon a civic freedom, the self-reflective application of reason to action - we would not want to resurrect an identity no longer applicable to our conceptions of what we ought to be. The conventions upon which moral order is founded thus simultaneously repudiate and embrace the state of nature. It is a parable that strikes close to home yet nevertheless remains a parable, the point of which lies not in the narrative but in the practical lesson we extract from it. "The ideal society", writes Ronald Grimsley, "is a kind of microcosm which in its essentials reflects the spiritual order governing the universe as a whole. Through his active participation in this higher order man will attain a happiness far superior to the merely instinctive 'goodness' of primitive man."<sup>20</sup>

"The philosophers, who have inquired into the foundations of society, have all felt the necessity of going back to a state of nature," writes Rousseau in the *Second Discourse*,

"but not one of them has got there. Some of them have not hesitated to ascribe to man, in such a state, the idea of just and unjust, without troubling themselves to show that he must be possessed of such an idea, or that it could be of any use to him. Others have spoken of the natural right of every man to keep what belongs to him, without explaining what they meant by 'belongs'. Others, again, beginning by giving the strong authority over the weak, proceeded directly to the birth of government without regard to the time that must have elapsed before the meaning of the words 'authority' and 'government' could have existed among men. Everyone of them, in short, constantly dwelling on wants, avidity, oppression, desires and pride, has transferred to the state of nature ideas which were acquired in society; so that, in speaking of the savage, they described the social man. It has not even entered into the heads of most of our writers to doubt whether the state of nature ever existed...."<sup>21</sup>

The significance of this thinly-veiled attack on Hobbes derives from Rousseau's emphasis on the evolution of human behaviour, language, norms and institutions. Hobbes is criticized for foisting an image of seventeenth century man upon pre-history and retrospectively establishing the conditions of contemporary civility. In effect, Rousseau echoes Vico's criticism that men who could contractually delimit their freedom of action in favour of an omniscient sovereign must themselves be the product of a sophisticated social order. However, Rousseau's objection to *Leviathan* goes deeper than this. A contrived, tautological argument is easily dismissed. Were Hobbes merely indulging in amateurish anthropology his formidability would dissolve in a caustic footnote. The real threat to an evolutionary conception of humanity posed by Hobbes' state of nature is its very opposition to such a conception in the first place. The motion of substances in Hobbes' monistic metaphysics reduces to a ruthless circularity that belies, by its very repetitiousness, the possibility of 'development'. The state of nature, as Hobbes conceives it, is not a temporally-confined notion applicable only to the opening moments of an irreversible process. Rather, it represents the 'heart of darkness', as it were, within all men for all time. It is the core of man's political soul: remove the veneer of civility and hibernating natural man will awaken. The state of nature, by this account, is a world devoid of strong government. In complete contrast to Rousseau, it is an assertion that chaos is endemic to human nature, and 'goodness' transitory and contingent. Whereas Rousseau takes disunity and selfishness to be the bitter harvest of burgeoning, ill-considered social relations, Hobbes looks towards the



'disorder within'. The fulcrum on which the debate hinges is the necessity of man's enslavement to selfish passions. One mythopoeic construction, Hobbes', dramatizes the point by elevating Hell to the human realm as *bellum omnium contra omnes*, and then homilizes on the dangers of lurking daemonic forces. The other mythopoeic construction, Rousseau's, does not counter by appropriating Heaven, but, cleverly, evokes a benign Purgatory in which good and evil are unknown. The strategy here is to avoid attributing anything to human nature other than the most simple intuitive categories of biological survival. Conflict is unknown because there is nothing over which one need quarrel: food, shelter, territory - all are bounteous and held in common. Circumstances coupled with innate, survival-oriented drives and sympathies determine the subsequent course of events. Rationality and morality grew out of man's interaction with nature, then, not full-blown from the godhead. In this respect, Rousseau was more in keeping with Spinoza than Calvin, and, like Spinoza, Rousseau penned an outline of the rise of civilization in terms of man's response to changing circumstances. Each response to some environmental stimulus altered the constitution of the organism, as it were, and each change amended subsequent responses. Taken to its logical conclusion, would it not then be possible to employ this relationship and direct the means and avenues of change?

Here we can see the emergence of Rousseau's political philosophy as, literally, a pedagogy of the oppressed. If inequality arises from differential responses to changing conditions and resultant contests over relatively diminished resources, then, firstly, reorganize the distribution of resources and, secondly, educate men to respond more thoughtfully and creatively to new situations. Needless to say, this will initially involve a lengthy transitional period in which a planned environment can be established and an entire generation educated to the ways of the new order. However, in theory at least, it follows from the initial premise of man's natural condition that the transition is possible and, if achieved, the resultant transformation inevitable. But we are getting ahead of ourselves. What is important here is that the divergent mythopoems of the state of nature lead to radically different political philosophies, and *vice versa*. Priority does not matter: philosophy and mythopoetry lead incestuous careers, each illuminating the other. Out of a portrait of the past grows a vision of the future and, more often than not, a romanticization of the present. What passes for political theory is, in this context,

little more than catechism and exegesis.

The point at which Rousseau and Hobbes converge is outlined in the first two paragraphs of chapter vi, Book 1 of *The Social Contract*:

"I suppose men to have reached the point at which the obstacles in the way of their preservation in the state of nature show their power of resistance to be greater than the resources at the disposal of each individual for his maintenance in that state. That primitive condition can then subsist no longer; and the human race would perish unless it changed its manner of existence.

"But, as men cannot engender new forces, but only unite and direct existing ones, they have no other means of preserving themselves than the formation, by aggregation, of a sum of forces great enough to overcome the resistance. These they have to bring into play by means of a single motive power, and cause to act in concert."<sup>22</sup>

Rousseau here assumes the reader's familiarity with the second part of the *Second Discourse* in which he traces the "slow succession of events and discoveries in the most natural order"<sup>23</sup> that led to the emergence of fixed private property. Though Rousseau completely discounts Hobbes' contention that man is innately acquisitive, he recognizes that competitive possessiveness has become the hallmark of 'civilized' human relations and, like Hobbes, identifies the rise of the State with the escape from (a now degenerate) natural freedom. Writes Rousseau, "The first man who, having enclosed a piece of ground, bethought himself of saying 'This is mine', and found people simple enough to believe him, was the real founder of civil society."<sup>24</sup> While the possession of goods in the natural state was limited to each person's capacity to defend and utilize what was needed for day-to-day self-preservation, the regular production of surplus food on an established piece of territory generated two hitherto unconsidered, if not unthinkable, notions, firstly, a claim to property rights and, secondly, a market for the exchange of commodities. Moreover, the individual's conception of himself, his self-awareness of what he is and how he appears to others, underwent a concomitant transformation. Whereas once the points of reference between men focused on what men were (their natural endowments and talents) the rise of personal property shifted attention to what men possess: I am what I own. In other words, personal identity was no longer exclusively a matter of reference to oneself and others as

persons, but a calculation of the disposition of things in a world increasingly characterized by an inequality of possessions.

The assertion of *claims to property rights*, then, fostered a radically different conception of human relations to the little-considered, roughly-hewn notion commonly held at the close of the state of nature. In particular, it promoted in the successful claimants ('the rich') a fear of the less-advantaged who, alone or in coalition, could themselves usurp the 'false titles' of the former. This sense of insecurity nurtured in turn what Rousseau considered to be "the profoundest plan that ever entered the mind of man: this was to employ in his favour the forces of those who attacked him, to make allies of his adversaries, to inspire them with different maxims, and to give them other institutions as favourable to himself as the law of nature was unfavourable."<sup>25</sup> Rousseau's paradigmatic man of property dramaticizes for his neighbours in terms reminiscent of Hobbes the horrors of instability and internecine strife:

" 'Let us institute rules of justice and peace', he concludes, 'to which all without exception may be obliged to conform; rules that may in some measure make amends for the caprices of fortune, by subjecting equally the powerful and the weak to the observance of reciprocal obligations. Let us, in a word, instead of turning our forces against ourselves, collect them in a supreme power which may govern us by wise laws, repulse their common enemies, and maintain eternal harmony among us.' "<sup>26</sup>

"All ran headlong to their chains, in hopes of securing their liberty"<sup>27</sup>, comments Rousseau in a passage seemingly in contradiction with the conclusion of Book 1 of the *Social Contract*:

"I shall end this chapter and this book by remarking on a fact on which the whole social system should rest: i.e. that, instead of destroying natural equality, the fundamental compact substitutes, for such physical inequality as nature may have set up between man, an equality that is moral and legitimate, and that men, who may be unequal in strength or intelligence, become every one equal by convention and legal right."<sup>28</sup>

However, Rousseau appends a footnote qualifying this statement to the effect that bad governments manufacture an illusory equality because their sole interest is to defend the rich. Almost as an afterthought he tacks on to the footnote a general comment that renders his annotation quite enigma-

tic. "In fact," he writes, "laws are always of use to those who possess and harmful to those who have nothing: from which it follows that the social state is advantageous to men only when all have something and none too much."<sup>29</sup> How is one to reconcile this categorical assertion with the remark it is meant to illuminate? All social systems ought to rest on conventions and legal rights because only in this way can we guarantee substantive equality, yet all laws, we are told, protect only the propertied. Granted it is added that social states are "advantageous to men only when all have something and none too much", but the textual summation does not premise the fundamental compact on a prior re-distribution of resources or a commitment to distributive justice. We must consider whether we are presented with a genuine internal contradiction, or if Rousseau has improperly presented his argument, in part taking for granted what was later made more explicit by Rawls with regard to distributive justice, and in part failing to elucidate upon the paedetic underpinnings of his political philosophy.

In the short run, however, it is possible to reconcile the two statements by emphasizing that in the post-natural/pre-civil fluxion men suffer from both proprietarial *and* conventional inequalities i.e. inequalities arising from the irregular, selective application of norms. At the very least, the formation of civil society introduces an element of stability and uniformity in the regulation of public behaviour, even if such stabilization consolidates the position of the 'rich' at the expense of the 'poor'. The formation of civil society is not questioned so much as the circumstances in which it is formed. Given that the presumed prevailing conditions prior to the establishment of civil order demand some rationalization, Rousseau is not contesting the fact of rationalization but, rather, the inequitable relations between men that *a priori* weaken the legitimacy of a newly-instituted order. The implication seems to be that should these circumstances be changed in favour of greater proprietarial equality *or* should the system be so rigorously fair that the rich cannot abuse the law, civil society would gain the mantle of legitimacy. In other words, since civil society is properly founded on an "equality of right", the true test of legitimacy is, firstly, whether or not such an "equality of right" has been at least notionally established; secondly, whether or not it is being fairly and rigorously enforced; and, thirdly, whether or not the social

matrix is actually conducive to the realization of egalitarian principles. (See *Appendix Five*.)

One of the aims of the *Second Discourse*, in sum, is to expose the gap between ideal and reality. In the state of nature men were no more than animals, but they enjoyed physical liberty; in civil society they are developed social beings with linguistic and technical skills, but they are either oppressors or, what is more likely, oppressed. What, Rousseau asks, has been gained? Unlike earlier writers who underscored the desirability of civil society by contrasting it with the horrors of the state of nature, Rousseau holds that there is little to choose between the two states of existence. He is not, to be sure, a primitivist. But he is anxious to show that civil society *as it is* (the *de facto* state) represents a missed opportunity: an opportunity to achieve a condition which is both social and free. Such is the civil, or political, society (the *de jure* state) which Rousseau envisages in the *Social Contract*.

## II

### The Social Contract

Rousseau, in the *Social Contract*, implicitly distinguishes between three states of existence. The first is the state of nature - the condition of 'natural' liberty and innocence. Second is what we shall term *de facto* (corrupt) society, i.e. civil society as it is depicted in the *Second Discourse*. The third state, which is civil society as it would be if the principles of political right were observed, may be called the 'just society'. The just society is not to be understood as a synthesis of the state of nature and *de facto* society, however. The natural liberty and the innocent virtue of the state of nature are lost forever. And this loss would be tolerable, Rousseau claims, were it not for the injustices of corrupted civil society; for even though man in a civil society is deprived of the advantages of the state of nature,

"he gains in return others so great, his faculties are so stimulated and developed, his ideas so extended, his feelings so ennobled, and his whole soul so uplifted, that, did not the abuses of this new condition often degrade him below that which he left, he would be bound to bless continually

the happy moment which took him from it for ever, and, instead of a stupid and unimaginative animal, made him an intelligent being and a man."<sup>30</sup>

The just society, as Rousseau conceives it, ends the abuses and fulfills the promise of corrupted civil society. It substitutes civil liberty - freedom<sub>2</sub> under law - for natural liberty (the freedom<sub>1</sub> of the beast in the wilderness). Property, "which can be founded only on a positive title", supplants possession, "which is merely the effect of force or the right of the first occupier".<sup>31</sup> Above all, in a just society the laws are applied fairly and the interests of all receive equal attention. This conception of the just society, as mentioned lies behind Rousseau's remark that "Man is born free; and everywhere he is in chains". According to the hypothetical anthropology of the *Second Discourse*, man is indeed born free<sub>1</sub>; but his development into a social being requires that he exchange his natural independence for the bonds of society. These social "chains" - or this "yoke", another metaphor Rousseau uses frequently - are as much a feature of the just society as of *de facto* society. The question to be answered in the *Social Contract* is, under what conditions are these chains justified? This is what Rousseau means when he says, "One thinks himself the master of others, and still remains a greater slave than they. How did this change come about? I do not know."<sup>32</sup> What can make it legitimate? That question I think I can answer."<sup>33</sup>

The *Social Contract*, then, is an inquiry into the moral foundations of the state, or, as the subtitle proclaims, into the *Principles of Political Right*. Rousseau begins this inquiry by dismissing the idea that political right is, as Locke would have it, natural. It is, instead, a matter of convention:

"But the social order is a sacred right which serves as a foundation for all other rights. This right, however, since it comes not by nature, must have been built upon conventions. To discover what these conventions are is the matter of our inquiry."<sup>34</sup>

The defense of this claim comprises two brief chapters in which "natural" accounts of the origin of political authority are rejected. In the first Rousseau attacks the argument that the right of the state is natural because it is simply an outgrowth of the most ancient and natural

of all societies, the family. Rather than deny that civil society may have developed from (or on the model of) the family, Rousseau turns the tables on his opponents by asserting that the "natural bonds" which unite the family are dissolved when children reach maturity. Once children outgrow their dependence on their parents, parents and children alike return to a state of independence. "If they remain united," Rousseau says, "they continue so no longer naturally, but voluntarily; and the family itself is then maintained only by convention."<sup>35</sup> The analogy with the family, consequently, fails to demonstrate that political right is natural rather than conventional.

In the second of these chapters Rousseau considers the argument that political authority derives from the right of the strongest. Since strength is a natural capacity, political right would, on this argument, also be natural. Rousseau's response is to point out that force creates no right. Those who maintain that it does, he says, simply confuse prudential and moral reasoning. "To yield to force is an act of necessity, not of will - at the most, an act of prudence. In what sense can it be a duty?"<sup>36</sup>

Once he has disposed of these arguments, Rousseau believes that he has made his point: there is no natural authority of man over man, and all legitimate authority among men is, therefore, conventional. The next question is, what is the nature and scope of this (these) convention(s)? Rousseau is especially concerned to delimit what men can reasonably be said to have agreed to, and he is particularly anxious to rebut the claim that slavery is or can be conventional - i.e. that one person can agree to enslave himself to another. The reason for this concern goes beyond opposition to slavery, for Rousseau is aware that justifications of slavery can also be used, *mutatis mutandis*, to justify despotism.

The ethical impotence of coercion is, for Rousseau, the starting point of political philosophy; for it allows one to move beyond descriptive analyses of *de facto* circumstances and formulate normative problems demanding *de jure* solutions.

The master-slave relation, according to Rousseau, is a 'contractual' rather than a natural condition; moreover, insofar as it is founded in coercion and not in right, it is an illegitimate contract. One would never

willingly submit to servitude, argues Rousseau, nor could one regard any convention flowing from coercion alone as morally binding. An absolutism derived from power alone, in other words, is a shallow, non-reflexive dominion, i.e. its legitimacy is self-referring, dependent upon the enforced quietude of its subjects. In keeping with Locke and Montesquieu, Rousseau rejected Grotius' and Pufendorf's arguments endorsing voluntary submission to absolutism: "If an individual, says Grotius, can alienate his liberty and make himself the slave of a master, why could not a whole people do the same and make itself subject to a king?"<sup>37</sup> A person cannot rightfully dispossess himself of his liberty, nor a people of theirs, contends Rousseau, because liberty is essentially inalienable. Yet how does this accord with Rousseau's solution of the fundamental problem of political philosophy in Book I, chapter vi?

Rousseau states that "(to) alienate is to give or to sell".<sup>38</sup> Clearly, if man is "born free" he has at the very least, freedom<sub>1</sub>, which he can surrender or 'sell'. If we assume that people act rationally, we generally mean that they act in accordance with their perceived advantage. Rousseau contends that because one could never be advantaged by the gratuitous divestiture of freedom one would not voluntarily do so: "To say that a man gives himself gratuitously, is to say what is absurd and inconceivable; such an act is null and illegitimate, from the mere fact that he who does it is out of his mind."<sup>39</sup> So, if liberty *can* be rationally alienated the only possible mode of divestment is exchange, that is, 'selling' one's liberty for some perceived advantage. But this advantage must be a considerable one, else the 'sale' be so lop-sided in the purchaser's favour that the bargain be no genuine exchange at all. Yet, Rousseau regards liberty (even freedom<sub>1</sub>) as priceless (unless, of course, it is set aside in the process of realizing freedom<sub>3</sub>), an aspect of one's humanity so central that "(to) renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties."<sup>40</sup> Since moral agency hinges on freedom of choice (and moral agency alone is that which properly defines humanity) the renunciation of liberty "is incompatible with man's nature; to remove all liberty from his will is to remove all morality from his acts."<sup>41</sup> Because liberty is priceless it is equally irrational to gratuitously renounce it or to 'sell' it; consequently, the voluntary alienation of liberty is beyond rational man. This is one of the principal axes on which turns the argument of the *Social Contract*; or, properly



speaking, it is one of Rousseau's principal axioms, for it does not flow from an argued case but rests entirely upon what he takes to be its intuitive good sense. Its centrality derives from the emphasis Rousseau places upon the sanctity of liberty as the critical concern of political philosophy, and in terms of which he delineates the boundaries of the "fundamental problem".

Leaving aside, for the moment, the argument for the enhancement of one's liberty, the only seemingly rational case for the divestiture of freedom<sub>1</sub>, declares Rousseau, is that from survival. "Grotius and the rest", remarks Rousseau, "find in war another origin for the so-called right of slavery. The victor having, as they hold, the right of killing the vanquished, the latter can buy back his life at the price of his liberty; and this convention is the more legitimate because it is to the advantage of both parties."<sup>42</sup> The assumption here, of course, is that the victor has a right granted by conquest, and that it is to the advantage of all to come to some sort of arrangement by which the conquered live and the conqueror rules. Since loss of life naturally entails loss of liberty, the vanquished is rationally bound to bargain for the maximum possible advantage, i.e. his life. The 'conquest argument', then, attempts to fashion a mutually-advantageous equilibrium of interests between radically unequal participants in a competitive-anarchic environment. Interests are differentially weighted in accordance with the relative dominance of one party; thus, the 'conqueror', by virtue of his dominance, sees his entire set of interests (ranging from mere survival to absolute sovereignty) at the heart of any notional calculation, while the conquered may rationally bargain only for his basic interests, of which the most fundamental is survival. It is assumed, of course, that the conqueror has completely defeated his rivals, otherwise the bargaining situation is altered in favour of the partially-defeated who will rationally pursue additional interests.

As the second step of argumentation in *Leviathan*, the conquest argument assumes a dramatic alteration in the state of nature, which for Hobbes is composed of equal participants ('atoms') in a competitive-anarchic environment. The domination of one person or group of persons in this condition inexorably leads to the dissolution of this natural state, since dominion entails the defeat of others, which further entails the imposition of order by the establishment of unequal but mutually-advantageous equilib-

ria. Since rights are negotiable commodities in a zero-sum game in which some must lose all their rights so that others can be secure - and virtually everyone (with at least one exception) must lose some rights so that everyone may be secure (each severally submits to and therefore contracts with the sovereign) - the Hobbesian account of a moral order is that most inclusive set of efficiently-enforced, mutually-advantageous equilibria between unequal interests within a given territory. Such an order is a moral one on the unabashedly utilitarian grounds that, in terms of the interests of all concerned, it is the only situation that gives everyone something and (with at least one exception) disadvantages all uniformly. It is 'moral', then, because it is the 'best' for all concerned. Moreover, argued Hobbes, it alone works; a pragmatic consideration that relegates other alternatives to the realm of the fanciful.

Rousseau challenged this conception of the rise of civil society on six grounds: (1) it presents an inaccurate picture of the state of nature, which for Rousseau is composed of unequal participants in a non-competitive anarchic environment; (2) it does not place the development of civil institutions within the context of human evolution as its *products*; (3) in regarding rights as negotiable commodities Hobbes has devalued the very notion of rights to the point of worthlessness; (4) the alleged 'right' of conquest is no 'right' at all; (5) Hobbes' conception does not provide an account of citizenship in any meaningful sense, but only a form of negotiated slavery that mindlessly chains future generations to the fears, foibles and failures of their ancestors; and, (6) a moral order is derived from neither pragmatic nor utilitarian considerations, but from *justice*. Rousseau does not dispute the common assumption that security for all within the context of a zero-sum game entails the vectoring of personal interests; what he does, however, is to inject a further element into the game - the general will - in terms of which the sacrifice of personal interests makes possible the realization of more important *civic* interests. Civic interests, according to Rousseau, are part and parcel of each citizen's overall set of interests but, as we shall see in Section III, are incapable of realization for the want of a suitable matrix: a moral order or just society in which personal interests are balanced so as to elicit and enhance civic interests.

It is the fourth point outlined above that occupies Rousseau's attention in Book I, chapter iv of the *Social Contract*. In refuting Hobbes' war of each against all Rousseau introduces his conception of the rise of civil society. The attack on Grotius is secondary to Rousseau's task, as if the inclusion of this noted gentleman added weight to an otherwise uncompromising rejection of Hobbes. To recapitulate, then, the state of nature is a somewhat non-competitive anarchy, according to Rousseau, characterized neither by peace nor war but by transitory, irregular relationships: men are not natural enemies. Wars are generated by the institution of property, "and, as the state of war cannot arise out of simple personal relations, but only out of real relations, private war, or war of man with man, can exist neither in the state of nature, where there is no constant property, nor in the social state, where everything is under the authority of the laws."<sup>43</sup> Wars are fought not between individuals but between states, and insofar as individuals are engaged in wars they confront each other not as citizens of their respective states, but as combatants 'defending the fatherland'. The Hobbesian formula for the manufacture of civil society is therefore by implication an inversion of what Rousseau takes to be the natural course of events. Order, merely factitious or otherwise, is not the product of war, rather, it is the preface to war.

According to Rousseau's logic (following Montesquieu), the purpose of war is the subjugation of hostile states, not citizens. Once the citizens of a hostile state lay down their arms they are no longer enemies and no one has any further 'right' over their lives. Paradoxically, the right over life thrown into question by war is rendered unproblematical once the conflict is resolved: conquest deprives the conqueror of his alleged right over the conquered since his success has ended the war. Consequently, attempts to develop arguments for the legitimacy of alienated liberty dissolve into questions of power and prudence, but not right. Furthermore, whether prudential or not, "(by) taking an equivalent for his [victim's] life, the victor has not done him a favour; instead of killing him without profit, he has killed him usefully. So far then is he from acquiring over him any authority in addition to that of force, the state of war continues...."<sup>44</sup> Forced consent cannot create an obligation because obligations pertain only to moral agents, persons possessed of volition and physical liberty; or, as Rousseau puts it, "(the) words *slave* and *right* contradict each other, and are mutually exclusive."<sup>45</sup>

Underlying Rousseau's rebuttal of the fact of submission as the justification (and paradigm) of *de facto* civil associations is a deeper, unrelenting hostility to all inequitable civil relations. Physical inequalities will be overcome in the wake of moral equality, not vice versa. Since obligations and rights are properly formulated and undertaken by moral agents, and such agency is made possible before all else by freedom<sub>1</sub> and freedom<sub>2</sub> (the freedom to cogitate and choose) the only policy guaranteeing the uniform assumption and application of obligations and rights within a polity is one of equal citizenship for all. A just society, in other words, is an ecology of citizens, equally free persons united by common rights and obligations. Once more, if the *telos* of man is moral agency which, in turn, flows from liberty, then the voluntary renunciation of freedom for any reason *other* than its eventual enhancement entails the self-denial of one's humanity. A moral order is rational, then, only insofar as its attainment guarantees the conditions of moral agency. Authority, as the *right* to compel compliance with an obligation, is thus made possible within this context by its enhancement of liberty. Rather than counterpoising each other, authority and liberty combine to achieve what Kant later termed *autonomy*. One is free<sub>3</sub> in that one obeys only oneself, that is, expressions of one's own will. In undertaking and fulfilling an obligation, argued Rousseau, one is exercising one's autonomy. Given that, on the whole, an obligation as it were unites one person's will with another's (in that a contractual obligation expresses the will of at least two several contracting parties), the existence of obligations presumes stable relations between moral agents. Moreover, it is presumed that since an obligation places a restriction on one's freedom, the unwarranted breach of an obligation not only represents the frustration of others' expectations but, more importantly, the trivialization of the voluntary vectoring of one's freedom: one has devalued one's right to freedom<sub>3</sub> and partially destabilized the relations between moral agents that, on the most basic level, constitute a moral order. Further, since (moral) authority is solely premised upon 'right' (what is morally obligatory) a moral order - as a matrix of social interaction within which, as Kant would put it, one's will can be united with another's under a universal law of freedom - is necessarily authoritative. In other words, authority is a necessary entailment of morality, which flows from autonomous agency, itself made possible by freedom.

The clustering of these concepts (freedom, morality, autonomy and authority) provides the conditions in which obligations may be properly undertaken and fulfilled. Thus, for Rousseau (as for Kant), the philosophical problem of 'legitimacy' reduces to the more basic consideration of what constitutes a moral order or just society. Needless to say, this lies in complete contrast to the pragmatic 'political' problem of legitimacy (expressed most forcefully by Hobbes) in terms of which a state is legitimate *as a consequence* of its monopoly of force over the most inclusive set of decisional activities within some territory. The process is here reversed. Rousseau and Kant acknowledge such a monopoly and omniscience as the practical result of a previously established authority. 'Illegitimacy' is therefore a possibility for Rousseau and Kant even within a successful coercive apparatus, since the seeds of legitimacy were sown elsewhere, namely, in the moral foundations of the state and in its current manifestation and performance. Consequently, a legitimate government may *become* illegitimate through abrogation of the principles of its underpinning moral order. Likewise, an illegitimate government may acquire a degree of legitimacy through its enhancement of moral order - Rousseau and Kant are far more cautious on this point. In its most sophisticated form, as presented by Max Weber, the political problem reduces to questions of social psychology: legitimacy as a *belief* held by the government and the citizenry that the former has a right to rule. Rousseau and Kant, however, regard this as a secondary issue that arises in the wake of the philosophical problem: the just state as the fruit of a moral order. The belief in a civil obligation to obey the laws of the state, that is, a belief in the basis of legitimacy, must be founded in an *actual* obligation, according to Rousseau and Kant. A moral order is the crucible of civil obligation on this view; in the final analysis, it is the only crucible.

The schematic argument of the *Social Contract*, as developed in Book I up to chapter iv, might be termed a 'formal paradox', with the conclusion drawn from the premises thus far given as a question demanding of a practical answer. The practical implication (which is thrown up by rather than deduced from the initial argument) is a further argument (embedded in the formal paradox) the unpacking of which constitutes the bulk of the text. In other words, Rousseau in the *Social Contract* firstly endeavours to arrive at the fundamental problem of political philosophy; secondly, having formulated the problem defends this particular formulation; and, thirdly,

solves the problem and defends his solution. With regard to Rousseau's first step, the formal paradox is itself the product of two logically prior strands of argument - *A* and *B* below. The conclusions of these two preliminary arguments constitute the premises of the reasoning by which Rousseau arrives at an initial formulation of the fundamental problem. The argument is as follows:

- A*
1. The *telos* of man is to be a moral agent. (This is the fundamental axiom upon which Rousseau builds his entire argument.)
  2. Morality is premised entirely upon freedom.
  3. Therefore, to renounce one's freedom is to renounce one's humanity: a rational impossibility.
- B*
1. A moral order is a (cooperative) mode of association which facilitates rational interaction between free persons, i.e. it maximizes the effective conditions of reason in action.
  2. Insofar as men consider the moral status of actual social conditions they reflect upon the (presumed) principles of moral order. Individuals make comparisons between what is and what ought to be the case.
  3. Since the signal characteristic of moral order is rational (cooperative) interaction between free persons, a common conception of what ought to be the case (that is, the principles of moral order) will arise from agreement between equally free persons. This is the *contractarian method*.

The proper application of the contractarian method, harnessed with the assumption that one cannot renounce liberty, leads to a single general conclusion: the only sort of association open to equally free rational persons is one in which the freedom of each is guaranteed. The political problem flowing from this general conclusion is how to implement it in practical affairs, i.e. how to fashion (or refashion) actual associations so as to ensure equal individual liberty. In other words, how can the contractarian method aid us in achieving autonomy without sacrificing authority?

Rousseau is now in a position to set out his own account of the convention which establishes political authority. This convention is a unanimous agreement by a group of people to form a body politic. And this convention is what Rousseau calls the social compact or contract.

But if the social contract is to serve as the foundation of legitimate civil authority, Rousseau must show how it avoids the problems detailed in the *Second Discourse*. Can there be a system of political right which does not subordinate the interests of some to the interests of others? Does the social contract require the individual to relinquish his personal power and freedom - "the chief instruments of his self-preservation" - only to betray him? The problem, once more, is that

"Some form of association must be found as a result of which the whole strength of the community will be enlisted for the protection of the person and property of each constituent member, in such a way that each, when united to his fellows, renders obedience to his own will, and remains as free as before. This is the basic problem of which the Social Contract provides the solution."<sup>46</sup>

This is the heart of Rousseau's conception of the just society. It is also an indication of the crucial role the social contract plays in his theory, and it will be necessary, therefore, to examine closely this passage and the rest of the brief chapter on "The Social Compact" (Book I, chapter vi).

To begin with, Rousseau clearly thinks of the social contract as a way of defining the terms under which rational individuals could agree to accept the authority of the state. There is no suggestion that there ever has been an actual social contract. That is, the content, or 'clauses', of all contracts among individuals to form a body politic is always and everywhere the same. This is because the content of the contract is "determined by the nature of the act", as Rousseau puts it, and "the slightest modification would make them vain and ineffective; so that, although they have perhaps never been formally set forth, they are everywhere the same and everywhere tacitly admitted and recognized...."<sup>47</sup> And if the clauses of this one and only possible contract are not adhered to, everyone regains his natural liberty - if not his natural innocence. This, indeed, is what distinguishes the just from the corrupt society: those in power in the corrupt society fail to observe the terms of the social contract.

But what are these terms or clauses? Rousseau never lists them, but he does say that "properly understood" they reduce to one clause:

"the total alienation of each associate, together with all his rights, to the whole community; for... as each gives himself absolutely, the conditions are the same for all; and, this being so, no one has any interest in making them burdensome to others."<sup>48</sup>

The emphasis here, although the word is not mentioned, is on equality. Rousseau's social contract stipulates that every individual surrender his original power and liberty and acknowledge the authority of a community in which he is an equal partner. This means that each member renounces his natural liberty in favour of civil or conventional liberty - *equal freedom under law* - and exchanges his power to possess all that he can for the social recognition and protection of a property right - *equal protection under law*. In Rousseau's words, this equality under law guarantees that

"each man, in giving himself to all, gives himself to nobody; and as there is no associate over which he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses, and an increase of force for the preservation of what he has."<sup>49</sup>

This is still rather vague, of course. What, after all, can Rousseau mean when he says that some form of association must be found in which each, "when united to his fellows, renders obedience to his own will, and remains as free as before"? This seems to contradict the very purpose of the political association, which is to establish an authority which in some respects supersedes the will of the individual. And how can one possibly be as free as before when he is subject to the commands of the state? Further, Rousseau's distillation of the "essence" of the social contract only raises more perplexing questions. What does it mean to say that,

"Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole."<sup>50</sup>

Passages such as these have led some critics to denounce Rousseau as a metaphysical mystifier or obscurantist. While these charges are unfair,



it is certainly true that Rousseau's terse and abstract exposition is often unclear and underdeveloped. If we are to make sense of these passages, in any case, we must first understand what Rousseau means by the *general will*.

### III

#### The General Will

What is this 'general will' which, according to Rousseau, is the "essence" of the social contract? There is, unfortunately, no quick and easy answer to this question: Rousseau is notoriously unclear on the matter - which is not to say that he is incomprehensible - and, as mentioned, the commentaries on the *Social Contract* present a bewildering variety of responses.<sup>51</sup> What is offered here, then, is an unavoidably long and involved answer to this apparently straightforward question. Our answer has two parts. In the first is set out an interpretation of the general will; in the second this interpretation is defended by showing how it helps us to understand some of the more baffling aspects of Rousseau's argument in the *Social Contract*.

The idea of a general will rests on a fundamental distinction between what are taken to be two aspects of a person. Everyone, in Rousseau's view, is both a human being - a *concrete* person - and (at least potentially) a citizen - an *abstract* person. Insofar as we are human beings, we are each unique; that is, each of us has his own particular identity and set of interests. Insofar as we are citizens, on the other hand, we are all alike in that we are all members of a *public*. And as members of a public we share a common interest in the welfare of the body politic. Everyone, consequently, according to Rousseau, has both a *particular interest* as a human being and a *general interest* as a citizen.

From this distinction between one's interest *qua* human being and one's interest *qua* the citizen, Rousseau moves to a distinction between the *particular will* and the *general will*. The particular will aims at the fulfilment of the particular interest of a person, an actual individual, while the general will seeks to further the interest of the citizen. Since, it is presumed, the interests of all citizens are the same, the general will

may be said to reflect the common or public interest - the interest we all have as members of the public. Rousseau distinguishes the particular from the general will in this fashion: "the particular will tends, by its very nature, to partiality, while the general will tends to equality."<sup>52</sup> As men, that is, with particular wills, we naturally tend to grant precedence to our own idiosyncratic interests and desires. Thus, the particular will is *partial* both because it is the will of an identifiable individual and because it is, in a sense, biased - it places a higher value on the interests of the self than on the interests of others. The general will, by contrast, tends to equality because it can do nothing but grant consideration to everyone's interests. By focusing on the common interest we all share as citizens, in other words, the general will is *impartial*: it considers only the interests of the abstract person Rousseau calls 'the citizen'. Since we are all the same *qua* citizens, the general will is devoted equally to all of us.

An example may help to clarify this distinction. Consider the case of an individual who possesses to a high degree the skills of a thief. Such a person may find it in his interest to put his skills to use and break the law. His particular will may then be to steal from others in order to satisfy his own desires. But it is also true that this same law prohibiting robbery benefits him *qua* member of the public, for it protects his property as well as others'. The particular will points one way and the general will another. If only his interests are considered, of course, our potential thief will put his talents to work because, by hypothesis, he may gain more of what he wants by breaking the law than by observing it. His interests *qua* man, it seems, may outweigh his interests *qua* citizen.

In *Part Seven* we will consider the pitfalls of this conception of human interests, in particular, the assumption of identical civil interests held in common by a (theoretically) homogeneous citizenry, each citizen severally situated within the civil matrix so as to gain equally from a common political-decisional viewpoint. It will be argued that while moving from premises similar to Vico's, Rousseau commits the Vichian error of apophrades by invoking a conception of order and civility alien to the 'world of men'. That is to say, while adopting a social evolutionary perspective, Rousseau frustrates his ambition to analyse things 'as they are' by imposing on them an image not only of things as they 'might be' but

but things as they '*morally* must become'. However, in this *Part* and in *Part Five*, when discussing Rawls' development of Rousseau, we will concentrate on what might be termed the 'most favourable' interpretation of Rousseau - an immensely fertile viewpoint that has much to offer, but only in (a strictly theoretical) context.

Rousseau does not invoke the general will, however, simply as a counterbalance to selfish interests. This would be a futile move, for, as Rousseau recognizes, the policy which is in one's *net* interest will often differ from one's interest *qua* member of the community. A farmer, to use another example, may find that it is in his interests, all things considered, for food prices to increase even though such an increase is not in his interests *qua* citizen. The point of the distinction between the general will and the particular will is to show that public policy decisions should not be based simply on considerations of self-interest; for this will result in the constant clash of particular interests and inequitable outcomes as everyone pursues the policy of greatest benefit to himself. What Rousseau suggests as an alternative is that decisions establishing laws and policies should be made solely on the basis of the common interest. This is no mere platitude. The common interest is, for Rousseau, the interest of each individual considered abstractly. No reference is made to the actual attributes of anyone - not to his possessions, his position in society, his abilities, or any of his characteristics. Instead, all individuals are considered only *qua* citizens, *qua* members of the public, and from this standpoint all have the same interests. Considered abstractly, as citizens, the thief and his victim share a common interest in the enforcement of a law against theft, and the farmer and the shopper share a common interest in a policy which prevents a rise in food prices. Rousseau's claim is that only the general will of the citizen - and not the particular will of the man - is relevant to public policy decisions.

When Rousseau uses the notion of the general will, then, he means by it neither a psychological construct nor a metaphysical self which is in conflict with a base, appetitive self. The general will is, on the contrary, a *moral imperative*. The purpose of this imperative (as for Kant's categorical imperative) is to guarantee that the claims of no particular individual(s) are given preference. Everyone receives equal consideration because public policy decisions take into account only the viewpoint of the

citizen - and this viewpoint is shared by all. Any other viewpoint is morally irrelevant. Here again we see the emphasis on formal equality. Thus Rousseau writes that

"the social compact sets up among the citizens an equality of such a kind, that they all bind themselves to observe the same conditions and should therefore all enjoy the same rights. Thus, from the very nature of the compact, every act of Sovereignty, every authentic act of the general will, binds or favours all the citizens equally; so that the Sovereign recognizes only the body of the nation, and draws no distinctions between those of whom it is made up."<sup>53</sup>

A further implication is that laws established in accordance with the general will do more than simply grant equal (initial) *consideration* to everyone: they actually *are* in everyone's interest. This is because a law sanctioned by the general will promotes everyone's interest *qua* citizen. Such a law is not likely to be the first choice of many individuals, but it is an acceptable choice for all because it makes some contribution to everyone's well-being. It is, as Brian Barry has said, "a sort of highest common factor of agreements".<sup>54</sup>

There is also a close connection between the general will and Rousseau's conception of moral liberty. If the people are furnished with adequate information, Rousseau says, and are allowed no communication when they deliberate (to prevent 'logrolling' manoeuvres), the outcome of their vote will be in accordance with the general will. Everyone can readily vote for and obey laws which are in his interest *qua* citizen, and this satisfies Rousseau's definition of liberty as "obedience to a law which we prescribe to ourselves...."<sup>55</sup>.

Two important points remain to be discussed before we turn to a defense of this interpretation of the general will. First, Rousseau does not confine the notion of a particular will to individuals: groups may also have particular wills. This is the case with what Rousseau calls "factions" or "partial associations", i.e. groups within the body politic which have distinct identities and interests. Rousseau disapproves of these associations because he fears that they will divert the loyalty of the people from the state; men will think of themselves as merchants, or farmers, or Catholics, rather than citizens. When this happens, Rousseau

warns, the particular wills of these rival groups will keep the general will from prevailing when the people vote. He argues, consequently, that "partial associations" should be prevented from forming; and if prophylactic measures fail, then "it is best to have as many as possible and to prevent them from being unequal...."<sup>56</sup>.

The second point has to do with the limits of the general will, or what may be called its range of applicability. According to Rousseau, the general will applies to laws, but not to decrees. A law is a general policy, a rule which governs the conduct of every member of the body politic, while a decree is an act which refers to particular, identifiable individuals. The general will "loses its natural rectitude when it is directed to some particular and determinant object, because in such a case we are judging of something foreign to us, and have no true principle of equity to guide us".<sup>57</sup> There is no "true principle of equity" in these cases because men, not citizens, are involved. Instead of appealing to the general will, we must decide on the merits of the particular case - and decisions of this sort are best left to executives and judges, not to the people as a whole.

The defense of this interpretation of the general will develops by showing that it allows us to make sense of some of the obscure and puzzling passages in the *Social Contract* and that it resolves the apparent contradictions in Rousseau's argument. We will concentrate on the following four aspects of the *Social Contract*: (1) What does Rousseau mean when he says that one may be "forced to be free"? (2) What is the difference between the general will and the will of all? (3) How is it that the general will is always right? and (4) What is the relationship between voting - especially majority rule - and the general will?

(1) Perhaps the most famous - or infamous - argument of the *Social Contract* is that which includes the phrase, "forced to be free" (Book I, chapter vii). The idea that someone may be forced to be free strikes many readers as both self-contradictory and repulsive. How can one be forced to be free, it is asked, when freedom is the very absence of coercion? But this objection only holds if 'freedom' is understood in its narrow, 'negative' or 'problematical' sense. Rousseau himself, as we have seen, conceives of three orders of freedom - natural, civil, and moral - and he

defines moral liberty ('autonomy', in Kant's sense of the term) as "obedience to a law which we prescribe to ourselves....". When he says that one may be forced to be free, he means that one may be compelled to obey a law to which one has given one's consent.

This, of course, does not remove all objections. For why should one have to be forced to obey a law to which he has consented? Is not this also self-contradictory? Given Rousseau's distinction between particular and general wills, it clearly is not. The particular will of a man who cheats on his taxes, for example, is in conflict with his general will as a citizen. He may "look upon what he owes to the common cause as a gratuitous contribution, the loss of which will do less harm to others than the payment of it is burdensome to himself" and therefore "wish to enjoy the rights of citizenship without being ready to fulfil the duties of a subject."<sup>58</sup> These aims are contradictory because the cheater wants both to enjoy the benefits of the social order - "the rights of citizenship" - and to avoid contributing his fair share to the maintenance of this order - "the duties of a subject". If he follows his particular will, he acts against the general will. "The continuance of such an injustice," Rousseau observes,

"could not but prove the undoing of the body politic.

"In order then that the social compact may not be an empty formula, it tacitly includes the undertaking... that whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less than that he will be forced to be free; for this is the condition which, by giving each citizen to his country, secures him against personal dependence."<sup>59</sup>

A persistent sceptic may still harbour a doubt - what has this to do with freedom? Why not simply say that members of the body politic will not be allowed to take unfair advantage of their fellows? Rousseau speaks of freedom here because he considers the state - or at least a just state - to be the realm of freedom. Civil society grants equal rights and liberties to all and secures everyone from personal dependence. Anyone who accepts and follows social rules whenever they favour him but breaks them whenever it suits his purposes contributes to the destruction of that realm. Such a person is a parasite whose actions threaten his own freedom as well as that of others. For this reason Rousseau says that the parasite must be "forced

to be free" - to act in accordance with his will as a citizen.<sup>60</sup>

(2) Another source of confusion is Rousseau's distinction between the general will and the will of all (Book II, chapter iii). Rousseau sets this out in the following paragraph:

"There is often a great deal of difference between the will of all and the general will; the latter considers only the common interest, while the former takes private interest into account, and is no more than the sum of particular wills; but take away from these same wills the pluses and minuses that cancel one another, and the general will remains as the sum of the differences."<sup>61</sup>

Although the object of this paragraph ostensibly is to elucidate, many have found that it has the opposite effect. John Plamenatz, for example, has charged that this quasi-mathematical account of the general will is, if taken literally, "sheer nonsense". According to Plamenatz, the "pluses" and "minuses" of particular wills must be that which is peculiar to each of them, and the mathematical explanation is:

"Let John's will be  $x + a$ , Richard's  $x + b$ , and Thomas's  $x + c$ ;  $x$  being what is common to them all, and  $a$ ,  $b$ , and  $c$ , what is peculiar to each. If the general will is what remains after the "pluses" and "minuses" have cancelled each other out, it is  $x$ ; but if it is the sum of the differences it is  $a + b + c$ . Whichever it is, it cannot be both; and the second alternative is too absurd to be considered. Beware of political philosophers who use mathematics, no matter how simple, to illustrate their meaning!"<sup>62</sup>

The problem here arises from Rousseau's equation of the general will with "the sum of the differences". If this phrase is taken literally, Plamenatz's complaint is justified. But there is evidence in the surrounding passages that indicates that what Rousseau means by "the sum of the differences" is Plamenatz's  $x$ , not his  $a + b + c$ . In a footnote to the passage in question, to begin with, Rousseau says that "the agreement of all interests is formed by opposition to that of each. If there were no different interests, the common interest would be barely felt, as it would encounter no obstacle...." In the succeeding paragraph of the text he claims that, "If, when the people, being furnished with adequate information, held its deliberations, the citizens had no communication one with another, the grand total (great number) of the small differences would

always give the general will...."<sup>63</sup> Furthermore, part of Rousseau's quarrel with "partial associations" is that, "The differences become less numerous and give a less general result."

The point of these passages may be put this way: the general will is "the sum of the differences" because Rousseau believes that the more small differences there are in society, the more likely people are to recognize and pursue the common interest. When there is a clash between the interests of a few large groups, the members of each group will tend to see only their particular interests *qua* members of the group of "faction". But when there are a "great number" of differences in the particular interests of individuals, the individuals are more likely to see their common interest *qua* citizens. Each sees that he can seldom, if ever, get all of what he wants, and he soon perceives the need for some sort of rule for allocating social benefits and burdens. The most reasonable rule, Rousseau suggests, is that which regards us all as abstractions - as citizens - for in this way we are all treated equally. The will of all - the "sum of particular wills" - will not produce an outcome acceptable to all because, when the "pluses" and "minuses" are tallied, it will favour the interests of some at the expense of others. The general will, however, "remains as the sum of the differences" because it represents the common ground which all can accept despite their differences.

(3) Rousseau has also baffled a good many readers with his assertion that the general will is always right. Here again there is the semblance of a contradiction, for Rousseau couples this assertion with the claim that the people, who supposedly express the general will, may well be wrong. How can both statements be true?

Rousseau refers to the "rightness" of the general will in three places.<sup>64</sup> He says, first, that "the general will is always upright and always tends to the public advantage; but it does not follow that the deliberations of the people always have the same rectitude".<sup>65</sup> Next, he asks, "Why is it that the general will is always upright... unless it is because there is not a man who does not think of 'each' as meaning him, and consider himself in voting for all?"<sup>66</sup> Finally, he declares that, "The general will is always upright, but the judgment which guides it is not always enlightened."<sup>67</sup>



The first and third references are relevant to the present question. If the general will is, as we have argued, a moral imperative which requires that all public policy decisions consider only the interests of the citizen, then it follows that the general will is always (in the) right, or righteous, or morally correct. How can it not be? Rousseau's point is that the people must try to approve laws and policies which satisfy the general will, but they are not always able to do so. The people may wish to pursue a policy of decreasing food prices, for instance, but if they lack either the necessary factual or theoretical knowledge, they may bring about the opposite effect. "Of itself the people wills always the good, but of itself it by no means always sees it." It is the task of the legislator to provide the guidance the people need to produce "the union of understanding and will in the social body...."<sup>68</sup>

Part of the difficulty here is that Rousseau uses 'the general will' in two related but different ways. For the most part he uses it as a moral imperative, but he sometimes speaks of a particular decision as an expression of the general will. If the people reach a decision whose outcome does indeed have the effect of promoting the common interest, Rousseau tends to say that the people have expressed the general will. This is, of course, quite confusing. But if a distinction is drawn between *the* general will - the moral imperative - and *a* general will - a decision in accordance with this imperative - then it is easy to see how the general will is always (in the) right even though the people may sometimes be wrong. *The* general will is always (in the) right because it is the criterion for rightness in public decisions; and *a* general will is right because it is a decision whose outcome actually promotes the common interest of the citizenry. But when the people enact a law or policy which does not have the intended effect of furthering the common interest, they they have not expressed *a* general will and they are, as a result, wrong: i.e., they are mistaken about what *the* general will requires in this particular situation. To be sure, Rousseau does not explicitly draw this distinction, but there is ample basis for it in the *Social Contract*.

(4) The last problem concerns Rousseau's remarks on voting. There are two related puzzles here. The first is, what is the relationship between majority rule and the general will? Rousseau's comments on this point are rather mysterious, but they are not completely obscure. Rousseau's brief

discussion of majority rule begins with the acknowledgement that the social contract requires unanimous consent, for "no one... can make any man subject without his consent"; but he soon goes on to say that, "Apart from this primitive contract, the vote of the majority always binds the rest."<sup>69</sup> This poses a problem, obviously - "how can a man be both free and forced to conform to wills that are not his own" - and Rousseau offers the following explanation:

"When in the popular assembly a law is proposed, what the people is asked is not exactly whether it approves or rejects the proposal, but whether it is in conformity with the general will, which is their will. Each man, in giving his vote, states his opinion on that point; and the general will is found by counting votes."<sup>70</sup>

In these two sentences we have a good example of Rousseau's conflation of *the* general will and *a* general will. The proposal is to be approved, on the one hand, if it conforms to *the* general will (moral imperative); but *a* general will (specific policy which satisfies the moral imperative) is discovered, on the other, only by counting votes. The important point, however, is brought out in the conclusion of the paragraph:

"When therefore the opinion that is contrary to my own prevails, this proves neither more nor less than that I was mistaken, and that what I thought to be the general will was not so. If my particular opinion had carried the day I should have achieved the opposite of what was my will; and it is in that case that I should not have been free."

This is complicated and paradoxical, to say the least, but it can be sorted out. We have already seen how a person (or even the whole people) can be mistaken in his (their) opinion of what is in conformity with the general will (§ III, *supra*). The question here is, why is the majority opinion any less likely to be mistaken than that of the minority or a solitary individual? It is certainly possible in principle for one person to be right while everyone else is wrong. But if we assume, as Rousseau seems to: (1) that there *is* a uniquely right answer, a specific policy in conformity with the general will, to be found; (2) that everyone has an equal, better-than-even chance of discerning the right answer; and (3) that everyone wants the right answer to prevail; then the majority vote or answer is more likely to be correct than the minority's. And this indicates how one

might be glad that his own point of view was not victorious, for Rousseau's point is not that whatever the majority wants is the general will, but that the majority is more *likely* to have discovered the policy which satisfies the general will. While this looks like a statistical argument it is not, and what makes the conclusion so unappealing is that it assumes in *practical* matters (such as voting on some issue) that (1) there *is* a uniquely right answer, a specific policy in conformity with the general will, to be found; (2) everyone has an equal, better-than-even chance of discerning the right answer; and (3) everyone wants the right answer to prevail. As we shall see in *Part Seven*, it is precisely these assumptions about man's *civil nature*, as it were, that stumble under Vichian criticism and ultimately restrict the Rousseauan enterprise to the realm of the (albeit heuristically fertile) theoretical.

But what has this to do with freedom? How could a person possibly be less free if his opinion had carried the day? The answer here, as in the case of the "forced to be free" passage, follows from Rousseau's conception of the just state as the realm of freedom. Rousseau assumes that all the voters want the policy which best satisfies the general will to prevail. If the majority is more likely to perceive that policy, then a person whose opinion is in the minority may be said to have voted against his will *qua* citizen; his will was to promote the common interest, but his opinion as to what policy would do so was mistaken. "The constant will of all the members of the State is the general will; by virtue of it they are citizens and free."<sup>72</sup> If one sees, consequently, that the policy he favoured actually is not in the common interest, he then recognizes that his particular opinion was divergent from his constant will. Since the realm of freedom is preserved only through observance of the general will, freedom is diminished whenever a policy contrary to the general will is pursued. And, from a thoroughly Platonic perspective, one who had supported such a policy - along with everyone else - would then be less free than if his opinion had not carried the day.

The second problem with Rousseau's remark on voting concerns the aims of the individual voter. In the chapter we have just examined, "Voting" (Book IV, ii), Rousseau clearly requires individuals to vote according to their perception of what the general will demands; particular interests are not to be considered. "(The) general will becomes mute", he says, when

"all men, guided by secret motives, no more give their views *as citizens* than if the State had never been...."<sup>73</sup> Earlier in the *Social Contract*, however, Rousseau seems to take the opposite position:

"Why is it that the general will is always upright, and that all continually will the happiness of each one, unless it is because there is not a man who does not think of 'each' as meaning him, and consider himself in voting for all? This proves that equality of rights and the idea of justice which such equality creates originate in the preference each man gives to himself, and accordingly in the very nature of man."<sup>74</sup>

Which of these statements reflects the "official" position? Or has Rousseau actually contradicted himself? With the aid of the distinction between *the* general will and *a* general will we can once again, for the moment, snatch Rousseau from the jaws of self-contradiction. In this second passage Rousseau's purpose is to justify *the* general will, the moral imperative that all public policy decisions are to take account of only the common interest of the citizen. His argument is that this particular imperative supplies a just basis for a civil society because it is acceptable to everyone, for everyone can see that he is not placing himself under arbitrary rule when he agrees to the social contract. The interests of all individuals are treated equally by the general will, and "the preference each man gives to himself" leads to "equality of rights and the idea of justice" under the general will. In the other passage Rousseau's concern is with determining what specific policies or laws are in conformity with the general will. Thus when he says that the voters are to state their opinions on the question, "is policy *x* in conformity with the general will?", and not to follow their particular interests when they vote, he is specifying how *a* general will in accordance with *the* general will can be found. These remarks about the aims of the voter, then, treat of two different aspects of the general will and do not contradict one another.

At this point the defense rests - the critique will be taken up in *Part Six* and *Part Seven*. What remains, finally, is to show how Rousseau's theory of the social contract provides a solution to the problem of civil obligation.

## IV

Rousseau's Contractarianism

Unlike Hobbes and Locke, Rousseau devotes little attention in the *Social Contract* to the details usually associated with contract theory. He says almost nothing, for instance, about how the individual gives his consent to the formation of the civil association, and he never mentions the distinction between express and tacit consent. Nor does Rousseau directly address the question, "what is the relationship between personal consent and civil obligation?" Given his neglect of these question, how can Rousseau's contract theory possibly provide a plausible solution to the problem of civil obligation?

The answer is that Rousseau neglects what may well be neglected. He is more concerned, in the first place, with the problem of 'hypothetical consent' - i.e. what kind of government deserves our consent? - than with the mechanics of the expression of consent. And he believes, secondly, that a citizen of a state which deserves his consent has a civil obligation to obey the laws of that state. Rousseau's solution to the problem of civil obligation looks to the character of the state rather than to any particular act of an individual.

How does the character of the state related to the theory of the social contract? For Rousseau, as has been pointed out, there is only one possible social contract, and its terms are "everywhere the same and everywhere tacitly admitted and recognized...." This contract is the only one to which men may reasonably be imagined to have consented. If a state violates the terms of this contract, it thereby frees the citizens of their obligation to it. The state which respects the contract, on the other hand, is a just state to which the citizens remain under an obligation. The just state and the state which preserves the contract, then, are one and the same.

But what are the terms of this contract? These terms, as we have seen, assure each individual that the surrender of his natural independence and power to the civil association will not merely place him under the will of an arbitrary government. By acknowledging the public authority, instead,

he is guaranteed both a voice in the passage of legislation and the state's protection of his life and property. He is, in Rousseau's words, both a "subject" and a member of the "Sovereign", for his duty of obedience to the law is balanced by his right to participate in the making of the law. Furthermore, the social contract includes the understanding that public policy decisions will be (as far as possible) in conformity with the general will, so that the individual knows that his interests will not be ignored.

These are the terms of the social contract. The emphasis throughout the *Social Contract* is on equality. Everyone is granted the same rights and liberties and all are subjected to the same duties and burdens. "From whatever side we approach our principle", Rousseau says, "we reach the same conclusion, that the social compact sets up an equality of such a kind, that they all bind themselves to observe the same conditions and should therefore all enjoy the same rights."<sup>75</sup> This equality of condition produces a mutuality of obligation: by accepting an equal place as a member of the Sovereign, the individual also undertakes a civil obligation as a subject. And this mutuality of obligation is the core of civil society, for "the essence of the body politic lies in the reconciliation of obedience and liberty, and the words subject and Sovereign are identical correlatives the idea of which meets in the single word 'citizen'."<sup>76</sup>

The notion of a social contract is therefore essential to Rousseau's theory of civil obligation, and, on a theoretical level, the theory itself is adequate. The theory is adequate because it provides a conception of a state which deserves our consent, and any citizen of such a state will have a civil obligation to obey its laws. More importantly, however, Rousseau's account is *genuinely* a contractarian theory because he derives his conception of the just state - the state which deserves to be obeyed - from the idea of a social contract. In this respect, at least, Rousseau's theory is superior to those of Hobbes and Locke.

## PART FOUR

Notes

1. Peter Gay, "Introduction", in Ernst Cassirer, The Question of Jean-Jacques Rousseau, trans. Peter Gay, Bloomington, Indiana, 1963, pp 3-30. See also Alfred Cobban, Rousseau and the Modern State, London, 1934, for another survey of the arguments.
2. G. H. Sabine, A History of Political Theory, third edition, London, 1966, ch.28; Ernest Barker, Introduction to the Social Contract, Oxford, 1948, ch's. 38-40; C. E. Vaughan, "Introduction and Notes", in Political Writings of Jean-Jacques Rousseau, C.E. Vaughan (ed), New York, 1962, pp 3-10, 70-85; J.L. Talmon, The Origins of Totalitarian Democracy, London, 1952, pp 38-49; Frederick Watkins, "Introduction", in Rousseau, Political Writings, trans. F. Watkins, Edinburgh, 1953, pp ix-xxxv; L. G. Crocker, Jean-Jacques Rousseau, vol.I, The Quest, 1712, vol.II, The Prophetic Voice, 1758-1778, New York, 1968, 1: 223ff, 282-283, 2: 189-196; Irving Babbitt, Rousseau and Romanticism, Cambridge, 1919, pp 155, 174, 221, 220.
3. J. N. Shklar, Men and Citizens: A Study of Rousseau's Social Theory, Cambridge, 1969, pp 1-3, 215ff; Pierre Burgelin, La Philosophie de L'Existence de Jean-Jacques Rousseau, second edition, Paris, 1973, pp 1-13, 503-507, 567-578; Ronald Grimsley, The Philosophy of Rousseau, Oxford, 1973, pp 7-19, 157-169; A. Cobban, Rousseau and the Modern State, Op Cit, ch's. 1, 4, 8.
4. Charles W. Hendel, Jean-Jacques Rousseau: Moralism, Oxford, 1934, pp 1-40; Ernst Cassirer, The Question of Jean-Jacques Rousseau, Op Cit, pp 66ff, 117ff; Jean Guéhenno, Jean-Jacques Rousseau, trans. J. and D. Weightman, London, 1966, 1: 276-277, 1: 337-338, 2: 1-14, 2: 301-303; Ronald Grimsley, Jean Jacques Rousseau: A Study in Self-Awareness, Cardiff, 1969, pp 268-330.
5. J. Shklar, Men and Citizens, Op Cit, pp 176-177. Shklar's discussion of the social contract in the following pages, however, seems to contradict this assertion. Note especially her reference to "a living social contract", p.189
6. c.f. Gordon Leff, Medieval Thought: St. Augustine to Ockham, Harmondsworth, 1970, p.111
7. Ibid., p.110
8. P. Riley, "On Kant as the Most Adequate of the Social Contract Theorists", in Political Theory, vol.1, no.4, November, 1973, p.451
9. Discourse on the Origin of Inequality (hereafter cited as Second Discourse) in The Social Contract and Discourses, trans. and ed., G.D.H. Cole, London, 1973, p.56

10. Note especially Rousseau's admission that he cannot answer the question, did society precede language or did language precede society? "I am so aghast at the increasing difficulties which present themselves, and so well convinced of the almost demonstrable impossibility that languages should owe their original institution to merely human means, that I leave, to any one who will undertake it, the discussion of the difficult problem, which was most necessary, the existence of society to the invention of language, or the invention of language to the establishment of society." Ibid., p.63
11. Ibid., p.83
12. Ibid., p.38
13. Ibid., pp 38-39
14. Ibid., p.39
15. Hypothetical contractarianism is, broadly, a methodological programme for dealing with normative questions, for determining the principles in accordance with which social and political institutions ought to be organized.
16. Second Discourse, Op Cit, p.56
17. Émile ou de l'Éducation, ed, F. and P. Richard, Paris, 1961, Book IV, p.277; trans. B. Foxley, London, n.d.
18. Cole, Op Cit, p.135  

"From the first moment of life, men ought to begin learning to deserve to live, and, as at the instant of birth we partake of the rights of citizenship, that instant ought to be the beginning of the exercise of our duty. If there are laws for the age of maturity, there ought to be laws for infancy, teaching obedience to others: and as the reason of each man is not left to be the sole arbiter of his duties, government ought the less indiscriminately to abandon to the intelligence and prejudices of fathers the education of their children, as that education is of still greater importance to the State than to the fathers...."  
(Ibid., p.136)
19. quoted by Ronald Grimsley, "Rousseau and the Problem of Happiness", in M. Cranston and R.S. Peters (eds), Hobbes and Rousseau, New York, 1972, p.437
20. Ibid., p.442
21. Cole, Op Cit, p.45
22. Ibid., pp 173-174
23. Ibid., p.76
24. Ibid., p.76



25. Ibid., pp 88-89
26. Ibid., p.89
27. Ibid., p.89
28. Ibid., p.181
29. Ibid., p.181
30. Ibid., p.178
31. Ibid., p.178
32. This remark is rather odd, since the Second Discourse addresses this very question. But note Ronald Grimsley's explanation in his edition of Du Contrat Social (Oxford, 1972), p.103, n.6:  
 "Although the second Discourse had actually given a hypothetical account of how this change might have taken place, the historical aspect is irrelevant in a political treatise that is not concerned with 'fact' but with 'right'."
33. Social Contract (I, i), Op Cit, p.165
34. We here follow Gerard Hopkin's translation in Social Contract: Essays by Locke, Hume, and Rousseau, Sir Ernest Barker (ed), Oxford, 1962, (I, i), p.70. c.f. Cole , pp165-166, who drops the last sentence in the passage we quote, and Grimsley, p.104: "Il s'agit de savoir quelles sont ces conventions."
35. Social Contract, Cole (ed), Op Cit,(I, ii), p.166
36. Ibid, (I, iii), p.168
37. Ibid., p.169
38. Ibid., p.169
39. Ibid., p.169
40. Ibid., p.170
41. Ibid., p.171
42. Ibid., p.170
43. Ibid., p.170
44. Ibid., p.172
45. Ibid., p.172
46. We quote again from Hopkins' translation in Social Contract, Barker (ed), (I, vi), p.180. In the first edition of his translation, Cole italicizes 'Social Contract' and gives the misleading impression that Rousseau is referring to the book rather than

to the contract itself; this is rectified in the 1973 edition. c.f. Grimsley, Op Cit, p.114: "Tel est le probleme fundamental dont le contrat social donne la solution."

47. Social Contract, Cole, (ed), p.174
48. Ibid., p.174
49. Ibid., p.174
50. Ibid., p.175. The emphasis on equality is made explicit at the close of Book I (see note 28).
51. The following, however, have been found to be stimulating and sometimes directly helpful: Brian Barry, "The Public Interest", in Political Philosophy, Anthony Quinton (ed), Oxford, 1967, esp. pp 119-126; Virginia Held, The Public Interest and Individual Interests, New York, 1970, pp 97-107; George Kateb, "Aspects of Rousseau's Political Thought", in Essays in the History of Political Thought, Isaac Kramnick (ed), Englewood Cliffs, N. J., 1969; Patrick Riley, "A Possible Explanation of Rousseau's General Will", in American Political Science Review, March, 1970; W.G. Runciman and A.K. Sen, "Games, Justice, and the General Will", in Mind, vol.74, 1965
52. Social Contract, Cole (ed), p.182
53. Ibid., p.188
54. Barry, "The Public Interest", Op Cit, p.120
55. Social Contract, Cole edition, Op Cit, p.178
56. Ibid., p.185. This prescription has been overlooked by many commentators; for example, Robert Dahl in After the Revolution? (New Haven, 1970), pp 82-83, states that Rousseau's "argument tends to distort reality by overlooking a vast body of concrete experience which shows that primary democracy... is sure to witness the emergence of factions and leaders. Readers of the Social Contract do not learn much about factionalism and leadership in primary democracies,... (As) Rousseau seemed to hold that because factions and leadership must be avoided in the perfect state, it was therefore unnecessary to provide institutions for dealing with them...."
57. Social Contract, Cole edition, Op Cit, p.187 and c.f. the remarks in II, vi, "Law". On the distinction between laws and decrees see Brian Barry, Political Argument, London, 1965, pp 197-198
58. Social Contract, Cole edition, Op Cit, p.177
59. Ibid., p.177
60. c.f. Brian Barry's explanation in Political Argument, Op Cit, p.198: "Rousseau does not deny that it may be in your interest to *break* a law which benefits you *qua* member of the community; all he says is that it is certainly in your interests to *vote* for it, and that if you have voted in favour of a certain punishment for a certain crime

you have no business to complain if your wish for a certain general policy is applied to you in a particular case."

61. Social Contract, Cole edition, Op Cit, p.185
62. J. Plamenatz, Man and Society, London, 1963, vol.I, p.393.  
c.f. Virginia Held's use of Pareto optimality to defend Rousseau's mathematics: The Public Interest and Individual Interests, Op Cit, pp 102-104
63. All quotations in this paragraph are from Social Contract (II,iii), p.185. The phrase in brackets is a better translation of Rousseau's "grande nombre". c.f. Du Contrat Social, Grimsley (ed), Op Cit, p.128
64. In II, iii; II, iv; II, vi. For a comment on translation difficulties, see F.A. Taylor, "A Note on Rousseau, Contrat Social, Book II, Chapter 3", in Mind, January, 1950.
65. Social Contract, Cole edition, Op Cit, p.184
66. Ibid., pp 186-187
67. Ibid., p.193
68. Ibid., p.193
69. Ibid., p.250
70. Ibid., p.250
71. Barry offers a fuller explanation of this in "The Public Interest", Op Cit, p.122
72. Social Contract, Cole edition, Op Cit, p.250
73. Ibid., p.248. Emphasis added.
74. Ibid., pp 186-187
75. Ibid., p.188
76. Ibid., p.237

## PART FIVE

### RAWLS: THE SECULAR COVENANT

The last of the contract theorists to be discussed in this thesis is John Rawls, a philosopher whose work has contributed greatly to the revival of interest in the idea of the social contract. Unlike Hobbes, Locke and to a lesser extent Rousseau, Rawls does not focus his contractual theory on the problem of civil obligation. The problem is treated seriously in his theory, but it is only one of many secondary concerns. For Rawls, the primary purpose of the contractarian metaphor is to serve as the source of a theory of distributive justice, and his work is much more a contractual theory of justice than of civil obligation. In a series of articles, beginning with "Justice as Fairness" in 1958, Rawls developed this theory and applied it to a number of problems in moral and political philosophy.<sup>1</sup> The definitive statement of Rawls' contractual position, however, is his *A Theory of Justice*, and we shall concentrate on Rawls' elaboration of his theory in that work.

Despite its length and scope, *A Theory of Justice* is a coherent work; and the philosophical scaffolding which holds it together is the idea of a social contract. Our aim here is to show how Rawls uses this scaffold to deal with one of the many problems he considers - the problem of civil obligation. In *Appendix Six* questions of obligation, obedience and stability are discussed, in particular, the problems of "natural duty" and civil disobedience. However, insofar as we are concerned with the manner in which Rawls addresses the problem of civility, *Part Five* focuses on his contractarianism. Section one, then, discusses the role of the social contract in Rawls' theory. Section two presents an account of the two principles of justice which, according to Rawls, would be chosen by the parties to a properly conceived social contract. Some of the criticisms of *A Theory of Justice* will be touched on in Section three, and we shall argue in Section four that on the whole Rawls provides a satisfactory contractual basis for solving the problem of civility. In Section five, H.L.A. Hart's development of the "principle of fairness" is discussed as a less complex and in many ways more direct approach to the problem of civil obligation than is to be found in *A Theory of Justice*.

The importance of the Kantian conception of 'moral personality' for Rawls' system of moral philosophy can be easily explained. His thought is founded on one central Kantian assumption, namely, that human beings should be thought of as the authors of the moral principles that guide their lives:

"Thus we are to imagine that those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits.... Just as each person must decide by rational reflection what constitutes his good, that is, the system of ends which it is rational for him to pursue, so a group of persons must decide once and for all what is to count among them as just and unjust."<sup>2</sup>

In other words, Rawls wants to view moral principles as the products of human *choices*. Therefore, moral principles are not to be regarded as the mandates of a Supreme Being or the distillation of the laws of nature, but as the result of intelligent deliberation. Rawls has several reasons for favouring this approach, each designed to appeal to certain plausible assumptions concerning the nature of moral theory. First, it seems proper that persons should play some role in determining the moral principles embracing their lives. People should not be governed by principles to which they have not in some way consented. This sentiment is responsible for the recurring popularity of varieties of social contract theories, and Rawls acknowledges that he sees himself working within this tradition. Second, it seems only reasonable that moral principles should take into account the interests and desires of social beings; and one way of doing this is to grant each citizen a role in the formation of these principles. Third, if Rawls' approach is accepted as the basis of moral theory, strong arguments are available for convincing moral offenders to mend their ways, namely, that they are contradicting moral judgements which they have made *or would make were they to give the matter their attention*.

However, there are obvious difficulties with this approach. First, although people commonly make moral judgements and often attempt to abide by what they take to be moral principles, few have given much thought as to why they accept such principles or whether some alternative set of principles might be preferable. People normally abide by, or react against (but remain within the categories of) the moral codes into which they are socialized and pay little attention to why they do so. There is no obvious way

of making plausible the assertion that individuals have in fact *chosen* their moral codes, or, indeed, that they ought to question the 'received wisdom' of generations. Second, if Rawls' approach is to be successful he must be able to vouch for the unanimity of choice underpinning the selection of moral principles. Unanimity is necessary here because, as with Rousseau's general will, the authority of a contrived code can issue only from its acceptance by all those within its domain. A third difficulty is that people differ greatly in intelligence, ambition, status and knowledge as well as temperament.

Because of these difficulties it is clear that Rawls cannot rely on the actual choices of actual human beings to provide a set of moral principles which meet the condition of universal acceptance. His solution is to develop a conception of moral being or moral personality which he variously calls 'moral nature' or 'autonomous nature'. It is in terms of the choices made by human beings as moral persons that Rawls talks of *choosing* principles of morality. Much like Rousseau's general will and Kant's rational will, moral personality is conceived as a compendium of those characteristics of human nature which Rawls deems to govern moral activity and moral thought, namely, freedom, equality and rationality; the set of these three features is referred to by Rawls as 'autonomy'.<sup>3</sup>

Rawls' conception of autonomy is quite conspicuously inspired by Kant. However, he believes that much of the interpretative literature on Kant's moral thought is fundamentally misguided, and in illuminating this misplaced emphasis Rawls indicates his particular vector.

"It is a mistake, I believe, to emphasize the place of generality and universality in Kant's ethics. That moral principles are general and universal is hardly new with him; and as we have seen these conditions do not in any case take us very far. It is impossible to construct a moral theory on so slender a basis, and therefore to limit the discussion of Kant's doctrine to these notions is to reduce it to triviality. The real force of his view lies elsewhere."<sup>4</sup>

Rawls is confident that the real force of Kant's view is located in the notion of *moral nature*. Thus he says:

"Kant held, I believe, that a person is acting autonomously when the principles of his action are chosen by him as the most adequate possible expression of his nature as a free and equal rational being. The principles he acts upon are not adopted because of his social position or natural endowments, or in view of the particular kind of society in which he lives or the specific things that he happens to want."

According to Rawls, the strength of Kant's position resides in the attempt to found moral principles on the decisions of free, equal and rational beings; and it is this aspect of Kant's theory which Rawls adopts for his own.

Rawls, in his acceptance of the general Kantian position nevertheless qualifies it. He believes that it is essential to carefully detail the conditions under which moral beings ideally make their choices, and that these conditions should be designed so as to give optimal expression to the features of moral nature.<sup>5</sup> Rawls calls this set of conditions the 'original position'.

Rawls emphasises that his original position differs from the circumstances of Kant's noumenal realm in two central aspects. First, the choice of moral principles is conceived as being a *collective* one; that is, the parties to the original position are assumed to be a group of individuals equal in stature, *each of whom is concerned only to advance his own interests*.<sup>6</sup> Rawls' intention here is to provide a moral basis for social relations; consequently, he does not want to presuppose social ties of any sort, but to base whatever social organisation that men construct on moral principles adopted by beings in the paradoxically unnatural 'state of nature'. It is assumed that the individual is morally prior to society.

The second way in which Rawls' moral persons differ in circumstance from those of Kant is in their awareness that they are subject to the conditions of human life.<sup>7</sup> First, the parties to the original position know that in whatever actual circumstances they find themselves they will be subject to the 'circumstances of justice', i.e. that there exists a moderate scarcity of means in the world for which men must compete. Second, the parties are allowed to possess general information concerning 'human nature' and the human condition. Rawls assumes that some such general information is necessary to enable persons to make rational choices in the original

position. The most important item of general information is the knowledge that there exist certain means which are necessary for the successful carrying out of any projects which *concrete* individuals might have in mind. Rawls calls these means 'primary goods', and the principal interest of the parties to the original position is to accumulate as large a supply of primary goods as is possible.

The introduction of the notion of the original position as the realm of moral personality adds quite considerably to the complexity of *A Theory of Justice*. Thus, in attempting to grasp any particular passage or chapter the reader must determine whether Rawls is speaking from the perspective of concrete individuals in the conditions of ordinary life; from the viewpoint of autonomous beings in the original position; or from the 'meta-position' of the moral philosopher speaking to his philosophically-enlightened readers. For example, the parties to the original position are characterised as being 'disinterested' in the welfare of their fellows in the sense that they are not concerned whether their fellows fare well or ill in the world. Concrete individuals, as acknowledged by Rawls, are *not* disinterested.<sup>8</sup> But only from the meta-position of Rawls and the reader is it known *why* the parties ought to be characterised as disinterested. Furthermore, various of Rawls' most basic notions have one meaning under the circumstances of the original position and another, though closely related, meaning under the conditions of ordinary life; this is true of 'autonomy', 'justice', the 'right', 'freedom' and 'equality'. Autonomy, for example, is the *ex officio* condition of the parties to the original position; they are situated equally, they are free since they live behind the 'veil of ignorance' (see Section one), and they are rational. Concrete individuals in ordinary life may also be autonomous, according to Rawls, but they may achieve this condition only by acting in accordance with the principles chosen by the parties in the original position. Being autonomous is something very different for concrete individuals than it is for abstract persons.



## I

Rawls' Contractarianism

Rawls begins *A Theory of Justice* by setting out his notion of society and his idea of the role that justice plays in our social arrangements. Society, he says, is "a cooperative venture for mutual advantage", but it "is typically marked by a conflict as well as an identity of interests".<sup>9</sup> Society is too valuable to be abandoned because it "makes possible a better life for all than any would have if each were to live solely by his own efforts"; but it also leads to conflicts because "persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share".<sup>10</sup> The role of justice in this situation is to "provide a way of assigning rights and duties in the basic institutions of society and... define the appropriate distribution of benefits and burdens of social cooperation."<sup>11</sup>

For Rawls, as for Rousseau, the principal task of the social contract is to provide a conception of the just or, in Rawls' terms, "well-ordered" society. A society is well-ordered, Rawls says,

"when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy these principles."<sup>12</sup>

The problem Rawls confronts is this: although we all have a conception of justice, we do not all share the same conception. Because principles of justice are so closely tied to self-interest, "what is just and unjust is usually in dispute".<sup>13</sup> And although we agree that there is a need for a set of principles which specify rights and duties and which determine the proper distribution of the benefits and burdens of social cooperation, we are not likely to agree on the contents of these principles.

The diversity of our conceptions of justice, however, is a hurdle which Rawls is prepared to leap. Drawing upon a distinction between 'conceptions' and 'concepts', Rawls argues that there is a unity which underlies

this diversity. This unity is supplied by the *concept* of justice, which is something of a common denominator for the various *conceptions* of justice: it is "specified by the role which these different sets of principles, these different conceptions, have in common."<sup>14</sup> This common denominator holds that a conception of justice - because it is a conception of *justice* - must make no arbitrary distinctions between persons in assigning basic rights and duties and must strike a proper balance between competing claims to the advantages of social life. Thus someone who proposes that only left-handed, red-headed persons over six feet tall be allowed to vote in public elections may be suspected of advancing something other than a conception of justice.

But this distinction between concepts and conceptions does not boost Rawls over all the hurdles. The concept of justice, as Rawls formulates it, is entirely formal, and the contents of the notions "arbitrary distinctions" and "proper balance" are, as Rawls acknowledges, "left open for each to interpret according to the principles that he accepts."<sup>15</sup> The concept of justice may set limits beyond which conceptions of justice cannot go, but it does not single out a *public* conception of justice - a set of principles which all can accept. Is there a conception of justice which is acceptable to all? Rawls believes that there is, and he thinks it can be discovered with the aid of the contractarian metaphor. In this respect, *A Theory of Justice* resembles the *Social Contract*; but Rawls is much more explicit and specific in his treatment of the derivation and substance of the principles of justice.

If the purpose of the social contract is to elicit a public conception of justice, then the contractual situation must be reinterpreted. We must not think of the original contract as a means of entering a particular society or establishing a particular form of government. Instead, "the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement."<sup>16</sup> Rawls asks us to imagine a situation in which a group of *free and rational persons* chooses a set of principles of justice for their society. This choice is made with the knowledge that the principles selected will govern all further agreements and specify the kinds of social cooperation - including the forms of government - which will be allowed. We are to assume, moreover, that the parties to this social contract are self-interested but not selfish, which means that each will favour the set of principles that promises him the

greatest personal advantage regardless of what it promises others.<sup>17</sup> And as in other contract theories, the choice in this "initial situation" must be unanimous.

Rawls' initial situation is meant to correspond to the state of nature in traditional contract theory; i.e. it is an illustration of the conditions under which the contract is proposed, considered, and 'signed'. In Rawls' theory, as in Rousseau's, the initial situation is strictly hypothetical. Its only purpose is to provide a proving ground, so to speak, for various conceptions of justice. Rawls' idea is that any set of principles of justice that could win the unanimous consent of the parties in the initial situation could also provide the basis of a well-ordered society: a public conception of justice. The difficulty, as he recognizes, is that the initial situation can be defined in various ways, and the conception of justice it yields will vary with its definition. It is necessary, consequently, to discover "the most philosophically favoured interpretation of this initial choice situation...."<sup>18</sup>

How do we decide whether an interpretation of the initial situation is or is not most philosophically favoured? Rawls' answer is that, since all interpretations of this situation will be restricted in some way, we must consider which restrictions it seems most reasonable to impose on a situation in which principles of justice are chosen. The most philosophically favoured interpretation is that which embodies these reasonable restrictions. As Rawls explains the procedure,

"I assume... that there is a broad measure of agreement that principles of justice should be chosen under certain conditions. To justify a particular description of the initial situation one shows that it incorporates these commonly shared presumptions. One argues from widely accepted but weak premises to more specific conclusions. Each of the presumptions should by itself be natural and plausible; some of them may seem innocuous or even trivial. The aim of the contract approach is to establish that taken together they impose significant bonds on acceptable principles of justice."<sup>19</sup>

What are these reasonable restrictions on arguments for principles of justice - on the initial situation? Rawls lists the following four:

1. "no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles";
2. "it should be impossible to tailor principles to the circumstances of one's own case";
3. "particular inclinations and aspirations, and persons' conceptions of their good (should) not affect the principles adopted"; and
4. "all have the same rights in the procedure for choosing principles; each can make proposals, submit reasons for their acceptance, and so on."<sup>20</sup>

The interpretation of the initial situation formed by these four conditions is designated "the original position". Because the principles of justice chosen in the original position satisfy the constraints which are deemed reasonable to impose on the initial situation, the principles themselves are sure to be acceptable to all. The original position is, therefore, the most "philosophically favoured" interpretation of the situation in which a conception of justice is to be selected.

The original position is, of course, a vital part of Rawls' theory. Its most important feature is the so-called "veil of ignorance", which is Rawls' metaphor for the cumulative effect of the first three restrictions.<sup>21</sup> The point of these restrictions is to proscribe considerations which, in Rawls' view, are irrelevant from the perspective of social justice. Thus Rawls holds that one's natural or social circumstances are 'contingencies' which do not bear on questions of justice. He also argues that it is reasonable to design the initial situation so that no one can advance principles which will simply further his own interests. To use Rawls' example, we cannot have the wealthy proposing the principle that taxation for welfare purposes is unjust while the poor support some sort of confiscatory measure: in this situation no agreement will be reached. The veil of ignorance is a metaphor which is used to illustrate how these three restrictions will exclude such self-serving suggestions.

This is how it works. We are to imagine that the persons in the original position are, as previously noted, rational and self-interested; but we are also to assume that these persons are deprived of most information about their personal identities. More precisely, they do not know what their socio-economic positions are, what abilities or disabilities they

have, or even what their aspirations are. They do know that they have goals to pursue - what Rawls calls a "rational plan of life" - but they do not know what these goals are. Similar constraints are placed upon the social knowledge of the participants. While they are allowed to know "the general facts about society" - i.e. they may be acquainted with economic, social, and psychological theory - they are ignorant of the particular circumstances of their society.<sup>22</sup> Thus the principles of justice chosen in the original position will be selected from behind a veil of ignorance - a veil which "excludes the knowledge of those contingencies which sets men at odds and allows them to be guided by their prejudices."<sup>23</sup>

One may wonder whether the veil of ignorance hides too much. When so little is known how could any principles be chosen? Rawls' response is that the persons behind the veil will concern themselves with the distribution of "primary goods; that is, things that every rational man is presumed to want."<sup>24</sup> These primary goods - rights and liberties, powers and opportunities, income and wealth - are desired by rational men, even those behind the veil of ignorance, because they are normally useful no matter what a person's goals are. A scholar, a playboy and a philanthropist will all find that the more of these primary goods he can command, the better will be his chances of fulfilling his rational plan of life. Everyone in the original position, then, will support principles of justice which seem to assure him of the highest possible level of primary goods.

The problem for these persons, of course, is that they are behind the veil of ignorance and they do not know whether to support principles that favour the most advantaged, the least advantaged, or the average member of society. As Rawls puts it, "no one is in a position to tailor principles to his own advantage."<sup>25</sup> By blinding everyone to the contingencies of his natural and social circumstances, Rawls produces a moral equality among those choosing a conception of justice for their society. No one knows whether he is at the top or bottom of society, and he must cast his vote accordingly. Deprived of the knowledge of their circumstances, the parties to the social contract are, like Rousseau's citizens, abstract individuals. When they choose principles of justice, therefore, they must choose principles which will benefit abstract individuals; and in this situation, "each is forced to choose for everyone."<sup>26</sup> In this way the veil of ignorance makes the unanimous choice of a conception of justice possible. And the

original position, which incorporates this veil, is the most philosophically favoured interpretation of the initial situation because it defines "the principles of justice as those which rational persons concerned to advance their interests would consent to as equals when none are known to be advantaged or disadvantaged by social or natural contingencies."<sup>27</sup> (Needless to say, this model presupposes the general 'liberal' assumption that 'primary goods' are fundamentally economic, i.e. negotiable and tangible scarce resources. There is little room in Rawls' model for the Nietzschean 'overman' who wishes to *dominate* others and scorns mere 'commodities'; after all, how can one 'distribute' dominance? Nevertheless, Rawls' Lockean and Smithian groundwork is sufficiently broad to cater for those who work within his milieu and accept much the same set of ethical and cultural axioms. In this sense, Rawls addresses his theory to philosophically literate Anglo-phones.)

The function of the social contract in Rawls' theory is to provide a method for eliciting a public conception of justice. The original position limits the kinds of principles which may be suggested and leads to a unanimous acceptance of a particular set of principles of justice. These principles form a public conception of justice and this conception, in turn, is the foundation of a well-ordered society.

In Section two we shall examine the substance of the principles that, according to Rawls, follow from the original position. Before doing so, however, some further remarks about the definition of the original position are necessary. In a sense the original position is no more than a metaphor for the restrictions which it seems reasonable to impose on principles of justice. Because it is only a metaphor, anyone can gain entrance to the original position at any time "simply by following a certain procedure, namely by arguing for principles of justice in accordance with these restrictions."<sup>28</sup> But how do we determine whether these restrictions are the proper ones? Rawls suggests two methods. The first, which consists of arguing from "widely held but weak premises to more specific conclusions", has already been discussed. The second method is a complicated bit of balancing which is supposed to produce a "reflective equilibrium" reminiscent of the standpoint of the intuitionist ethicist's 'ideal observer'.

Finding a "reflective equilibrium" requires us to weigh the principles of justice which follow from a definition of the initial situation against our considered judgements of justice. We do this by imagining cases in which a question of justice is raised, beginning with cases where we have a firm conviction about how the question should be answered. We then examine the relevant principle from the set of principles under consideration to see how it would have us answer the question. If the principle requires an answer in this case which differs from our considered judgement, then we may reject the definition of the initial situation which leads to this set of principles. If, on the other hand, the principle requires an answer which matches our considered judgement, we must continue to check the set of principles against our considered judgements. The proper definition of the initial situation is reached by altering the features of the situation so that its principles of justice accommodate our considered judgements of justice. In this sense, the method entailed by the pursuit of a 'reflective equilibrium' is an 'asymptotic' approach to principles of conduct; that is to say, we engage in a dialectic between ideal principles, actual principles currently employed, and proposed principles under discussion. The outcome, while not necessarily being a compromise, at least takes note of the various perspectives and modulations under consideration.

This is a rather one-sided account of the process, however, for finding a reflective equilibrium involves a mutual adjustment of conceptions of the initial situation and considered judgements. In some cases - Rawls cites religious and racial intolerance - we are firmly convinced of what is just and unjust; in other cases - the distribution of wealth and authority - we are much less certain. In these latter cases a conception of justice may actually extend or modify our judgements. It is even possible that a set of principles may be so powerful and attractive that we reject a considered judgement in favour of the judgement prescribed by the relevant principle. When we consider interpretations of the initial situation, then, we "check an interpretation... by the capacity of its principles to accommodate our firmest convictions and to provide guidance where guidance is needed."<sup>29</sup>

When we arrive at a definition of the contractual situation which meets these criteria, we reach a state of reflective equilibrium. Rawls describes the process this way:

"By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium. It is an equilibrium because at last our principles and judgments coincide; and it is reflective since we know to what principles our judgments conform and the premises of their derivation."<sup>30</sup>

The definition of the initial situation which meets our considered judgements in reflective equilibrium, according to Rawls, is the original position - the most favoured interpretation of the contractual situation. Now that we have seen *how* Rawls derives his principles, let us see *what* those principles are.

## II

### Principles of Justice

What is the conception of justice which will be chosen by the persons in the original position? Since Rawls provides both a general statement of this conception and a more specific formulation of its constituent principles, we shall follow his lead and discuss the general conception before setting out the principles themselves. This general conception - the choice of those in the original position - holds that,

"All social values - liberty and opportunity, income and wealth, and the bases 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 favoured."<sup>31</sup>

Two aspects of this conception are especially noteworthy: its relationship to other conceptions of justice and its incorporation of the "maximin" rule. This general conception, in the first place, stipulates that primary goods are to be distributed to all equally except in those cases where an unequal distribution will benefit the least favoured members of society. This divergence from strict equality follows from Rawls' assumption that the parties to the 'social contract' are self-interested but not selfish. The



significance of this difference is illustrated in the following table. Suppose there is a society composed of three persons, A, B, and C. In the status quo, (SQ) each receives an income of \$5. A, B and C are to choose among three alternative distribution schemes ( $S_1$ ,  $S_2$ ,  $S_3$ ), each of which improves upon the status quo.

	SQ	$S_1$	$S_2$	$S_3$
A	\$5	\$7	\$9	\$15
B	5	7	8	10
C	5	7	7	8

If A, B and C are following the general conception of justice, they will select  $S_3$  as the most just alternative to the status quo.  $S_3$  is preferable to  $S_1$  and  $S_2$  because everyone enjoys a higher income in  $S_3$ ; and since the parties are not envious (Rawls' assumption), the discrepancy in incomes makes no difference. By the same token, if  $S_2$  were the only alternative to SQ, then  $S_2$  would be the preferred distribution. But if both  $S_1$  and  $S_2$  were alternatives to SQ, then men acting on Rawls' conception of justice would select  $S_1$ . Compared to  $S_1$ ,  $S_2$  is an unjustified inequality.  $S_2$  offers no more benefit to C than  $S_1$ , and Rawls' conception allows inequalities only when they work to the advantage of the worst-off. Thus, while it does allow for inequalities, the general conception has a definite bias toward equality.

The general conception also differs in an important way from the utilitarian conception of justice. In its classical form utilitarianism aims at producing the greatest good for the greatest number or, in a more contemporary idiom, at maximizing aggregate welfare. The conception Rawls claims to derive from the original position, on the other hand, places distributive over aggregative considerations. Utilitarianism can in principle require that some members of society be deprived of social goods in order to improve the aggregate welfare of the remainder; Rawls' conception rules this out as an arbitrary inequality.

Imagine that our society of three is confronted with the following distributive possibilities:

	S <sub>0</sub>	S <sub>1</sub>	S <sub>2</sub>
A	\$5	\$9	\$50
B	5	8	25
C	5	7	4

According to the utilitarian conception of justice S<sub>2</sub> is the preferred alternative, for it promises the highest level of aggregate welfare. Rawls' general conception, however, selects S<sub>1</sub>, for it is an improvement on S<sub>0</sub> and it does not sacrifice the interests of part of the community to those of the rest.

This general conception of justice, then, is meant to differ from - and provide an alternative to - both strict egalitarianism and utilitarianism. But this brings us to the second notable aspect of this conception of justice: why would this conception be chosen over all others in the original position? The reason for its selection, says Rawls, is that it is a "maximin" solution to the problem of social justice. The maximin decision rule states that, when confronted with a number of ways of distributing some good(s), we should maximize the minimum. We should rank the alternatives by their worst possible "outcomes", in other words, and choose that alternative whose worst outcome is better than the worst outcomes of the others. Since its worst possible outcome is better than that of utilitarianism and as good as that of equalitarianism, the general conception is the maximin solution to the problem of social justice: it will be chosen by those in the original position *if* they follow the maximin rule. (Of course, there are many difficulties associated with Rawls' use of the term "outcome". Not only are there problems arising from probability theory, but as well there is the dilemma of *possible* outcomes being evidence-relative. The open-endedness of the term also leads one to ask "how remote an outcome?" However, for our purposes it is sufficient to adopt Rawls' somewhat colloquial approach and regard outcomes as the tangible short-term results of particular sets of circumstances.)

But this poses another question: why would (or should) those in the original position adopt a maximin strategy? This is a question raised by many of Rawls' critics, and we shall return to it in Section three. For now we shall simply set out Rawls' answer. Maximin is a timid, risk-averse

strategy, and there seems to be no plausible reason for adopting it, although there may be psychological motives for doing so. As Rawls' acknowledges, "the maximin rule is not, in general, a suitable guide for choices under uncertainty." But he also maintains that maximin is an attractive rule in "situations marked by certain special features" and that "the original position manifests these features to the fullest possible degree...."<sup>32</sup>

There are three of these special features. The first is that "since the rule takes no account of the likelihoods of the possible circumstances, there must be some reason for sharply discounting estimates of these possibilities." If there is a high probability that one shall be among the most advantaged members of society, then it is irrational (i.e. contrary to one's own interest) to adopt the maximin rule. But Rawls claims that in the original position, behind the veil of ignorance, knowledge of probabilities is "impossible, or at least extremely insecure". The second feature that suggests the maximin rule is, "the person choosing has a conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend that he can... be sure of by following the maximin rule." This feature, which discourages gambling, is supposedly met by the persons in the original position with their contentless "rational plans of life". Finally, the maximin rule is attractive if "the rejected alternatives have outcomes that one can hardly accept."<sup>33</sup> Thus Rawls argues that the original position exhibits all these features to a high degree; that this makes maximin the appropriate strategy to adopt in the original position; and that his general conception of justice will be chosen in the original position because it is the maximin solution to the problem of social justice.

In its more precise formulation the general conception of justice consists of two principles and two priority rules for their application. These are:

*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... and (b) attached to offices and positions open to all under conditions of fair equality of opportunity."<sup>34</sup>

(We have deleted from principle II(a) the phrase, "consistent with the just savings principle". While Rawls' account of the problem of saving between generations is provocative, it is a subject which need not be considered here.)

The first principle is far from novel - everyone is to be as free as possible so long as his freedom does not interfere with the rights and liberties of others. A few words need to be said about the second principle, however. Principle II(a) is what Rawls calls the "difference principle". The idea behind the difference principle is that inequalities are just "if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society".<sup>35</sup> Rawls promotes the difference principle as an attractive alternative to the principle of efficiency (Pareto-optimality), which holds that a distribution of goods is efficient (optimal) when no changes can be made without making someone worse off. The problem with the principle of efficiency is that it sanctions a variety of distributions that seem intuitively unjust, including the situation in which one person has all the goods. Since the others have nothing unless they take something from him, thereby making him worse off, the distribution is inefficient. Rawls' difference principle, on the other hand, specifies that such a distribution is unjust because it is an inequality which does not benefit the least favoured. The principle of efficiency also approves of changes whenever the changes benefit someone and harm none. But the difference principle prohibits these changes too, except in the case where those who benefit are the least advantaged members of society. Otherwise, the better off are not allowed to improve their own positions unless they also improve those of the worst-off.

The difference principle also has a positive side, for it requires some changes that violate the principle of efficiency. According to the difference principle the position of the least advantaged must be improved whenever possible, *even if* this involves a redistribution which takes goods away from the most advantaged. Hence the difference principle represents the claims, as Rawls puts it, of "democratic equality". "If the basic structure (of society) is unjust," he says, the difference principle

"will authorize changes that may lower the expectations of some of those better-off; and therefore the democratic conception is not consistent with the principle of efficiency

if this principle is taken to mean that only changes which improve everyone's prospects are allowed. Justice is prior to efficiency and requires some changes that are not efficient in this sense."<sup>36</sup>

The function of principle II(b) is to set limits on II(a). II(b) stipulates that all social and economic inequalities are to be attached to positions open to everyone: equality of opportunity. This is to prevent a rigidly hierarchical society from being justified by the conception of justice which flows from the original position. Without II(b), in fact, it would be *possible* to argue that the difference principle required the establishment of something like a hereditary aristocracy. This could only be done, of course, on the grounds that the lot of the least advantaged would be better in such a society. But II(b) rules this out as beyond consideration.

In addition to the principles themselves, Rawls' specific formulation of the conception of justice includes two priority rules. The first grants principle I precedence over principle II, so that considerations of liberty are prior to considerations of welfare. Only when the first principle is satisfied is one allowed to go on to the second. This priority is established to prevent trades of liberty for higher levels of welfare. Rawls only allows this priority rule to be broken when the following conditions are met:

"(a) a less extensive liberty must strengthen the total system of liberty shared by all;

(b) a less than equal liberty must be acceptable to those with the lesser liberty."<sup>37</sup>

The second priority rule gives II(b) - equality of opportunity - precedence over II(a) - the difference principle - for the reasons mentioned in the preceding paragraph.

This, then, is the set of principles which would be chosen in the original position, or so Rawls claims. These principles have been called into question by critics of Rawls' theory of justice, and we shall briefly examine some of these criticisms before turning to Rawls' treatment of the problem of civil obligation.

## III

Criticisms Considered

As might be expected of a book of its scope, *A Theory of Justice* has been the target of criticism for scholars in a variety of disciplines and with a variety of predilections. In this section we shall consider some objections to the manner in which Rawls derives his principles - the contractual aspect of his theory - and to the substance of the principles. Although the derivation is more crucial to a study of the social contract, most critics seem concerned with the content of the principles. We shall begin with a rehearsal of some of these objections.

Objections to Rawls' principles of justice generally fall into two categories: those which attack the priority of liberty (first priority rule) and those which attack the difference principle (principle II(a)). The first offensive has been skilfully directed by Brian Barry.<sup>38</sup> Barry argues that liberty can only be granted such absolute priority when wealth or welfare is radically devalued. Is it never worthwhile, he asks, to trade liberty for economic gain? Not even when we exchange a minute portion of our liberty for an immense increase in our welfare? The argument is simple but effective. Indeed, Rawls himself relaxes the priority rule so that societies at low levels of material well-being are allowed to trade liberty for welfare. This is, in effect, a retreat to a new position, where Rawls holds that the priority rule does not apply until a certain threshold has been reached: "Beyond some point it becomes and then remains irrational from the standpoint of the original position to acknowledge a lesser liberty for the sake of greater material means and amenities of office."<sup>39</sup> And this retreat has important ramifications: for if those in the original position do not know whether their society has crossed this material threshold, they may not grant priority to liberty. It seems safer, in fact, to reserve the possibility of exchanging liberty for welfare when one is ignorant of the material well-being of one's society. Thus the first priority rule seems to lack justification - at least in the absolute form Rawls first assigns to it. Of course, both Rawls and Barry here take for granted what is perhaps the most odious entailment of social atomism, namely, the *negotiability of values*. Moreover, there is a complete failure to express any intelligible relationship between 'objective benefits' and subjective advantage, e.g.,

income versus happiness, status versus quietude. The diminishing return of satisfactions associated with the ever-increasing accumulation of wealth seems to pass by both Rawls and Barry. To the extent that both operate within the same conceptual matrix and hold the same values, Barry merely *adjusts* rather than *criticizes* Rawls' theory.

The difference principle, and the maximin criterion which underlies it, has drawn more critical fire than any other feature of Rawls' theory.<sup>40</sup> Here, as with the first priority rule, critics have argued that Rawls fails to demonstrate that the difference principle would be chosen in the original position. Rawls' claim that the original position displays "to the fullest possible degree" the three features that make the maximin rule plausible is, in their view, patently wrong. These features are: (1) it is unreasonable to estimate probabilities of one's position in society when one is behind the veil of ignorance; (2) the person in the original position cares little, if anything, for what he might gain above the minimum that following the maximin rule guarantees; and (3) the rejected alternatives have unacceptable outcomes. But are these actually characteristics of the original position, or does Rawls attribute them to the original position without justification?

In the case of the first feature, it is argued, there is no reason to accept this as a description of the original position. No matter how opaque the veil, the pessimism of the maximin rule is no more warranted as a general strategy than the optimism of the maximax rule. Harsanyi points out that

"using the maximin principle in the original position is equivalent to assigning unity or near-unity probability to the possibility that one may end up as the worst-off individual in society; and... there cannot be any rational justification whatever for assigning such an extremely high probability to this possibility."<sup>41</sup>

Critics have also declared the second feature to be an arbitrary assumption. Why will the person in the original position have a conception of the good which leads him to care little about what he can gain beyond the minimum he is assured by the maximin rule? Why should this be accepted as a feature of the original position - the most favoured interpretation of the initial situation? Rawls says that his conception of justice "guarantees a satisfactory minimum. There may be, on reflection, little reason for trying

to do better.<sup>42</sup> This is a supposition, not an argument. Rawls also ties the second feature to the priority of liberty when he asserts that, "The minimum assured by the two principles in lexical order (i.e. with liberty granted priority) is not one that the parties wish to jeopardize for the sake of greater economic and social advantage."<sup>43</sup> But this merely rests one weak reed on another. It is not clear, in short, that the priority of liberty and the difference principle follow necessarily from the original position. Rawls' continued defence of the difference principle indicates that he is not willing to abandon it; but he also suggests that the most important aspect of his theory is not the particular conception of justice he sets out, but the contractual procedure he follows to arrive at this conception.<sup>44</sup> He believes, in other words, that the contractual procedure is capable of producing a public conception of justice even if he is (somewhat) mistaken about the content of that conception. With this in mind, let us see if anyone has undermined this most fundamental part of *A Theory of Justice*.

We shall examine here the criticisms of Douglas Rae and Ronald Dworkin. Rae's criticism is less sweeping, for he criticizes 'from within'; i.e. he accepts most of Rawls' contractual method, but he charges that Rawls has misinterpreted the contractual situation. "Rawls's use of ignorance," Rae says, "turns the contract metaphor outside in."<sup>45</sup> This is because no one in the original position is allowed to know his natural or social circumstances, each, as Rawls says, is forced to choose for everyone. A simple contract theory, in Rae's view, allows this sort of knowledge so that "the general interest would emerge as a bargain between agents for particular interests."<sup>46</sup> With every interest represented equally, the bargain struck must be fair and in the general interest. The problem with Rawls' approach, according to Rae, is that it "*disenfranchises all the interests except those of the social minimum*."<sup>47</sup> - which is to say that principles are chosen by representatives of the least advantaged members of society. This may be true given the "special features" which Rawls attributes to the original position, especially the assertion that everyone "cares very little, if anything, for what might be gained above the minimum stipend that he can... be sure of by following the maximin rule." But if these assumptions are dropped - and they can be - then Rawls' version of the contractual situation is more promising than Rae's. For a contractual situation in which everyone knows who he is and whom he represents is likely to end in stalemate. Self-



interested men who know their status are not likely to reach an agreement on fundamental rules of justice, for the attempts of each to tailor the principles to his own advantage will lead to the frustration of all: or all except those who enjoy the benefits of the *status quo*.<sup>48</sup> By stripping his contractors of their individual identities, on the one hand, Rawls is able not only to show *how* agreement on a conception of justice can be reached, but also *why* those who agree to the rules will be inclined to respect them: it is a conception arrived at impartially in a situation where morally irrelevant considerations are excluded. For Rawls' argument to stand we do not need *actual* differences of interest but only the *possibility* of such.

Dworkin's criticisms are more fundamental. His charge, basically, is that Rawls' hypothetical contract is empty because it, and all hypothetical agreements, have nothing to recommend them other than the inherent fairness (if they are fair) of their terms. The fact that I *would have* agreed that  $x$  is a fair rule does not supply an independent argument for the fairness of  $x$ ; I would have agreed that  $x$  is a fair rule because it simply *is* fair. Nor does the fact that I *would have* agreed to this proposition bind me to observe  $x$ ; at least, it does not bind me any further than the fairness of  $x$  itself. Dworkin provides this helpful example of his reasoning:

"Suppose that you and I are playing poker and we find, in the middle of the hand, that the deck is one card short. You suggest that we throw the hand in, but I refuse because I know I am going to win and I want the money.... Your might say that I would certainly have agreed to that procedure had the possibility of the deck being short been raised in advance. But your point is not that I am somehow committed to throwing the hand in by an agreement I never made. Rather, you use the device of an hypothetical agreement *to make a point that might have been made without that device*, which is that the solution recommended is so obviously fair and sensible that only someone with an immediate contrary interest could disagree. Your main argument is that your solution is fair and sensible, and the fact that I would have chosen it myself adds nothing of substance to the argument."<sup>49</sup>

There are two distinct arguments here. The first holds that a hypothetical agreement adds no obligatory force to a rule; this is not immediately relevant. The other holds that the fairness of rules is in no way related to hypothetical agreements, and the upshot is that Rawls' hypothetical contract is meaningless. Perhaps I *would have* agreed in advance to

throw the hand in when the deck was found to be short; but this is only to say that I would have *recognized* the fairness of the solution, not that my hypothetical agreement *makes* it fair.

But this argument misses the point. Dworkin seems to have in mind a 'performative' view of agreeing: one does something in agreeing. Yet, there is a sense of the notion of agreement - not so much a tacit as an implicit dimension - that does not require performative execution. How do we know whether or not a rule or solution is fair? One way is to imagine how persons not swayed by "immediate contrary" interests would solve the problem at hand, and this, of course, is what Rawls suggests we do. The simplicity of Dworkin's example is misleading. The device of a hypothetical agreement may *appear* to be redundant in the poker game, but this is only because the fair solution is obvious. In cases where the fair solution is not apparent - when questions of social justice arise, for instance - we need a hypothetical agreement, or something quite like it, to show us the proper solution. Rawls has merely put a highly sophisticated version of this device to work on an exceptionally difficult problem.

The criticisms of Rawls' theory, in sum, bring into question the set of principles which Rawls claims to derive from the original position, but they do not undercut the contractual method of his theory. Contract theory does provide a way of discovering a conception of justice which can serve as the basis of a well-ordered society, even if it is not the conception Rawls expounds in *A Theory of Justice*.

#### IV

#### Civil Obligation

Rawls' solution of the problem of civil obligation is developed as a corollary of his theory of justice. After the persons in the original position have chosen principles to govern their institutions - principles of justice - they must next choose principles to govern their conduct as individuals. This choice is simplified by the fact that the conception of justice is already arrived at and the parties have only to find a set of principles for individuals which is in harmony with the conception of justice.

Among this set of principles for individuals are the two which Rawls calls on to deal with the problem of civil obligation.

The first of these is the principle of fairness. This principle applies to conduct within institutional contexts, including such institutions as games and promising. It is also the source of *all* obligations, according to Rawls, for all obligations arise within the context of rule-governed social practices. Rawls offers this account of the principle of fairness:

"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... those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefitted from their submission. We are not to gain from the cooperative labours of others without doing our fair share."<sup>50</sup>

The second part of the principle of fairness is most important here. If the notions of "voluntarily accepted benefits" and "taken advantage of the opportunities" are broadly interpreted, then, following Locke, all the citizens of a just society may be said to be under an obligation to obey the law. If they are interpreted narrowly, on the other hand, then few citizens, if any, will have a general civil obligation. Rawls takes the latter path. That is, he says "there is no political obligation, strictly speaking, for citizens generally" because it is not clear what "the requisite binding action"<sup>51</sup> is. Thus, while those who have taken an oath of office may have a general obligation to obey the law, the average citizen does not.

The second principle for individuals enters the theoretical picture at this point. This principle, "the natural duty to justice", is one of several 'natural' duties. Others are the duty to help others in need when doing so poses no excessive risk or loss to oneself; the duty not to harm others; and the duty not to inflict unnecessary suffering. Unlike obligations, natural duties apply to us regardless of our voluntary acts and need not be connected to institutions or social practices - hence their 'natural'

quality. In terms of the commitment-content distinction noted in *Part One*, natural duties can be traced to the content of the situation rather than to a commitment: "Thus we have a natural duty not to be cruel, and a duty to help another, whether or not we have committed ourselves to those actions."<sup>52</sup>

The role of the natural duty of justice is to supplement the principle of fairness. It does so by requiring

"us to support and comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves. Thus 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 his part in the existing scheme. Each is bound to these institutions independent of his voluntary acts, performative or otherwise."<sup>53</sup>

In a just society, therefore, the average citizen has a general (Kantian) *duty* to obey the law even though he has no *obligation* to do so. And if we were to put into his mouth the question, "Am I morally required to obey the law?", rather than "Am I under an obligation to obey the law?", the answer would be "yes".

Strictly speaking, then, Rawls does not provide a solution to the problem of civil obligation, for he argues that only a few have civil obligations, even in the just society. He provides, instead, an answer to the more general question of political obedience: "Why should I obey the law?". To this Rawls answers, "Because you have a natural duty to do so." Within a Kantian framework, this answer is entirely satisfactory, and it is a contractual - if not consensual - response. At the same time, however, it can be seen that Rawls has sold the principle of fairness short. There are difficulties, no doubt, in describing what counts as a voluntary act which obliges us to obey the laws of a just society, but this does not mean that we only commit ourselves to obey the law by taking an oath to do so. It does not seem altogether unreasonable to say that we "voluntarily accept the benefits" of a just political system when, over time, we "take advantage of the opportunities it offers to further our interests". And to do this is, in a sense, to incur an obligation. Rawls, like Rousseau, provides a tentative contractual basis for solving the problem of civil obligation; and, although he shies away from this solution, he also goes on to point out a

way of handling the problem of civil disobedience.

For Rawls, as for Rousseau, the fundamental idea of the social contract is not to show when and how men have consented to the establishment of a civil society, but to show what kind of principles rational men not bent on the pursuit of *de facto* advantages would choose to govern their society if they were able to do so. The purpose of the 'contract' is to elicit those principles. Underlying the contractarian theories of both Rawls and Rousseau is a respect for the equality of men. This respect takes the form of *the citizen* in Rousseau's theory, the abstract sense in which we are all alike and allegedly share the same interests. In *A Theory of Justice* this sense of equality is displayed in Rawls' notion of the original position, the situation in which, deprived of their identities, men are required to choose principles of justice. Without knowledge of morally irrelevant contingencies, the persons in the original position become equals, and they regard the decision they must make from the same vantage point - from that of citizens. "The original position", as one commentator has said, "is well designed to enforce the abstract right to equal concern and respect, which must be understood to be the fundamental concept of Rawls's deep theory."<sup>54</sup>

V

Hart on Fairness and Obligation

In *Part Three*, Section two, we remarked that the model of a social contract helps express the fact that, in Rousseau's and Rawls' view, civil society is beneficial to those who participate in it - it is something that rational men who considered the alternative would voluntarily accept and support. But we need not take the metaphor literally and think of the fictional contract as the actual *source* of the obligation to obey the law. Then, if not from a 'contract', from what circumstance does the obligation arise? Rawls, as has been mentioned, shies away from a contractual solution to the problem of civil obligation almost by way of ignoring the implications of the principle of fairness. H.L.A. Hart, on the other hand, both provides a simpler formulation of the principle of fairness *and* makes an interesting attempt to preserve the spirit of contractarianism while elimi-

nating a 'contract' as the actual basis of civil obligation.

Hart considers civil society to be a cooperative enterprise regulated by common rules and argues that obligations arise in such cases from a "mutuality of restrictions":

"...when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission. The rules may provide that officials should have authority to enforce obedience and make further rules, and this will create a structure of legal rights and duties, but the moral obligation to obey the rules in such circumstances is *due to* the cooperating members of the society, and they have the correlative moral right to obedience."<sup>55</sup>

Civil society may be considered as the one cooperative enterprise in which we all participate. By working together and making sacrifices according to the rules we are able to provide by our concerted endeavours far more for each individual than one could provide by his own solitary labour. The common enterprise requires rules according to which the members restrict their liberty and make certain sacrifices. By accepting the benefits of the cooperative scheme I incur an obligation to submit to the same restrictions and to make similar sacrifices. Although the obligation results from the acceptance of benefits, it differs significantly from a simple obligation to reciprocate for a favour or gift; it has nothing to do with showing gratitude (though this may be an additional motive in fulfilling the obligation). It is a matter of acting justly or fairly toward those who have already submitted to the "mutuality of restrictions". Unlike the vague obligations to which benefactions give rise, the obligation to 'do one's part' is specific and strict: the other members of the common enterprise, those to whom the obligation is owed, have a right that the obligatory actions be performed. Disobeying the law is refusing to restrict my freedom or to make contributions as others have done; it is unfair of me to accept the fruits of their sacrifices while refusing to make my own.

Convenient examples of obligations arising from a fair distribution of necessary burdens would be taxes and military service. Few persons care to contribute either, but both are necessary, many would argue, to the success

of our common social enterprise. Of course, society could get along if some people did not do their part, but to benefit from the taxes and service of others while evading them oneself would be to treat others unfairly. According to Hart, one owes a similar (or at least an equivalent) sacrifice to them, and they have reason to rebuke one as a shirker if one attempts to evade the burden. Naturally, there may be reasons which would justify making an exception of oneself, but in the absence of such reasons one is simply taking advantage of those who have done their part.

However, there are three problems with Hart's argument as it stands: (1) it leaves out the justification of the institution or enterprise from which the obligations arise, (2) it may not apply to disobedience which is principled or conscientious rather than self-seeking, and, (3) it may not take into account that society itself requires from some of its members that their contribution relative to their share of the benefits may be disproportionately large.

Hart claims, or at least he does not *disclaim*, that one ought to obey the rules of any joint enterprise which involves a mutuality of restrictions. This needs to be qualified, for as it stands it sounds like a purely conventionalist view. If the enterprise is a pernicious one, if it is condemnable on moral grounds, and if it were better that it did not exist, then no obligation to obey its rules can be based upon considerations of fair play. The slave trade or an extortion racket would be examples of joint enterprises of this sort. Even those who are beneficiaries of such enterprises have no moral obligation to obey its rules. One may treat his fellow extortionists unfairly by dealing with the police, let us say, but this does not mean that one ought not to have done it. The undertaking must be morally justifiable before the fairness appeal will be appropriate.

The value of civil society has already been discussed. Without rules of certain sorts men could not live together and cooperate to mutual advantage. These rules must provide at the minimum for peace and security of person and property. Besides these standing rules there must be recognized procedures for making and executing policies and for adjudicating disputes. Without this framework of order and stability, and without this decision-procedure, there could be no common economic endeavour, and so no material prosperity. Nor would there be any but the most primitive culture: no

scientific, "no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man solitary, poor, nasty, brutish, and short."<sup>56</sup> Civil society is not simply one valuable thing among others; it is the necessary condition of almost everything else that we value. And it would be impossible unless the law was generally obeyed. The whole point of having laws and judicial procedures is lost if they are not generally followed; it is simply inconsistent to grant the desirability of government and to say that it is a matter of indifference whether its laws and decisions are obeyed. General disobedience would bring about the dissolution of civil society itself.

Hobbes makes the point forcefully when he discusses "the *diseases* of a commonwealth, that proceed from the poison of seditious doctrines, whereof one is, *that every private man is judge of good and evil actions.*

"From this false doctrine men are disposed to debate with themselves, and dispute the commands of the commonwealth; and afterwards to obey, or disobey them, as in their private judgments they shall think fit; whereby the commonwealth is distracted and *weakened.*"<sup>57</sup>

Locke makes the same point when discussing the social contract, which puts all those who are party to it under an obligation to the others "to submit to a determination of the majority and to be concluded by it." If it did not, then the contract would be meaningless:

"For what appearance would there be of any compact? What new engagement if he were no further tied by any decree of the society than he himself thought fit and did actually consent to? This would still be as great a liberty as he himself had before his compact...."<sup>58</sup>

It cannot be necessary for all to agree before each is bound to obey. "Such a constitution as this would make the mighty leviathan of a shorter duration than the feeblest creatures, and not let it outlast the day it was born in."<sup>59</sup>

Now it would be quite possible for any one individual to disregard the laws without damaging the social enterprise. Obeying the law often means bearing some burden or restricting one's liberty in some unpleasant way. It could well be to one's advantage to disregard the law, as long as others continued to heed it. But it would be unjust or unfair to those who do



restrict their freedom and do bear the burdens, not to do likewise. In the absence of some special circumstance which excuses one from obedience, one would be taking advantage of the sacrifices of others to further one's own ends. This would be similar at least to violating a moral obligation in the narrow sense: one's conformity to the law is owed to others by virtue of their cooperation in the scheme from which all benefit.

This argument, as we have developed it, appeals to considerations both of utility and of fairness and, it seems clear, is stronger than an argument appealing only to one criterion. An argument appealing exclusively to fairness, as we have just seen, would generate unwanted obligations in cases of morally objectionable institutions. But what about an argument appealing only to the utility of one's acts? After making a case for having government one might simply argue that one ought to support desirable institutions and ought not by his actions contribute to their demise. Socrates speaks in places as though his escape would single-handedly overturn the Athenian legal system, though in others he speaks only of the tendency of such an act to undermine the system. In either case the consequences of such an act would be bad. One ought not by an act of disobedience to contribute to a breakdown of the political order.

The modified fairness argument is stronger than this consequentialist argument for more than one reason. In the first place, it does not rely upon the actual or hypothetical consequences of any given act of disobedience. It is quite possible that many acts of disobedience which would be unfair in the way described would bring about a balance of 'good' consequences and would have no effect upon the obedience of others. The second virtue of the argument is that it more accurately portrays what might be referred to as the 'horizontal' nature of our moral-political relations. Obedience to the law is not owed to the government, as the simpler benefits argument has it; rather, it is something we owe our fellow citizens and they owe us. The debt arises from our past actions and reflects a situation of mutual dependence, trust and cooperation. And we owe our part to the cooperating members of society because of their cooperation, not simply because they are creatures upon whom one ought not inflict suffering.

This brings us to the second problem with Hart's argument: the law is sometimes openly disobeyed, not for personal benefit, but because it is con-

sidered morally objectionable. We must distinguish between covert criminal disobedience for personal gain and public civil disobedience for some larger purpose. There is a difference between disobeying a law because obedience is irksome, and disobeying it because one judges it to be bad. The fairness appeal as developed so far is sufficient to show the wrongness of the former, but it does not seem properly directed to the latter. If it is an unjust law or unjust executive act under recovering law which is at issue it seems odd to accuse the disobedient of unfairness, for it is in the name of fair play that he takes his stand. If he is seeking no private advantage from his action and is even inviting legal punishment for it, he cannot be considered a shirker or 'free rider'.

Nevertheless, one ought to obey even those laws which one takes to be 'bad' (leaving out for now the possibility that the whole system of laws is bad). It is not necessary to appeal to the notion of fairness to make this point. We must have some procedure for deciding which rules are best and for settling any other controversies which might threaten the peace. If each person obeys only those decisions which he thinks are correct the 'system', to put it crudely, will not work. Persons of different experience, outlook and temperament cannot be counted on to agree in their individual judgements. Even men of good will, as Kant would have it, will disagree about what decision would be best. Each must be prepared, then, to accept the decision reached through a decision-procedure of which one approves as binding, even though one may think it is wrong. We shall examine this argument more carefully in *Part Six* when discussing the scope of obligations.

If one grants the necessity of general unconditional acceptance yet refuses to take this stance oneself, then we should ask what makes one an exception to the rule. This is not so much a matter of fairness as *consistency*. If one expects others (white supremacists, for example) to obey laws which they think are immoral, then one must be prepared in consistency to do the same. At least one must be prepared to justify making an exception of oneself by appealing to some sort of relevant difference.

The natural temptation in many cases is to reply that there *is* a relevant difference: white supremacists, for example, are morally backward individuals whose sense of justice is obviously deficient. They are 'wrong'

in their judgement of race laws whereas we are 'right' in ours. If we disobey such laws it is because we 'correctly' perceive their shortcomings. One could even claim consistency: the principle one is consistently advocating is that a law be obeyed if it is not an immoral law. One may consistently act on this principle, but it is not a principle on which everyone could act and the political system still survive. As has been mentioned, one reason for having a social decision-procedure is that persons cannot be counted on to agree about what ought to be done in many situations. In the absence of some sure sign of moral infallibility, everyone should be willing to submit his conduct to determination by a fair decision procedure. Thus, one ought *prima facie* to obey a law even when one thinks it is a bad law.

Civil obligation is a complex obligation, supported as it is by different sorts of considerations. In the broadest sense of 'obligation', one has an obligation to obey the law because reason dictates the adoption of a certain principle of conduct. It is in one's own interest, as well as in the interest of others, that one obey the law regardless of the advantage to be obtained by disobedience, and regardless of one's judgement of the worth of a particular law. It is necessary that people generally act in this way, and one must be prepared in consistency to do the same. Finally, one will be acting unfairly towards others if one refuses to do his part in maintaining the system from which all benefit. In this respect, civil obligation resembles more closely an obligation in the narrow sense of the term.

As it is based upon the preservation of something of great importance, it is accordingly an obligation of great weight. This does not mean that it may never justifiably be set aside, but it does mean that the decision to do so should never be made without careful and sober reflection.

PART FIVENotes

1. "Justice as Fairness", Philosophical Review, vol.57, 1958; a shorter version appeared in the Journal of Philosophy, 1957. The other articles are listed, with one exception, in John Rawls, A Theory of Justice, Oxford, 1973, p.x, n.l. The exception is "Legal Obligation...", in Law and Philosophy, S. Hook (ed), New York, 1964
2. A Theory of Justice, Op Cit, pp 11-12
3. Ibid., p.252
4. Ibid., p.252
5. Ibid., pp 255-256
6. Ibid., p.144
7. Ibid., p.257
8. Ibid., p.144
9. Ibid., p.4
10. Ibid., p.4
11. Ibid., p.4
12. Ibid., pp 4-5
13. Ibid., p.5
14. Ibid., p.5
15. Ibid., p.5
16. Ibid., p.11
17. "self-interested but not selfish" has been substituted for Rawls' "mutually disinterested"; see Ibid., pp 13f, 127f
18. Ibid., p.18
19. Ibid., p.18
20. Ibid., pp 18-19
21. Ibid., p.19
22. Ibid., pp 137-138

23. Ibid., p.19
24. Ibid., p.62; also p.92
25. Ibid., p.139
26. Ibid., p.140. Rawls appends a reference to the Social Contract, II, iv, para.5. This is the paragraph in which Rousseau asks, "Why is it that the general will is always in the right, and that all continually will the happiness of each one, unless it is because there is not a man who does not think of 'each' as meaning him, and consider himself in voting for all?"
27. Ibid., p.19
28. Ibid., p.19; c.f. p.138: "one or more persons can at any time enter this position, or perhaps, better, simulate the deliberations of this hypothetical situation, simply by reasoning in accordance with the appropriate restrictions."
29. Ibid., p.20. "Reflective equilibrium" is discussed here and in pp 46-50, 120-121
30. Ibid., p.20. c.f. Joel Feinberg, Social Philosophy, Englewood Cliffs, N.J., 1973, p.3:

"Correct general principles and ultimate policies do not reveal themselves spontaneously, nor are they deduced from self-evident principles. The only way to arrive at them is to begin with those singular judgments and attitudes about particular social issues in which we have the greatest confidence, and attempt to extract their implicit rationales. We then tentatively apply the extracted principles to perplexing borderline cases, revising the general principle where necessary to accommodate the specific judgment, and modifying the particular attitude where required by a well-tested or deeply entrenched general principle, always aiming at the ideal of a comprehensive personal and interpersonal coherence in which singular judgments and general principles stand in a 'reflective equilibrium'."

31. A Theory of Justice, Op Cit, p.303. c.f. Rawls' first formulation of the general conception, p.62: "All social values - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any, or all, of these values *is to everyone's advantage*." (emphasis added)
32. Ibid., p.153
33. All quotations are from Ibid., p.154
34. Ibid., p.302. We have deleted from principle II(a) the phrase, "consistent with the just savings principle". While Rawls' account of the problem of saving between generations is provocative, it is a subject which need not be considered here.
35. Ibid., p.75

36. Ibid., pp 79-80. Rawls' explanation of the "lexical difference principle" partially contradicts his other versions of the difference principle. The lexical difference principle states that whenever two possible distributions of goods tie - i.e. offer the same benefits to the worst-off - the tie is to be broken by maximizing the welfare of the second worst-off, "and so on until the last case which is, for equal welfare of all the preceding n-1 representatives, maximize the welfare of the best-off representative man" (p.83). This is contradictory because in some situations it leads to solutions different from that selected by the general difference principle. In the following situation, e.g. the general difference principle selects S<sub>1</sub> and the lexical difference principle picks S<sub>2</sub>; and, according to the general difference principle, S<sub>2</sub> is an unjustified inequality.

	SQ	S <sub>1</sub>	S <sub>2</sub>
A	\$5	\$10	\$11
B	5	8	9
C	5	6	6

On the implications of this contradiction see Russell Keat and David Miller, "Understanding Justice", in Political Theory, February, 1974, pp 10-12

37. A Theory of Justice, Op Cit, p.302
38. Brian Barry, The Liberal Theory of Justice, Oxford, 1973, ch.7. See also H.L.A. Hart, "Rawls on Liberty and Its Priority", in University of Chicago Law Review, Spring, 1973
39. A Theory of Justice, Op Cit, p.542
40. See, *inter alia*, Barry, The Liberal Theory of Justice, Oxford, 1973, chs. 9 10; James Fishkin, "Justice and Rationality", in American Political Science Review, June, 1974; John Harsanyi, "Can the Maximin Principle Serve as a Basis for Morality?", in American Political Science Review, June, 1974; Thomas Nagel, "Rawls on Justice", Philosophical Review, April, 1973; Douglas Rae, "Maximin Justice and Alternative Principle of General Advantage", in American Political Science Review, June, 1974
41. J. Harsanyi, "Can the Maximin Principle Serve as a Basis for Morality" Op Cit, p. 599
42. A Theory of Justice, Op Cit, p.156
43. Ibid., p.156

44. J. Rawls, "Some Reasons for the Maximin Criterion", in American Economics Review, May, 1974, esp. p.145: "But I do not wish to overemphasize this (maximin) criterion: a deeper investigation covering more pair-wise comparisons may show that some other conception of justice is more reasonable. In any case, the idea that economists may find most useful in contract theory is that of the original position."
45. D. Rae, "Maximin Justice and an Alternative Principle of General Advantage", Op Cit, p.636
46. Ibid., p.636
47. Ibid., p.637, Rae's emphasis.
48. c.f. James Buchanan and Gordon Tullock, The Calculus of Consent, Ann Arbor, Michigan, 1965, pp 77-78:

"Agreement seems more likely on general rules for collective choice than on the later choices to be made *within* the confines of certain agreed-on rules.... Essential to the analysis is the presumption that the individual is *uncertain* as to what his own precise role will be in any one of the whole chain of later collective choices that will actually have to be made. For this reason he is considered not to have a particular and distinguishable interest separate and apart from his fellows.... The individual will not find it advantageous to vote for rules that may promote sectional, class, or group interests because, by presupposition, he is unable to predict the role he will be playing in the actual collective decisionmaking process at any particular time in the future...."

49. Ronald Dworkin, "The Original Position", University of Chicago Law Review, Spring, 1973, p.501 (emphasis added)
50. A Theory of Justice, Op Cit, pp 111-112. On the principle of fairness see §18 generally and §52.
51. Ibid., p.114
52. Ibid., p.114. On natural duties see §19 generally and §51.
53. Ibid., p.115
54. R. Dworkin, "The Original Position", Op Cit, pp 531-532
55. H.L.A. Hart, "Are There Any Natural Rights?", in The Philosophical Review, vol.64, 1955, reprinted in F.A. Olafson, Society, Law and Morality, Englewood Cliffs, N.J., 1961, pp 180-181
56. Hobbes, Leviathan, M. Oakeshott (ed), Oxford, 1955, p.82
57. Ibid., p.211
58. Locke, Second Treatise, in Two Treatises of Government, P. Laslett (ed), Cambridge, 1963, sec. 97
59. Ibid., sec. 98

## PART SIX

### THE CONTRACTUAL THEORY OF CIVIL OBLIGATION

In the preceding *Parts* of this thesis we have argued that Rousseau and Rawls, in particular, point the way toward a contractarian solution to the problem of civil obligation, and that the theories of Hobbes and Locke - whether they succeed or fail as accounts of civil obligation - are not adequate *contractual* theories. Contractual terms abound in both *Leviathan* and the *Second Treatise*, to be sure, but this simply obscures the fact that the social contract plays a vital role in neither theory. For Hobbes, the ultimate appeal is to prudence; for Locke, it is to the law of nature. Thus the contractual field is left to Rousseau, Rawls and, in part, Kant. But this distinction between the theories of Rousseau and Rawls, on the one hand, and Hobbes and Locke, on the other, could only be drawn after a study of the details of their arguments; and this scrutiny of the theoretical trees may have led us to lose sight of the philosophical forest. At this point in the exposition, therefore, we return to more general considerations. With the explications of the theories of Hobbes, Locke, Rousseau and Rawls lending the necessary background, it is now possible to address the question, What is the contractarian theory of civil obligation? What, in other words, are its elements and how is it structured? As a prelude to these matters, we shall first reconsider and extend our earlier remarks on the problem of civil obligation.

The aim of *Part One* was to show that the problem of civil obligation can be solved. To accomplish this task we had first to set out a conception of civil obligation free from the ambiguities which usually surround that concept. It also had to be demonstrated that those who dismiss civil obligation as a pseudo-problem which does not admit of a general theoretical solution were mistaken. According to the formal solution advanced in *Part One*, a *citizen* of a *moral order* or *just state* has a civil obligation to obey the laws of that state. And a satisfactory theory of civil obligation, on this reasoning, must supply both a conception of the (or a) just state and a conception of citizenship or membership. But other questions remain. What, for example, is a *general* solution to the problem of civil



obligation? Must a solution to this problem be general? And why, finally, must the state be just? These matters we touched on in *Part One*, but they must now be examined more closely.

The principal aim of social contract theory, as it is usually understood, is to demonstrate that we ought to obey the laws of the country in which we live because we have somehow agreed or consented to do so. But this puts too great an emphasis on consent. Contracts are agreements, certainly, and they are binding because they rest on the consent of the parties involved; but contracts are agreements to do or not do *something*. They include *terms*, that is, the explicit and implicit conditions under which the parties consent to the contract. The problem with the traditional view of the social contract is that its preoccupation with the notion of consent has caused it to pay too little attention to the 'terms' or 'clauses' of the contract.

In the first four sections of *Part Six* we shall try to correct this oversight. The logic of the social contract shows us not when and how we have consented to obey the laws of a state, but what kind of state warrants our obedience. With the aid of the idea of a social contract, in other words, we can develop a conception of a state - a just state - to whose authority we could reasonably assent. If we find that the state in which we are living meets this conception, then, following the principle of fairness, we know that we have an obligation to obey its laws.

In sections five to seven we wish to do two things. First, we shall consider some of the objections commonly brought against contract theory. These are telling objections when contract theory is understood in the usual sense, but we hope to show that the interpretation of the social contract advanced here overcomes or avoids them. When these criticisms are disposed of, secondly, we shall attempt to define contract theory further by pointing out its limitations. Throughout this thesis it has been maintained that the social contract can guide us to a satisfactory account of civil obligation; but if we are to understand the logic of the social contract, we must be aware of what it cannot do as well as what it can.

## I

The Question of Generality

One of the ironies of the literature on civil obligation is that attempts to clarify the issues and problems involved have often had the opposite effect. In the name of linguistic precision, for instance, Macdonald, McPherson, and Weldon have all argued that attempts to find a general theory of civil obligation are futile because the problem of civil obligation, stated generally, is senseless. But none of these writers bothers to explain what 'generality' means in this context, and this oversight makes it rather difficult to evaluate their claims. Let us take a closer look and see if a notion of generality can be discovered.

Macdonald's essay, "The Language of Political Theory", affords the best opportunity, for it is the most straightforward and concise statement of the anti-general-theory position. The purpose of this article is to criticize philosophers who seek a general solution to the "fundamental puzzle of political philosophy", which is "to find a valid reason for political obligation".<sup>1</sup> Macdonald formulates the fundamental puzzle in this way: "Why should I obey *any* law or acknowledge the authority of *any* State or Government?"<sup>2</sup> She then claims that the question, when it is stated in this vague manner, cannot be answered because we simply do not have enough information to know *how* to answer it. As Macdonald says,

"No general criterion of all right actions can be supplied. Similarly, the answer to 'Why should I obey *any* law, acknowledge the authority of *any* State or support *any* Government?' is that this is a senseless question. Therefore, any attempted reply to it is bound to be senseless...."<sup>3</sup>

Since time spent on general questions of obligation is time wasted, Macdonald suggests that we concentrate instead on particular questions. "It makes sense," she says,

"to ask 'Why should I obey the Conscription Act?' or 'Why should I oppose the present German Government?' because by considering the particular circumstances and the characteristics of all concerned, it is possible to decide for or against obedience and support."<sup>4</sup>

There are two problems with Macdonald's argument. Her formulation of the general question of civil obligation, in the first place, is actually a question of obedience, not obligation. It asks, in other words, "Why should I *obey* any law?" rather than "Do I have an *obligation* to obey any law?". These are different questions, and an answer to one is not necessarily an answer to the other. By the same token, good reasons for dismissing one of these questions are not necessarily good reasons for dismissing the other. Macdonald is probably right to discard so vague a question as "Why should I obey *any* law?", but "Do I have an obligation, or a *prima facie* obligation to obey the law?" is another matter. To answer this second question we must show how persons incur obligations to obey laws and determine whether or not the questioner has done so. This may be difficult to do, for it may require an explanation of the concepts of obligation and law; but the task is surely not impossible and the question is clearly not senseless. Macdonald's formulation of the general question, in brief is an example of the unhappy consequences of conflating 'obligation' with 'ought'.

The second problem with Macdonald's argument is that she presents a misleading account of the levels involved. She leaps, that is, from questions about obedience to laws in general to questions about obedience to *a particular* law as if there were no intermediate level. This kind of analytical gymnastics leads her to reject the general question as senseless and accept the particular question as sensible.<sup>5</sup> But this is much too facile a move; for Macdonald neglects a third question at an intermediate level: "Why should I obey the laws of *this* state or government?". In one sense, of course, this is a particular question: it refers to a specific state or government. But in another sense it is a general question, for it does not refer to a single law or instance, but to an entire system of laws. Furthermore, this intermediate or systemic level often evokes the general question. This is because we sometimes must determine what are the general features of states which deserve our obedience before we can decide whether a particular state has these features and, hence, ought to be obeyed. There is, moreover, a way of formulating this systemic level question which clearly invokes general concerns: "What kind of state (or civil society, or rule-enforcing body) ought I obey?". This is a general question, certainly, but it is by no means senseless. And it seems, finally, that this, and not Macdonald's "Why should I obey *any* law?" is the

general question which has engaged political philosophers for so long.<sup>6</sup>

Thus Macdonald's attempt to clarify civil obligation is doubly confused: she begins by conflating 'obligation' and 'ought', then compounds the problem by over-simplifying the number of levels at which questions of obligation and obedience can arise. With these confusions removed, however, it is clear that a general solution to the problem of civil obligation is not an impossibility. Such a solution must answer the question, "When am I under an obligation to obey the laws of a state or government?". The answer, as we suggested in *Part One*, is, "You are under an obligation to obey the laws of a state if and only if you are a citizen of a just state". The notion of citizenship must be filled out so that it accounts for a commitment to the state, of course, and a conception of the just state must also be elaborated. But any theory which accomplishes these tasks is a general theory of civil obligation, for it delineates the criteria which must be met if one is under an obligation to obey the laws of a state.

It is possible, then, to develop a general theory of civil obligation. But this leads to a further question about generality: *must* a theory of civil obligation be general? The answer is yes. A civil obligation, as was argued in *Part One*, is a systemic obligation: one does not have a *civil* obligation to obey this law or that law, but to obey a law just because it is part of a system promulgated by the law-making authorities of the state. One may have an obligation to obey some laws of the state and not others, but in this case the obligation is legal rather than civil. A person in Nazi Germany, for example, might have had a legal obligation to obey the traffic laws, but he had no civil obligation to obey the laws of the regime.

This systemic nature of civil obligation means that practical questions about civil obligation must be raised at what we have termed the intermediate level - "Am I under an obligation to obey the laws of *this* state?". True, particular questions of obligation can be raised sensibly, but we usually cannot answer them without referring to the intermediate or systemic level. When we can ask "Am I under an obligation to obey this law?" without also asking "Am I under an obligation to obey the laws of this state?" it is because we appeal to a legal, not a civil obligation.

When we question our civil obligation, consequently, we question our obligation to, in a Kantian sense, 'respect' the system of laws of a specific state and, consequently, to accept a *prima facie* obligation to obey laws just because they are part of the system.

But questions of this sort cannot be answered unless we turn to the general level. We cannot determine whether a person is or is not under an obligation to obey the laws of a state unless we can determine how anyone, anywhere, incurs a civil obligation. If pledging allegiance to the flag is sufficient to place Jones under an obligation to obey the laws of the jurisdiction to which he is subject, then, *ceteris paribus*, it is also sufficient for his neighbours. This does not cover all circumstances, obviously: what binds one person to obedience to the laws of one state may not bind another person to the laws of another state. This is to say that the character of the state in question is an absolutely vital consideration; but this consideration too cannot be confined to the intermediate level. If pledging allegiance (or whatever) suffices to place one under a civil obligation to one (kind of) state but not to others, then we must once again resort to a general question: to what kind of state does one incur a civil obligation? A theory of civil obligation, therefore, must have a general application - it must be a general theory.

Since a theory of civil obligation serves as a measuring rod of sorts it enables us to decide whether or not a particular person has an obligation to obey the laws of a particular state. According to the notion of civil obligation we have set out, for example, a theory of civil obligation must include a conception of a just state and a conception of citizenship. When a case arises, we must determine whether the state and person involved fit these conceptions. In this way questions of civil obligation at the particular and systemic levels require and presuppose a general theory of the state as deserving of the obedience of its citizens, such that the state will exercise legitimate authority and not serve merely as a focus of power. This consideration, needless to say, is the central problem of liberal political philosophy.

## II

The Just State

In addition to these questions about generality we must also attend briefly to another question: why must the state be just? Why is it, in other words, that a civil obligation is an obligation to obey the laws of a just state and not those of an unjust state?

There are two reasons for denying that one can have a civil obligation to an unjust state. The first is related to the tendency to derive obligation from coercion. Those who claim that all members of a civil society have a civil obligation to that society run the risk of reducing obligation to obedience and founding obedience in coercion. For if membership and civil society are defined broadly, this position leads to the conclusion that everyone has an obligation to obey those who rule over him - even if this rule rests only on naked terror. There are, as noted in *Part One*, only two ways to avoid this conclusion: either redefine 'civil society' so that arbitrarily coercive regimes are excluded, or distinguish those kinds of civil society which have a legitimate claim to civil obligation from those which do not. In either case, we must draw a distinction between regimes which may be owed obedience from those which may not. This distinction is conveniently marked by the adjectives 'just' and 'unjust'.

An objection may arise here: it is possible, and even likely, that a state will treat some citizens justly and others unjustly. What are we to say when this happens - that those in the former category are under a civil obligation while those in the latter are not? If this is the case, then all that concerns the individual is how the state treats him, not its justice or injustice toward all. And this means, in turn, that a state need not be just in order to claim the civil obligation of *some* of its citizens.

The problem with this objection is that the individual cannot simply be concerned with how the state treats him. He incurs a civil obligation not as a person, but as a *citizen*; and this, as Rousseau argued, is an abstract status which he shares with others. So long as those in power treat some citizens unjustly, no citizen is secure. It is only when the

state accords the same rights and liberties to all citizens that any citizen can have an obligation to obey the system of laws of the state. In this respect civil obligation is an all-or-nothing matter: either every citizen has it or none has it. Peculiar personal characteristics or deeds have no bearing here: all that counts is one's status as a citizen. Given this all-or-nothing condition, any state that can justifiably claim the civil obligation of its citizens must be just. The content given to the concept of justice may vary, but it must include at least the notion that all citizens are 'equal' under the law.

This connection between citizenship and civil obligation is the second reason for denying that one can have a civil obligation to an unjust state. One may have prudential or even moral reasons for obeying the laws of an unjust state; or one may have undertaken a legal obligation to obey some of its laws. But a person cannot have a civil obligation unless he is a citizen of a just state.

### III

#### The Contractual Theory of Civil Obligation

We must now consider how the contractual theory meets with the requirements of a general theory of civil obligation; to see, that is, what content it gives to the concepts of 'citizen' and 'just state'. There are some things that we cannot properly call 'citizens' or 'just states' without entering the realm of fantasy. But the boundaries which separate what may from what may not be called a 'citizen' and a 'just state' are both flexible and vague, and within these vague boundaries there is room for a good deal of contest. 'Citizen' may describe members of a small, politically active minority, as in Periclean Athens, or it may be extended to the relatively passive masses. Similarly, a 'just state' may be applied to a small, hierarchically organized polity, as in Plato's *Republic*, or to a large, decentralized nation. The looseness of these concepts seems to indicate a discomfiting relativism as though what anyone takes to be a just state is no more than a matter of taste. There is more involved than taste, surely, but there is a serious problem here: how are we to justify our conceptions of 'citizen' and 'just state'?

Contract theory, as Rawls has demonstrated, affords not only a conception of the just state: it also provides a procedure which leads us to that conception. The contractual procedure is, in a sense, the justification of the contractual conception of the just state. For if the procedure is appropriate, then the outcome of the procedure must also be acceptable. What the contractarian says, in effect, is this: "Here is a procedure. Follow it and you will discover a non-arbitrary conception of the just state." Thus the burden of justification rests on the procedure rather than on the conception itself.

The core of the contractarian theory is the notion of hypothetical consent. Instead of asking whether or not one has at any time expressly or tacitly consented to obey the laws of a state, the contractarian asks, "To what kind of state *should* I give my consent?". This calls for the imaginative construction of a just or deserving state, and, although they approach this task in different ways, Rousseau and Rawls both suggest that in this enterprise each must choose for all.<sup>7</sup> That is to say, when he is choosing principles to govern the just state, each person is making choices which must be agreeable not only to himself, but to everyone in the state. When he is thus forced to take others into account the individual is prevented from 'stacking the deck' in his own favour. The resulting conception of a just state, consequently, is justifiable, not arbitrary, because it is acceptable to all.

The matter is far more complicated than this, however. The contractual procedure is justifiable basically because it satisfies both moral and prudential considerations. Taking prudential considerations first, it seems that anyone charged with 'constructing' a state will be concerned to erect safeguards to protect his person and possessions. Without such safeguards there would be no reason to consent to the authority of the state, for one would be as well off in a Lockean or Hobbesian state of nature. As Rousseau puts it, "the force and liberty of each man are the chief instruments of his self-preservation", and one cannot reasonably surrender these instruments to anything other than "a form of association which will defend and protect with the whole common force the person and goods of each associate...."<sup>8</sup> The individual, then, will incorporate at least minimal safeguards into his imagined state. A rational egoist, of course, may wish to limit or define these safeguards so that he is protected while others



remain vulnerable - especially vulnerable to him. But this option is denied, for the contractual procedure requires him to choose for all, and so the egoist must extend the protection he desires for himself to others. The contractual procedure leads in this way to a conception of the just state in which everyone has a right to equal protection. Since everyone's interests will be protected equally, the contractual procedure yields a result acceptable on prudential grounds to everyone. This works, however, only if some problems in moral theory are overcome - problems which attend to the idea that each must 'choose for all', i.e. choose for each as each would choose for himself. This requirement is itself the expression of a political axiological principle - the notion that an individual may not have one set of standards for others and another for himself. A well-worn example may help to illustrate this point: if Jones believes it is proper for him to walk across a well-kept lawn rather than on the pavement, he has no right to condemn others who do the same thing in similar circumstances. This is sometimes called the principle of universality, and its variants - which is not to say equivalents - include the Golden Rule and Kant's Categorical Imperative.

But this principle is not free from difficulties. That we must do what we would have others do in a similar situation is, first, easily rendered trivial. This is due largely to the vagueness of "in a similar situation". Jones may hold that, generally speaking, one should not walk across lawns when pavement is at hand. But he may also introduce a series of qualifications and exceptions which serve to excuse him in a particular situation: e.g. "One may walk across lawns when in a hurry and when no one will see you so that one doesn't set a bad example". Jones could even go so far as to build a description of himself into the excusing characteristics of the situation: e.g. "all 32 year old males may walk across lawns.. ." This is likely to be rejected by others as a resort to irrelevant considerations, but it does show how a universal rule can be trivialized so that it applies to a single instance, or little more.<sup>9</sup> The upshot, obviously, is that an individual may formulate a rule in universal terms and still favour himself. And this means that in the contractual procedure one could choose for all a rule which required everyone to pay an income tax, for instance, except those who are public servants earning less than \$20,000, etc. The loopholes that trivialization opens, in short, present the contractarian with a serious problem.

There is also another problem with the principle of universality, involving the acceptability of the rules some people may be willing to universalize. A sincere Nazi, for example, would hardly hesitate to universalize the judgement "Jews should be exterminated". Not only does he believe that he should exterminate Jews, but he believes that others should do so as well.<sup>10</sup> This has serious implications for contract theory because it demonstrates that requiring each to choose for all will not always lead to completely acceptable conceptions of the just state. Fanatics and bigots of all persuasions will be eager to establish a state based on intolerance, while those they would persecute and subjugate will not hesitate to reject it. Thus the stipulation that each must choose for all fails once again to guarantee a conception of the just state which is acceptable to all.

For both these reasons the principle of universality - at least in its "each must choose for all" form - is not adequate to the contract theorist's task. The aim of contract theory is to achieve a set of principles of justice, a conception of the just state, which is satisfactory from everyone's point of view even if it is the first choice of none. So long as the individuals who enter into the hypothetical contractual situation are able to slant the principles in their favour, or colour the conception with 'unacceptable' attitudes, however, there is no chance that unanimity will be attained. The solution, therefore, lies in finding a way to prevent those who choose for all from granting preference to their own interests and desires.

This solution is precisely the one sought by Rousseau and Rawls. As we have seen, Rousseau insists not only that each must choose for all, but that each must choose as a *citizen*. As men our wills are *partial*; but as citizens we share a *general* will. The thief and his victims share an interest as citizens in laws protecting property even though such laws may be contrary to the thief's interest as a man. If, then, the principles which are to govern the just state are chosen from the vantage of the citizen rather than the man, they will be acceptable to all: they will represent the common ground which all can accept despite their differences.

Rawls offers essentially the same solution, but he presents it in a much more concrete and fully developed form. Like Rousseau, Rawls asks the

individual to shed his private interests and assume an abstract identity so that the principles he chooses *for* all will be acceptable *to* all. He accomplishes this by placing the parties to the contract behind the "veil of ignorance". In this position, as Rawls points out, "No one knows his situation in society nor his natural assets, and therefore no one is in a position to tailor principles to his advantage."<sup>11</sup> Given this restriction, the rational move for someone behind the veil is to propose principles of justice which will protect his interests - whatever they may happen to be. In this way the veil forces the parties to the hypothetical contract to adopt a common viewpoint; or, in Rousseau's terms, the veil leads them to promote their common interest as citizens instead of their private interests as men. Rawls uses the veil of ignorance in order to show us what it *means* to choose as a citizen. In this sense Rawls' version of contract theory develops and clarifies Rousseau's insight. Since it is more complete and suggestive than Rousseau's account, though, it must be regarded as the exemplar of contract theory.

When Rousseau and Rawls deprive the parties to the hypothetical contract the right and ability to maximize their personal interests, they achieve two aims. They ensure, in the first place, equality of consideration. If the individuals in the contractual situation (or "original position") cannot rig principles to their own advantage, they must choose principles which will be to some extent in everyone's interest. Consequently, no one's interests are favoured and none overlooked - everyone receives equal consideration. From the moral point of view, then, no one has reason to complain. In the second place, this guarantee of equal consideration also closes the loopholes in the notion that "each must choose for all". Deadlocks caused by a clash of interests are avoided, and the outcome of the contractual procedure is at least acceptable to everyone for prudential reasons. The constraints which Rousseau and Rawls place upon the parties to the contract, in sum, allow them to derive a conception of the just state from the contractual procedure. 'Abstraction', then, is the essence of the contractarian method; the technique by which the good citizen *prescinds* from what does not concern him as a citizen. And with the difficulties of the principle of universality overcome, the contractual procedure justifies the conception of the just state which emerges.

What, then, does the just state look like? What *is* the contractarian conception of the just state? It is not possible to provide a detailed portrait here, and not simply because of the press of space and time. The contractarian conception of the just state is necessarily abstract, for it makes no reference to social and material conditions or political and legal institutions. There are two reasons for this. First, the parties to the contract are deprived of information about social and material conditions, and it would be foolish to try to design the institutions of government without such knowledge. This is why Rawls suggests a four-state sequence - during which the veil of ignorance is gradually lifted - for (1) choosing the principles of justice, (2) designing the constitution, (3) considering legislation, and (4) implementing and administering laws and policies.<sup>12</sup> It is also possible, secondly, that there may be a number of just states which vary widely in the kinds of conditions they face and institutions they have. Just states would no doubt share 'family resemblances', but no two would be identical. Hence no single portrait of the just state could possibly suffice; we shall have to be content, as a result, with a sketch.

The first requirement of a just state is that it must maintain the rule of law.<sup>13</sup> There must be regular and recognized procedures for enacting, enforcing and interpreting the rules which govern the society. The rules cannot simply be the arbitrary dictates of those in power, dictates issued with little regard for consistency or fairness. There are also other important aspects of the rule of law. If laws are to serve as rules - as guides to conduct - then the laws must be made public so that the citizens have a chance to follow them. There is no legal offence without a law, and a person cannot be held liable if he has no opportunity to learn what the law requires. Further, laws must take account of the notion "ought implies can". It is unreasonable to require or forbid men to do what they cannot be expected to do or avoid. Finally, the rule of law also demands that similar cases be treated similarly. What this means in practice depends upon the context, of course, but it does prohibit judges from ruling in favour of one claimant and against another when the only differences in their cases are patently irrelevant.

The ideal typical just state described in purely abstract and uninterpreted terms must also guarantee certain fundamental rights and liberties. The basic rule here, as stated in Rawls' first principle, is that everyone

is entitled to the greatest possible freedom compatible with a similar freedom for others. Legal and political rights will continue to emphasize equality: everyone is equal in the eyes of the law; everyone is entitled to due process of law; everyone has a right to an equal voice in the political process. Beyond this, we find that the ideal typical just state also guarantees familiar substantive rights and liberties: freedom of expression, assembly and worship.<sup>14</sup> This is, of course, only an indication of the rights and liberties protected by the just state, not a catalogue of them.

In both these respects - the rule of law and the recognition of certain fundamental rights and liberties - the contractarian conception of the just state embodies the principles of liberal democracy. In the area of distributive consideration, however, the contractarian conception significantly modifies the traditional liberal view. Citizens may be free and equal under law even though they are unable to enjoy this freedom or equality in practice. If the formal guarantees of the law are to have any meaning in actual life, then steps must be taken to ensure that the rich and powerful are not able to control the lives of others. Personal dependence, to use Rousseau's terms, must not undermine legal independence. For this reason both Rousseau and Rawls advocate distributive schemes which try to prevent great economic disparities. Rawls' claim that the difference principle will be chosen by those in the original position may be wrong, but it does seem that contract theory rules out some alternatives, at the least. From behind the veil of ignorance, the difference principle appears more attractive than complete egalitarianism. Laissez-faire capitalism, by the same token, seems incompatible with contractual reasoning, for those behind the veil of ignorance are not likely to look favourably upon the prospect of some entrepreneur cornering the market on some vital commodity or of a plutocrat passing all his wealth, untaxed, on to his heirs. Whether they will choose the difference principle or the average utility principle is not clear - perhaps both, and others, are acceptable. But it does appear that those in the contractual situation will opt for a distributive principle which includes both incentives and levelling devices.

This sketch of the just state lacks colour as much as it lacks detail. It is not likely to inspire heroic deeds or lofty visions; but this is not to be expected. The just state is not the ideal state. We may say that a

state is just without thereby implying that there is complete harmony between all its constituents or that the citizens are realizing one and all their full human potential. Even within the just state there will be crime, conflict and frustration. But the contractual conception of the just state is not meant to be a utopian ideal, valuable as such ideals may be; it is, instead, a 'benchmark', or Kantian schema, a measuring rod which we use to see whether the state we inhabit is just. If this actual state measures up, as it were, then the citizen knows that he has an obligation to obey its laws, for it is governed by principles to which he would consent in the contractual situation. He has, in this case, a civil obligation.

## IV

Citizenship, Fairness and Obligation

The justice of the state is a necessary condition for civil obligation, which is to say that we cannot have a *civil* obligation to an unjust state. But the justness of a state is not by itself sufficient to establish a civil obligation to that state. To show that someone is under an obligation to obey the laws of a state, we must demonstrate that the state is just *and* that he is a citizen of this state. The reason why both conditions must be satisfied is related to the distinction between 'ought' and 'obligation'. There are some things we ought to do even though we have no obligation to do them, and it may be that, *ceteris paribus*, I ought to obey the laws of a just state. But the fact that a state is just cannot place me under an obligation to obey. Obligations must be *undertaken*, and I can only be under an obligation to obey the laws when I have in some way committed myself to do so. The thesis we shall advance here is that *all citizens of a just state have committed themselves to obey the laws of that state*. Two requirements must be satisfied to substantiate this assertion. First, a conception of what it means to be a citizen must be developed. Once this is done, we must show *how* the assumption and exercise of citizenship in a just state commits one to obey the laws.

The meanings of 'citizen' and 'citizenship' are not absolutely fixed, of course. However, there is a common core: a citizen is entitled to

exercise the civil and political rights recognized by a civil society. But this does not tell us much, and problems arise when we ask, "to whom is the status of citizenship to be accorded?". Throughout history the prevalent conceptions of citizenship have restricted this status to a privileged few. Vast numbers of people have been denied citizenship because they failed to meet racial, sexual, religious or economic criteria. In view of the wide variety of positions that have been taken on this question, consequently, we must also ask here: to whom does contract theory grant citizenship?

This question can be answered by returning to the contractual situation. Here, behind the veil of ignorance, the question may be put this way: who is to be allowed to take part in deciding matters of policy for the community? Since those in the contractual position are ignorant of their natural and social characteristics, citizenship will be granted to a broad spectrum of people. Racial, sexual and economic standards for citizenship will be rejected. At the same time, contract theory allows for the exclusion of those who are mentally incompetent or immature. If someone behind the veil does not know his age, for example, he may reason that he should not have a say in important community matters until he is mature enough to know what is in his interest. Settling the matter of citizenship, however, is not quite this easy. For once we admit that some people ought to be denied full citizenship for lack of mental maturity or competence, we face the problem of drawing the line which separates those who are accorded full citizenship from those who are not. This does not seem to constitute a serious problem where age is concerned, for the line will not constitute a permanent barrier. But in the case of mental competence we seem to be opening the door to some form of aristocracy or elitism. Consider the following situation. Brown finds himself in the contractual situation, and he faces the question: who shall be a citizen? Brown does not know his own circumstances but he is allowed an acquaintance with social theory. He has, let us say, read J. S. Mill's *Considerations on Representative Government*. Struck by the notion that some people are better able to make decisions than others, Brown invokes a principle of plural voting which allots one vote to those of average intelligence (as determined by standard 'IQ' test), two votes to those above the 75th percentile and three votes to those in the top ten percent. What, in this case, has become of the contractual conception of citizenship?

The problem here is more apparent than real. If Brown continues his research he is not likely to find a conclusive (even a good) reason for restricting citizenship to or increasing the power of an intellectual elite. But even if his studies do incline him to believe that such restrictions are desirable, Brown still has no reason for denying the less intelligent an equal vote. For if it happens that he is correct in his belief then he has ample opportunity to act on it in the real world. If he finds, that is, that he is not capable of participating in decision-making, then he simply may forego his political rights and allow his intellectual betters to govern for him. There is no reason for one behind the veil to surrender the right to participate when he may decide whether to exercise his right once the veil is lifted.

Contract theory thus provides a conception of citizenship which is consistent with a broadly democratic notion. Basically, the contractual conception stipulates that everyone capable of knowing and acting on his interests is to be a citizen - to have all the civil and political rights recognized by the community. Racial, sexual, religious and economic standards are ruled out. And although it will be difficult to draw the line between the competent and incompetent, this is a difficulty which can only be avoided by according citizenship to all from birth to death.

Now that the contractarian conception of citizenship has been set out, it remains to be seen how being a citizen commits one to obey the laws of a just state. As we suggested in *Part Five*, this commitment follows from the principle of fairness, as stated most succinctly by Hart: "when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission."<sup>15</sup>

Anyone who voluntarily accepts the benefits of a collective enterprise thereby undertakes an obligation to those who restrict their liberty in order to make a success of the enterprise. Fairness, in other words, requires us to do our part in a collective enterprise when the burdens of the enterprise fall on our shoulders. As long as the rules are fair and applied fairly, we owe obedience to these rules to our fellow participants. Mutual benefit enterprises are designed to benefit *all* members, and coopera-



tion is necessary if this benefit is to be realized. One who participates in such an enterprise, according to the principle of fairness, undertakes an obligation to his fellow participants to do his share of the work or bear his part of the burden when the time comes. Hart and others have held that civil obligation can be understood in this way. Civil society is a joint enterprise, and if we are to receive its benefits we must also accept its burdens - by paying taxes, serving in the military, obeying traffic laws, and so on. By accepting the benefits of the civil enterprise, furthermore, we undertake an obligation to submit to the restrictions of our liberty necessary to the continued existence of the enterprise. And this is to say that we incur an obligation to obey the laws. Fairness requires that the citizen of a just state obey the laws of that state.

This version of civil obligation is in many respects similar to the 'game' or 'institutional' model discussed in *Part One*. Indeed, the obligations that one incurs when playing a game clearly fit Hart's statement of the principle of fairness. The problem with the game model is that it has been carelessly extended to account for civil obligation. McPherson and Weldon make participation or membership in political communities completely analogous to participation in a game. The problem with this is that some political societies - in the broadest sense of the term - are more like games than others. We are not, generally, coerced into playing games; moreover, games are governed by rules which are more or less well known to the players and which apply to all players equally. Now while some political societies share these characteristics with games, others do not. The point is that politics is far from a game when the 'rules' are really no more than the dictates, enforced by coercion, of those in power.

The principle of fairness improves on the game or institutional model by pointing out that we only incur institutional obligations when we participate in institutions *of a certain kind*. They must be "joint enterprises according to rules", as Hart says. David Lyons tightens the restrictions even further when he specifies that the enterprise must be "a useful, cooperative, *de facto* practice."<sup>16</sup> These features are present in a just state, or at least in the contractual conception of the just state, and they account for the citizen's obligation to obey the laws of such a state. As he benefits from his fellow citizens' obedience to the laws, the citizen also places himself under an obligation to observe the rules himself; and

this is a civil obligation. So long as a state is just, then, every citizen - everyone who is entitled to exercise the civil and political rights recognized by the community - is under an obligation to obey the laws of the state.

Before going on to consider some objections to this account of civil obligation, we must reiterate an important point. We do not hold that the citizen of even a just state must always obey all its laws. There are certainly occasions when other considerations justify breaking the law, as in the familiar example of exceeding the speed limit while rushing someone to the hospital. It is also possible that a just state may sometimes act unjustly - by abusing other states, for instance, or even by enacting an unjust law. In these cases there may be excellent reasons for disobeying one or more of the laws. To say when, where and how one is entitled to disobey the laws of a just state is a complicated undertaking and far beyond the scope of this thesis. But it is important to remember that even if one has an *obligation* to do *x*, it is not necessarily true, all things considered, that one *ought* to do *x*.

The principle of fairness seems to offer the best hope of forging a link between citizenship and civil obligation. To this point, however, it is no more than a hope. Serious objections to the principle of fairness have been raised in recent years, and it is not clear that these objections can be met. In what follows, therefore, we shall examine and respond to these criticisms, then evaluate rather tentatively the prospects of the principle of fairness.

These objections fall into two categories.<sup>17</sup> The first is similar to that brought against traditional consent theory: just as the notion of tacit consent stretches 'consent' beyond recognition, so the principle of fairness distorts the voluntary nature of obligations. Obligations must be undertaken freely, voluntarily; they cannot be imposed on us. The principle of fairness, though, holds that those who live in a society and take advantage of its benefits thereby incur an obligation to obey the laws of that society. To say that this amounts to a voluntary acceptance of an obligation is going too far, for, like Locke's tacit consent, it implies that "the very being of any one within the territories" of a state entails a civil obligation to it. It is this difficulty which has led Rawls to

abandon the principle of fairness as a foundation for civil obligation.

The best response to this objection is to admit that there is indeed a problem with the voluntariness of obligations, but to point out that this is not only a problem for the principle of fairness. The voluntariness of obligations is in general problematical. J. L. Austin has reminded us of how slippery 'voluntary' is, and this must always be kept in mind when dealing with questions of obligation.<sup>18</sup> What does it mean to say that obligations must be undertaken voluntarily? That the person who undertakes the obligation must say aloud or to himself at some point, "By doing this I am undertaking an obligation"? Or does it simply mean that one cannot be forced or coerced into undertaking an obligation? The person who says to himself as he promises to do something, "By making this promise I am undertaking an obligation" is certainly placing himself under an obligation voluntarily. But so do members of any cooperative endeavour, even though none of them may inwardly or outwardly acknowledge this at the time. If we take 'voluntarily' to mean 'deliberately' or 'on purpose', we fail to take account of many cases in which we attribute obligations to individuals who have not deliberately - *with deliberation* - incurred those obligations. It follows from this use of 'voluntarily', for example, that the members of a bridge group are not under an obligation to observe the rules of bridge unless they expressly promise to do so. If, on the other hand, we take 'voluntarily' to mean 'not under constraint or duress', we may recognize that the bridge players have an obligation to follow the rules despite their failure to proclaim their acceptance of this obligation.

This brings out a strength of the principle of fairness. A person who *voluntarily* participates in a mutually advantageous collective enterprise places himself under an obligation to his fellow participants even if he never *deliberately* incurs the obligation. When his participation is coerced, however, and against his will, then he is not under an obligation. In as much as the citizen of a just state is not forced to accept the benefits of that state, then we may say that he voluntarily undertakes a civil obligation to it. In this way the principle of fairness steers between the narrow construction which unduly shrinks the scope of obligation and the broad, Hobbesian construction which derives obligation from coercion. It is also in line with the ordinary use of 'voluntarily'.

But this response does not counter all the arguments against the voluntariness of the principle of fairness. Robert Nozick has also objected that the principle of fairness allows for obligations to be imposed on us.<sup>19</sup> If we say that we incur an obligation whenever we accept the benefits of a just, mutually advantageous, cooperative enterprise, Nozick argues, we are saying that others can foist obligations on us. For this implies that others can place us under an obligation simply by conferring benefits on us without our consent - by throwing books in our yards, for example. But we do not ordinarily have an obligation to one who, without asking us to reciprocate in some way, confers a benefit upon us. "You may not decide to give me something... and then grab money from me to pay for it, even if I have nothing better to spend the money on."<sup>20</sup>

Nozick's point here is surely correct, but his example is beside the point. The principle of fairness does not require us to reciprocate whenever someone does something which is to our benefit; it refers only to the benefits of just, mutually advantageous, cooperative practices. But Nozick sees the same problem arising within such practices. In some cases one may avoid the obligation to reciprocate by refusing to accept the benefits of the cooperative enterprise in question. Those who never listen to a radio station which is supported by contributions for example, normally have no obligation to help underwrite its costs. But in other cases it may be practically impossible to avoid the benefits of a cooperative enterprise. Nozick offers this example: "If each day a different person on your street sweeps the street, must you do so when your time comes?"<sup>21</sup> If you have agreed at some point to wield the broom, the answer is easy. But what if those who organized the street-sweeping enterprise never consulted you, but merely appeared one day to say, "We've been taking turns cleaning the street, and next Thursday is your turn."? This certainly is a difficult case for the principle of fairness. One may say, "I don't care that much for clean streets. If the rest of you want to spend your time sweeping, fine, but don't expect me to help." But if we agree that a clean street is to some extent beneficial to everyone who lives in it, then it looks as if there is no way to decline the benefits. It seems, consequently, that in this case, at least, some can foist obligations on others.

Nozick considers one possible escape from this bind: to stipulate that the benefits one receives from the actions of others must outweigh the

costs of doing one's share. Thus if the costs of taking a turn as sweeper are greater than the benefits of a clean street, then the practice is not mutually advantageous and one is not under an obligation to take a turn. This seems to relieve us of the problem of having obligations thrust upon us against our wills. But this condition is very strong, and it raises another difficulty: it narrows considerably the range of application of the principle of fairness. For if I have an obligation to do my part in a cooperative practice only when the benefits of that practice outweigh the costs of participation, then I must value these benefits more than anything else I could achieve with the time and resources I expend in doing my share. I would only be under an obligation to take my turn with the broom, for example, if the benefits of a clean street were greater than any other benefits I could gain by using the same time and energy otherwise.

Nozick argues that even if this strong condition is met by some practices, the principle of fairness is still not satisfactory. What if you are a cooperative member of an enterprise whose benefits to you are greater than your costs, but the enterprise does not benefit you as much as it would if some changes were made? One way of drawing attention to this alternative if the others ignore it is to withhold your cooperation. But the principle of fairness requires you to do your part so long as the enterprise is just and mutually advantageous. Thus one must support an enterprise even when he wishes to change it and his support makes it harder to change. This also holds true, according to the principle of fairness, if the benefits of the enterprise are uneven - if, i.e., some may benefit greatly while others only benefit enough to make their contributions worthwhile. In such a case do we want to say that everyone is obliged to do an equal amount to sustain the enterprise?

These are powerful arguments and cannot be refuted, but the principle of fairness can accommodate some of them - at least when applied to questions of civil obligation. First, it is likely, if not necessarily true, that the benefits of living in a just state outweigh the costs of obeying its laws, even in the strong sense stipulated by Nozick. The benefits a just state provides its citizens will be greater than any benefits they could obtain by disobeying the laws and refusing to pay their taxes. Secondly, the principle of fairness does not absolutely prohibit an individual from withholding his cooperation in an attempt to convince others that

a cooperative practice can be improved. The principle of fairness states that an individual has an obligation to do his part when others have done and are doing theirs; but this is not to say that this obligation cannot be overridden. It is possible, for instance, that a particular law in a just state may be disadvantageous to some citizens. The state as a whole meets the conditions of the principle of fairness, but in one aspect it is unjust. In this case we may say that the disadvantaged citizens may or *ought* to disobey this law even though they have a civil obligation to obey the system of laws of the state.

Even if the principle of fairness can be spelled out and applied in a way which accommodates Nozick's objections it will still come under fire from another direction: the utilitarians. If the principle is strictly adhered to, they contend, it will lead to cases where individuals are required to obey the rules even though better consequences can be secured by breaking them. To appreciate the force of this objection we must re-examine the examples used to illustrate the principle of fairness. The bridge club is small, and the failure of one member to accept his share of responsibility poses a direct, perceptible threat to the success of the venture. But this is only because the group is small and each member's contribution is significant. In larger groups, where each member is likely to know only a minute fraction of the total membership, the contribution of most members is by itself insignificant. Since civil societies typically resemble large groups more than small, we must beware of drawing conclusions about civil obligation from examples such as the bridge club.<sup>22</sup>

Consider, then, a different example. Adams is a citizen of a large, just state, and he earns an average income. In this state the amount of money the average person pays in taxes, while highly significant to him, is insignificant when compared to total government revenues. Adam's contribution has no visible effect on any government policy or programme. Suppose also that Adams loves to drink fine wine and would much rather buy wine than pay taxes. Given these considerations, should Adams pay his taxes? If he does no one will be appreciably better off than if he does not, and if he buys wine instead then at least he will be markedly happier. If better consequences are achieved by buying wine, why should Adams pay his taxes?

One answer often given is that individuals cannot be allowed to calculate utility when collective enterprises are at stake. For if everybody did as Adams does, no taxes would be paid and the state would collapse. But this argument will not sway an act-utilitarian. It may be good enough when the group is small, but the situation changes remarkably when the group is large. If no one discovers that Adams has decided to spend his tax money on wine, he will not be setting a bad example. And Adams will not broadcast his decision because he does not want others to emulate him - at least not *too many* others - for then he would no longer receive the benefits of the collective enterprise. So Adams surreptitiously buys wine, secure in the knowledge that most people will continue to pay their taxes and the government will remain stable. Should Adams be condemned for failing to fulfil his obligation?

The example can be put in terms even more favourable to the utilitarian position: suppose that Adams is altruistic; he will not buy wine but give money to a desperately needy person. Say that Adams' tax assessment is \$1500. There is no doubt that in most cases a needy person would benefit more from \$1500 if Adams gives it to him rather than to the government. In this case do we want to say - as the principle of fairness requires - that Adams has an obligation to pay taxes? Or is it not better to abandon the principle of fairness?

A proponent of the principle of fairness can respond to the utilitarian's objection in either of two ways, depending upon whether the objection is interpreted in a weak or strong sense. A weak sense is one which holds that we do have an obligation to do our part in a collective enterprise when others are doing their share, but which also holds that this obligation *can be* overridden by utilitarian considerations. When it is stated in this way, however, the objection is not an objection at all. This is due to the distinction between 'obligation' and 'ought'. One who takes part in and accepts the benefits of a cooperative venture undertakes a *prima facie* obligation to obey the rules and shoulder his share of the burden. But it would be foolish to pretend that an obligation can never be overridden. We do not condemn one for breaking speed limits rushing an injured person to hospital. It ought also to be noted that 'overriding' considerations are sometimes incorporated into the law as exemptions. The right of taxpayers to deduct donations to charities is a good example of this provision for

exceptions within the law.

The problem is more difficult, though, if the utilitarian objection is taken in the strong sense. On this interpretation there is not even a *prima facie* obligation to obey the laws or observe rules. When we must decide whether to do our part in a collective enterprise, our sole guideline should be the principle of utility: take that action which will produce the best consequences. If Adams has reason to believe that he can produce better consequences by buying wine than by paying his taxes, then he ought to buy wine. If, conversely, he has reason to believe that his failure to pay taxes will actually play a significant part in the downfall of the government - an outcome he does not desire - then he ought to pay his taxes. Whatever the decision may be, the reasoning is the same.

What can be said in response to this strong sense of the utilitarian objection? The simplest answer is to say, "But that is not fair". It is not fair for Adams, that is, to expect others to abide by rules when he does not. But why is it not fair? Adams' action does not endanger the collective enterprise - this is part of his calculation. The reason why it is unfair is that there is nothing special about Adams' case. All members of a just state can undoubtedly find something which, *qua* individuals, they would prefer spending their money on to paying their taxes. But unless extenuating circumstances arise, none of them has the right to disobey the law simply to increase his personal pleasure. Adams expects his fellow citizens to continue to pay their taxes: he wants them to - or at least enough of them to keep the government in working order. But he also wants to make an exception in his own case. Since he had no justification for doing so which does not also apply to everyone else, he has no *right* to do so. He has no right to make an exception in his own case because *as a citizen* of a just state he has undertaken an obligation to do his part. If Adams shrugs off this obligation, he takes unfair advantage of those upon whom he depends. This is *not* to imply that consequences should not be taken into account. Rawls has said that a moral theory which shuts out the consideration of consequences is crazy, and we would add that it is dangerous.<sup>23</sup> But the point we wish to make here is that the principle of fairness helps us to see what we are under an obligation to do and, hence, what we ought to do *ceteris paribus*. All things are not always equal, however, and it may be that our altruistic Adams ought, *all things*



*considered*, to give his money to the needy person rather than to the tax collector. But this is not to say that Adams does not have an obligation to pay his taxes, or that he is not under an obligation to obey the laws of the state: it is only to say that in this case these obligations may be overridden (by other reasonable claims on conduct which are not themselves obligations).

What can be said, in summary, about the adequacy of the principle of fairness? We must recognize, first, that the principle is open to serious objections. Whether these objections are crippling is an open question, but the burden of proof is clearly on the advocates of the principle. Even if these objections do not undermine the principle of fairness, secondly, they do restrict its scope to practices where the benefits provided outweigh the costs of participating. As Nozick has shown, this is a very strong condition. Finally, we have seen that the principle does not answer all our questions about what we ought to do even in those cases where it may apply. In other words, claims based on the principle of fairness must be advanced cautiously and conditionally, on one hand, and with an awareness of the need for further investigation of this principle, on the other. The 'social contract' cannot establish by itself a civil obligation. It may furnish the basis for doing so - a conception of the just state - but something like the principle of fairness is needed to forge the link between citizenship and civil obligation.

In *Part One* it was argued that a civil obligation can be attributed to a person only when two conditions are met: when he is (1) a citizen of (2) a just state. But these conditions are purely formal and they have little practical value until they are given content. What is a citizen? What is a just state? In the last four sections we have tried to show how the theory of the social contract helps us to answer these questions. Contract theory provides us with acceptable conceptions of citizenship and the just state, we have claimed, and this means that it affords the basis of a satisfactory theory of civil obligation.

However, we have not claimed that contract theory offers the only or even the best answer to questions of civil obligation. Such a claim could only be sustained after a detailed examination of the merits of rival approaches. However, the one virtue of contract theory which indicates

its superiority is that contract theory not only provides conceptions of citizenship and the just state, it also supplies a procedure for developing and defending them. It is this *procedure*, we have argued, which satisfies both moral and prudential considerations and demonstrates the acceptability of the contractarian conceptions of citizenship and the just state.

## V

Criticism and Defense

Criticisms of contract theory have typically concentrated on its use (or abuse) of the concept of consent. Many of these criticisms were first voiced in David Hume's essay, "Of the Original Contract".<sup>24</sup> Others are of more recent vintage.<sup>25</sup> But the point of the criticisms is basically the same: the social contract is a misleading metaphor insofar as it portrays consent as the only possible foundation for political authority.

One fundamental criticism of contract theory focuses on its historical nature. Even if we grant for the sake of argument that sometime, somewhere some group of people did expressly enter into a social contract, the critics say, what has this to do with our situation here and now? The composition and character of governments and states change so often that current institutions probably bear little resemblance to those founded by the original contract. Moreover, what difference does it make to us whether our distant ancestors agreed to establish and obey a political authority? They may have given their consent, but they had neither the power nor the right to give ours. We may incur obligations through consent, but only through our own.

A related criticism points out that if obligation is derived from consent, then most people have no obligation to obey the laws. For so long as 'consent' is taken to mean *express* consent, then it is clear that only those who somehow directly pledge their allegiance are under an obligation to obey the laws. This is an undesirable result, of course, for the purpose of 'contract' theorists - at least Hobbes and Locke - was to show that the general populace was under a civil obligation.

The contractarians were not ignorant of these difficulties; but so long as they pinned their hopes on consent their only recourse was to loosen the concept.<sup>26</sup> Thus, express gave way to tacit consent. This promised a solution to both of the criticisms already stated because it allowed for each new generation to renew the original contract - append their signatures, so to speak - by tacitly consenting, on the one hand, and for the obligation to obey the law to be extended to the general populace, on the other.

But stretching the notion of consent only left contract theory vulnerable to other objections. The idea of tacit consent is not far-fetched, and it has its uses in certain contexts. But what is to be taken as a sign of tacit consent to obey the laws of a state? For Hobbes, such consent was given by anyone who was protected - and the degree of protection required seems minimal - by a sovereign authority. For Locke, tacit consent "reaches as far as the very being of any one within the territories of (a) government". In both cases the notion of consent is robbed of its meaning. For if mere presence in a country is an acceptable sign of consent, then no one ever lived who was not under an obligation to obey the laws of the state in which he found himself.

Locke hit upon a theoretical solution to this problem. While one's presence in a country was a sign of tacit consent to its laws, he said, one could withdraw this tacit consent by leaving the country. This emigration-in-protest solution, however, is utterly unsatisfactory, since emigration may be made both legally and physically impossible. And even where one is free to leave whenever he chooses, practical considerations render Locke's solution meaningless.

Another solution that has been suggested attempts to restrict the range of tacit consent more carefully than Hobbes and Locke did.<sup>27</sup> According to this view an overt act of participation in the political process, such as voting, can be construed as tacit consent to obey the laws. By taking a part in this process, the argument goes, the citizen indicates that it meets with his approval. This revision of the notion of tacit consent has its merits, but it too is open to serious objections. What are we to make of the person who votes for losing candidates? If no one he supports wins office, can we still say that he has consented to obey the

government? What, furthermore, is the status of the non-voter? Is he under no obligation to obey the laws? This seems to be the only possible conclusion, yet it is hardly satisfactory. In the United States, for instance, it would mean that forty per cent or so of eligible voters who do not even vote in presidential elections would have no obligation to obey the laws. This clearly is not the outcome the contract theorist desires.

We find, then, that the contract *qua* consent theorist is on the horns of a dilemma. If he relies on express consent, his theory shows that only a few people have undertaken an obligation to obey the laws. And if he invokes tacit consent, his theory either imposes consent on everyone or encounters other crippling difficulties. The only way to escape the dilemma is to abandon the idea that we incur an obligation to obey the laws only when we somehow consent to do so. This is precisely what Rousseau and Rawls do. Consent still plays an important role in their theories, to be sure, but it is not consent to obey the laws. As they use it, consent is hypothetical, and its purpose is to elicit the terms of the social contract: to draw out a conception of the kind of state to which we would rationally give our consent if we had the chance. Whether we have a civil obligation depends upon the closeness of the fit between the actual state and the conception of the just state. Whatever the result may be, Rousseau and Rawls have avoided the dilemma. The logic of the social contract does not require that civil obligation be founded directly on consent.

There is a different kind of attack on contract theory which also must be considered, and it is not so easily avoided. This position has been set out by J.F.M. Hunter in an essay on "The Logic of Social Contracts".<sup>28</sup> Hunter recognizes that some contractarians do not invest all their philosophical capital in the equation of consent with the tie that binds. In some cases, he says,

"the idea of a social contract may be used as a kind of political calculus, by asking such questions as what it would anyway be reasonable to suppose that people might agree to in making a social contract, or what it is logically possible or impossible to do in such contract situations."<sup>29</sup>

Hunter is primarily concerned in this regard with some of Locke's arguments. Nonetheless, his sketch does resemble the position we have

attributed to Rousseau and Rawls, and his attack is consequently a stiffer challenge than the more common criticisms of consensual contract theory.

Hunter lodges two related objections against the idea of a social contract as "a kind of political calculus". He claims, to begin with, that the reasons one has for entering into a contract are largely irrelevant to the contract itself: "It is not what one wanted to secure for oneself in a deal which one can be held to, but what one has agreed to."<sup>30</sup> Now this objection has itself two aspects. Hunter is contending, it seems, that (1) hypothetical agreements are not actually binding: no one is bound by an agreement into which he might have entered if he did not actually enter it, and (2) the reasons one has for entering into a contract do not determine the terms of the contract. We are bound by the contract we actually 'sign', not by any hypothetical agreement we would have concluded had we the chance. The reasons we had for signing the contract, moreover, do not specify its terms, for there are often concessions to be made and compromises to be reached before the contract is finally signed. The idea of a social contract cannot provide a binding political calculus, consequently, because it leads only to a hypothetical agreement which has no bearing on our actual circumstances.

Hunter is right on both counts; but he also misses the point. The purpose of the social contract is to help us discover a conception of the just state, a state to whose authority we would or could consent. As such the social contract is an analytical device - "a kind of political calculus" - and it is not meant to have any obligatory force in itself.

This is not to say that the contractarian method is committed to the analogy found in intuitionist moral theory of the *ideal observer*: the notional arbitrator in matters of ethical judgement whose notional opinion is valued because it is assumed to be informed, impartial and dispassionate. The contractarian does not so much contrast 'ideal observers', or *citizens*, with real observers but, rather, uses the ideal conception to understand the conditions under which an ordinary person's judgements about moral matters are authoritative. Properly (employing the jurisprudential inflexion of the contract metaphor) contractarianism utilizes the analogy of *judicial reasoning*, where the paradigmatic arbitrator is not an ideal observer but a *good judge* - one who relies upon *standards of rational*

*justification*. A standard of rational justification, as defined by Thomas Perry, is an

"objective standard directing us to use reasons and arguments of a kind which are in fact well calculated to secure the reasonable agreement of others to our own reasonable moral judgment, or at least to secure their respect for us in reasonably making that judgment.... To give reasons and arguments of that kind for that purpose *is* to justify one's moral judgment... even though the truth or probably truth or moral statements cannot be established in this way, or perhaps in any way."<sup>31</sup>

The judicial analogy illustrates most forcefully the Kantian modulation of the contractarian method - the rational will addressed to matters of judgment. While nascent in Rousseau (perhaps even adolescent) and richly developed in Kant's (non-contractarian) deontology, the judicial analogy is present as a mature synecdoche in Rawls - a stylized microcosmic representation of the liberal theory of moral reasoning. It can readily be seen "that many familiar requirements of the good judge and good judicial work are closely similar if not identical to the requirements of moral reasonableness"<sup>32</sup> outlined in *A Theory of Justice* as the groundwork of the original position. The reflective citizen, then, in forming and criticizing public decisions assumes the role of the 'good judge' which, as outlined by Perry, exhibits the following features:

"First of all, a judge must carefully study the case before him, taking note of the precedents and statutes and legal principles which have been cited to him, and any other relevant standards which his study may disclose; and of course he must be attentive to all the facts of the case which may have legal significance. This is obviously similar to the requirement that we be reasonably well informed of relevant facts and plausible moral principles when making moral judgments. Second, a judge must be impartial; his decision must be one that he would be willing to render no matter who the parties to the case were, as long as the legally relevant facts remained the same. Third, a judge is supposed to disqualify himself from sitting in a case where his personal interests are involved. And in deciding other cases, he must not give special weight to the interests of his own socio-economic or professional class, or to his own racial or religious group, and so on. Now it is true that in morals we cannot avoid judging matters in which our own interests are involved, but if our judgment is to be universalizable we must give no greater weight or importance to them than if they were someone else's interests. A fourth requirement of the legal judge is that he be sincerely ratio-

nal. That is, he is not free to reach any result he pleases as long as he can give plausible reasons; he must give the judgment which he honestly thinks is best, and the reasons which he honestly thinks are strongest. This is obviously similar to the requirement that we defend only those moral judgments which we have reached in reasonable reflection, and that we use only those arguments from facts and relevant moral principles which we have ourselves found convincing."<sup>33</sup>

The exercise of autonomous moral reflection, then, is neither a totally fanciful nor impractical approach to matters of judgment; indeed, it is in many respects the basic notion underpinning our conception of rational judgement, how we actually come to determine what is fair and just. The autonomous moral judge who remains in doubt on some issue even after careful reflection may ask 'where is there a correct answer to be found?' Yet, as Perry reminds us, "Clearly, there is nowhere he can turn; there is no external authority, even in theory. He must make up his own mind as best he can."<sup>34</sup>

Hunter's distinction between the reasons for entering into a contract and its terms is also irrelevant. The social contract is not a hypothetical agreement which any one person would like to reach with others; it is a hypothetical agreement between all the members of a society. Because each is to choose for all, it is to be an agreement which everyone could confidently sign. And this means that concessions and compromises are incorporated into the contractual model. Neither aspect of Hunter's first objection, then, strikes a fatal blow to contract theory.

What of the second objection? It too is concerned with the problem of deriving the terms of the social contract from the reasons and motives of the parties to it. Even if we grant that the reasons for entering a contract do determine its content, Hunter argues, we still have no way of knowing ahead of time what these reasons are. "It is not easy to see how we could say *a priori* what the motives of the parties to a social contract *must* be."<sup>35</sup> Different persons have different motives and goals, and what one will agree to may be completely unacceptable to another. Where one man may hold out for a state which offers absolute protection, to use Hunter's example, another may be ready to run certain risks of death as long as other risks are minimized. Given this diversity, we must conclude that we cannot specify *a priori* the terms that any group will agree to - or whether

they will arrive at an agreement at all.

How powerful is this objection? As Hunter points out, we cannot use the idea of a social contract to predict or define the clauses of any actual social contract. If the people of Newcastle, England and Newcastle, New South Wales, say, were each required to draw up social contracts, the finished products would be similar in some respects and quite different in others. In any case, the idea of a social contract could not tell us what terms (if any) either group of Novacastrians would agree upon unless we knew their motives and goals and ascribed them to the parties of the hypothetical contract - and if we had this information, we would have no need for the hypothetical contract. But here again Hunter's objection is beside the point; or at least the point of contract theory as we understand it. The proper question is not, "Can the idea of a social contract delineate the terms of association that people will actually consent to?". It is, instead, "Can the idea of a social contract help us to delineate the terms of association to which we ought to consent?". Rousseau and Rawls are well aware of the difficulties involved in bringing actual persons together in a social contract, and they require us to assume an abstract identity - as a citizen, behind the veil of ignorance - precisely for this reason. From this perspective we can develop a conception of the just state: a state to whose authority all can consent even though, in the real world, some would not. And insofar as the point of contract theory is to develop a conception of a state to which we ought to consent, Hunter again is wide of the mark. The problem with so many authors is that they adhere to a purely performative view of consent, such that consent does not involve for them anything in the nature of judgement (other than, say, the decision to consent). They cannot make sense of the idea that one ought to consent to X even if one in fact has not consented to X and will not do so; and, if consenting is seen as just a bare human act, then the idea that some situations call for it and others do not can't be understood. So, actual consent is demanded not so much because it generates obligations, but because it is assumed that *reasonable* and *actual* consent run together. According to the tenets of legal positivism, then, the law demands actual consent before it will acknowledge a contract because the law will not speculate about hypothetical agreements. But this is precisely where legal and moral judgements differ. Moral demands are ones to which we morally ought consent, whether or not we have actually done so.



Contract theory, in sum, is more defensible than usually thought; at least when it is interpreted along the lines suggested in this thesis. But contract theory also has its limitations, and when these go unnoticed the contractarian may open himself to some of the criticisms we have just rejected. Let us see what is beyond the reach of the contract theorist, and perhaps we will better understand what is within his grasp.

## VI

The Limits of the Social Contract

The criticisms considered above were dismissed mainly because they do not apply to contract theory as we, following Rousseau and Rawls, have interpreted it. Since these criticisms have plagued contractarians for centuries, in some cases, one may suspect that the version of contract theory presented here is in some ways narrower than other, more common versions. This suspicion is well founded. For in appealing to the logic of the social contract we are suggesting that contract theory is adequate for some purposes and inadequate for others. Despite the views of Hobbes and Locke, for example, contract theory alone cannot determine for us whether we ought to obey or disobey the laws. Contract theory can certainly help us here, but it is not itself sufficient. In this section, however, it will be shown how contract theory is limited in another respect - namely, it cannot solve Hobbes' problem.

Hobbes' problem, briefly, is this: how and why would free, rational, and self-interested agents form any organized society at all? Unlike Rawls, who presupposes the existence of civil society, Hobbes uses the social contract to *generate* the political association. The social contract is what brings men out of the state of nature, subjects them to political authority and ends the war of all against all. Once men recognize that they stand to gain from the surrender of the natural liberty, Hobbes reasons, they will simultaneously agree to the social contract and authorize a sovereign to enforce it. The reason why free, rational, and self-interested men form an organized society, in short, is that it is preferable to the state of nature, where the life of man is "solitary, poor, nasty, brutish, and short".

Unfortunately for Hobbes, his explanation does not withstand critical examination; hence the term, Hobbes' problem. For if men in the state of nature are free, rational, and self-interested, as Hobbes says they are, then it is unreasonable to suppose that they all would sign the social contract. Life in Hobbes' state of nature is precarious at best; everyone feels free to pursue his own advantage at the expense of others. Some may be better off than others, of course, but no one is secure: "the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others...."<sup>36</sup> Everyone, consequently, would prefer to live securely in civil society. Nonetheless, they cannot create civil society by means of a social contract. The reason for this is that the ideal situation for any one person is to be, as Thrasymachus would have it, the only agent who does not abide by the terms of the social contract.<sup>37</sup> This situation benefits the "false contractor" in two ways: he is no longer threatened by the others, on the one hand, and he finds them easier prey, on the other. The social contract promises the most desirable outcome, as it happens, for the person who violates its terms, while it is even worse than the state of nature for those who do not. For, while they abide by the contract, they renounce opportunities to take advantage of other agents and lay aside (perhaps out of reach) the means of self-defense which they had in the state of nature.

In the terms of game theory, Hobbes' problem is known as an n-person prisoners' dilemma.<sup>38</sup> The original prisoners' dilemma, which involves only two parties, takes the following form. Jones and Smith are charged with robbing a bank, although the evidence against them is not strong enough to warrant a conviction. The Crown prosecutor tells both prisoners that he will come to each separately and ask him to confess. If both confess, both will be prosecuted, but the prosecutor will recommend six year sentences rather than the usual ten. If neither confesses, they will be tried for illegal possession of weapons - an open and shut case - and be imprisoned for two years. But if one confesses and the other does not, the confessor will be let off with a one year sentence and the non-confessor will receive the full punishment of ten years. The prisoners' alternatives are summarized in the following choice matrix, with the first number in each square representing the consequences for Jones, the second for Smith.

		<u>Smith</u>	
		not confess	confess
<u>Jones</u>	not confess	2, 2	10, 1
		a	b
		d	c
	confess	1, 10	6, 6

Quite obviously, Jones and Smith are in a bind. If they are rational, self-interested agents, the sensible strategy is to confess. For although they will be better off if neither confesses than if both confess, neither can trust the other not to confess. Whatever Jones assumes about Smith's behaviour, and vice versa, it is always in his interests to confess. The theoretical upshot of this is that in cases like the prisoners' dilemma, acting rationally from an individualistic viewpoint produces a relatively worse overall result. In this particular case, Jones and Smith get six years instead of two - clearly a relatively worse overall result.

In the case of Hobbes' problem each individual in the state of nature considers himself to be one agent set against all others, and he must decide whether he is to cooperate by signing and respecting the terms of the social contract. This calculus is set out in the following matrix, with preference orderings taking the place of years in prison.

		<u>Others</u>	
		cooperate	not cooperate
<u>Self</u>	cooperate	2	4
		a	b
		d	c
	not cooperate	1	3

Here cell *c* - non-cooperation by everyone - is the state of nature and cell *a* is total cooperation in civil society. While *a* is preferable to *c*, however, everyone clearly prefers cell *d* over all. In the situation represented by *d* all but one person cooperate, and the lone non-cooperator is in the best position to take advantage of the others. The least desirable outcome, conversely, is cell *b*, where only one person cooperates. Here the cooperator is even worse off than in the state of nature: not only are his efforts to establish civil society wasted, but he also relinquishes the means of self-defense he had in the state of nature.

Hobbes' problem is a prisoners' dilemma because free, rational and self-interested men will not obtain through their choices the best *overall* result, which is cell *a* - where everyone signs and respects the social contract. The rational course for any individual is non-cooperation. This will either bring about the most desirable result for the agent (cell *d*) or it will leave him where he already is - the state of nature (cell *c*). So long as the individual cannot trust the others to cooperate, it is not rational for him to cooperate. And while this lack of trust persists, the men in the state of nature cannot possibly remove themselves from it by means of a social contract. Hobbes' problem cannot be solved by the social contract.

This may seem to be too quick an assessment of the situation. Hobbes' problem may seem especially intractable because of Hobbes' harsh view of human nature and the state of nature. What happens if these views are altered, so that the state of nature is a peaceful state of non-cooperation rather than a war of all against all? Such a move may reduce the stakes somewhat, but it does not change the outcome. Even with these more charitable conditions, the choice matrix remains the same. Everyone still most prefers a situation in which he is the only non-cooperator. For though no one endangers his life or possessions by signing and abiding by the social contract, everyone who cooperates bears a burden that can be shirked at little or no cost. A self-interested rational actor will not accept this burden when he has an opportunity to enjoy the fruits of the enterprise at no cost.

This is because the social contract is a *public* or *collective* good. Public goods are characterized by jointness of supply and non-excludabil-

ity, which is to say that if they are provided for any members of a specific group, they are provided for the whole group. Common examples of public goods include clean air, public parks, national defense. How is it that the social contract is a public good? It is a good, in the first place, because everyone acknowledges that it is better than the Hobbesian state of nature. It is a public good, secondly, because the benefits of cooperation are indivisible and non-excludable. If the social contract goes into force, for example, a system of rules is promulgated and defense against invasion is provided. But every member of the group is able to take advantage of these benefits whether he cooperates or not. Even the person who breaks the rules upon occasion is benefitted by a system of rules, just as a thief wants his property protected from theft. Thus the social contract is a public good.

The problem is that in a large group, as most societies are, the contribution of any individual to the provision of the public good is insignificant. Indeed, the public good will normally be provided for all even when some members of the group make no contribution at all. Here again our lover of fine wines, Adams, offers a helpful illustration. Adams realizes that his cooperation - paying taxes - is an insignificant contribution to the maintenance of the state in which he lives. If enough others cooperate the public good will be provided no matter what he does and he may continue to enjoy it even if he buys wine with his tax money. The sensible strategy for Adams to pursue, consequently, is non-cooperation. This remains true, furthermore, even when Adams believes that the public good will not be available due to insufficient cooperation. Should this circumstance arise, Adams would still find noncooperation to be the rational strategy because his contribution is not large enough to make a difference by itself. Rather than waste his own resources by cooperating when cooperation serves no purpose, Adams will withhold his contribution. No matter what others do or are likely to do, in sum, Adams will reason that he should not cooperate. This reasoning once more dooms the social contract. For when each rational, self-interested agent realizes that he has most to gain through non-cooperation and most to lose through cooperation, the preference matrix again assumes the form of the prisoners' dilemma.

		<u>Others</u>	
		cooperate	not cooperate
<u>Self</u>	cooperate	2	4
	not cooperate	1	3

a	b
d	c

Cell *c* remains dominant. Thus Hobbes' problem continues to be a problem for those like Locke, who (sometimes, at least) conceives of the state of nature as considerably more benign than Hobbes allows. In the end, it is clear that the social contract cannot solve Hobbes' problem unless certain crucial assumptions are dropped - that the agents are self-interested - or added - that they are untrustworthy. To take either of these courses, however, is to beg the question, for if we assume that men are not self-interested or that they are trustworthy, we are fundamentally altering Hobbes' problem.<sup>39</sup>

It should also be noted that in this regard the principle of fairness is of no assistance. Considerations of fairness only arise within ongoing institutions or practices; they are of no use when we are trying to generate new ones.<sup>40</sup> We may be able to persuade Don to obey the rules of cricket, for example, by showing him that he is not playing fairly. But we cannot normally accuse him of unfairness if he simply refuses to join in the game. This accusation can only be made when there are special circumstances. Perhaps Norm, Doug and I have played cricket with Don when we would have preferred to do other things. Now that we want to play and Don has something he would rather do, we may say to him, "Turnabout is fair play". But in this situation there is an ongoing system of cooperation, albeit ill-defined, which warrants the appeal to fairness. In the case of Hobbes' problem, though, there is no such system - there has been no cooperation at all - and fairness has no role to play.

The logic of the social contract presupposes the existence of organized society. If this society does exist, then contract theory can help us to distinguish between its various forms so that we may discover whether

our society is just or unjust. Knowing this, we may go on to determine with the aid of the principle of fairness, whether we are under an obligation to obey its laws. But contract theory can explain neither how the state came into being nor how we could create a new one *ex nihilo*. In this sense, at least, the social contract is more limited than some contractarians have thought.

## VII

### Obligation, Obedience and the Social Contract

We have already alluded to another limitation of the social contract: it cannot give us clear and absolute answers to all our questions about obedience to the law. Some 'contract' theorists, Hobbes and Locke among them, have written as if the social contract answered once and for all every one of the multifarious questions about civil obligation and obedience. If you have (tacitly) consented to the social contract, they argue, then you are morally bound to obey the laws of the civil society in which you live; if you have not, you need not do so. The utter simplicity of this view has been largely responsible for the criticism which contract theory has suffered. What is to be taken as a sign of consent? Does consent to the social contract place us under an obligation to obey the authorities no matter what they do? Or does it imply certain limits on authority? What might these limits be? To whom does our consent bind us? Can the sovereign violate the contract? These and other questions indicate the perplexities that result from taking contract *qua* consent theory to be the answer to all the problems involving obedience to the law.

We must recognize that the theory of the social contract cannot tell us what we ought to do in each and every case. But in this respect it is like other theories. What has been traditionally identified as the problem of civil obligation - Why should I obey the law? - is, as Hanna Pitkin shows, a cluster of related questions. Despite their relatedness, however, they are different questions, and it is too much to expect one theory to provide a straightforward and satisfactory answer to all of them.

The kernel of truth in the writings of those who question the very possibility of a general theory of civil obligation is that most questions of obedience to the law cannot be answered without undertaking a thorough examination of the circumstances involved. Should I refuse conscription? Should I perform an illegal abortion? Should I drive faster than the legal limit? Only the most ardent law-worshippers would even attempt to answer these questions without investigating the contexts in which they arise. For in any serious problem of this sort a number of factors must be considered. Any theory of civil obligation or obedience which tries to supply a formula for answering all these questions in abstraction is simply not doing justice to the complexities of life.

We have argued that a theory of civil obligation can be developed and that the social contract provides the basis for such a theory. But we have also tried to show that a theory of civil obligation is much more modest than has usually been thought. Such a theory can help us to see when we are under an obligation to obey the laws of a state; but this is not to say that when we know this we know all we need to know. If we know that the state is just and that we therefore have an obligation to obey its laws, we may still conscientiously decide that we ought not obey a specific law or laws in certain special circumstances. And if we know that the state is unjust and that we therefore have no obligation to obey its laws, we are likely to conclude in many cases that some of its laws ought still to be obeyed. Like all theories of civil obligation, the social contract helps us to learn whether we have an obligation to obey the laws. If we do, then we know that, *ceteris paribus*, we ought to obey them. This does not tell us everything, but it does tell us a great deal.

Problems of political ethics, like other moral problems, cannot be resolved by *a priori* theories. The man faced with a moral problem may look to a theory for guidance, but the theory cannot tell him, for example, if in his particular case all things are equal. The *ceteris paribus* clause means that theories are abstract and formal; if their strictures are to be put into effect, they must be filled out. This can only be done on a case by case basis. We have tried to show how the social contract can lend us guidance when we face what may be the foremost problem of political ethics. Contract theory may not answer every particular question for us, but it



does show us how to begin to answer them. This is not everything we can ask for, but it is all we can reasonably expect.

PART SIXNotes

1. Margaret Macdonald, "The Language of Political Theory", in A.F.N. Flew (ed), Logic and Language, First Series, Oxford, 1951, p.185
2. Ibid., p.191; also p.185. Macdonald's emphasis.
3. Ibid., p.191. Macdonald's emphasis.
4. Ibid., p.191
5. Note that Macdonald groups together the questions, "Why should I obey the Conscription Act?" and "Why should I oppose the present German Government?". Ibid., p.191. Both are sensible questions, but they are not, as Macdonald implies, at the same level. Note also that the second is neither a question of obedience nor of obligation.
6. This paragraph draws on Carole Pateman's article, "Political Obligation and Conceptual Analysis", in Political Studies, June, 1973, esp. pp 202-203 and 208.
7. J. Rawls, A Theory of Justice, Oxford, 1973, p.140. Rawls also cites here the relevant passage from Rousseau, Social Contract, II, V, p.29 (Cole, ed.).
8. Rousseau, Social Contract, I, vi
9. See Don Locke, "The Trivializability of Universability", in Philosophical Review, April, 1968
10. This example is adapted from R.M. Hare, Freedom and Reason, Oxford, 1965, ch.9
11. Rawls, A Theory of Justice, Op Cit, p.139
12. Ibid, §31
13. In this paragraph we follow Rawls, A Theory of Justice, §38. See also Lon Fuller, The Morality of Law, New Haven, 1964, ch.2
14. The right to worship or not as one pleases presents a problem, for Rousseau is well known as an advocate of "civil religion". In the last substantial chapter of the Social Contract Rousseau declares that all sects will be tolerated save those which themselves refuse to tolerate others. He also demands that all citizens profess faith in the following dogmas: "The existence of a mighty, intelligent, and beneficent Divinity,... the life to come, the happiness of the just, the punishment of the wicked, the sanctity of the social contract and the laws...." (IV,viii, p.139). Those who refuse to profess these dogmas are to be

banished; those who profess but show by their behaviour that they do not truly accept the dogmas are to be executed. The purpose, as Rousseau says, is to punish "not for impiety, but as an anti-social being incapable of truly loving the laws and justice...." (IV, viii, p.139)

But, clearly, this will not do. A conception of a just state includes the rules and principles which are to govern the state, not the ideas and beliefs of the citizenry. Rousseau demands the profession of faith because, apparently, he does not believe that the just state is safe in the hands of those who do not acknowledge his dogmas. Atheists, in short, cannot be trusted. However, this is a matter to be dealt with *after* the contractual conception of the state is settled. If an atheist breaks the law he is to be punished - but so too is the God-fearing criminal. If the intention is to punish those who violate the laws, in other words, there is neither cause nor need to punish them for their beliefs. c.f. A Theory of Justice, §33-35. Rawls also holds that the intolerant must be given a chance to modify their views. Failing modification, sanctions may be employed against them.

15. Hart, "Are There Any Natural Rights?", in A. Quinton (ed), Political Philosophy, Oxford, 1967, p.61. c.f. J. Rawls, "Justice as Fairness", § V, in R. Flathman (ed), Concepts in Social and Political Philosophy, New York, 1973, esp. p.413, and David Lyons, Forms and Limits of Utilitarianism, Oxford, 1965, ch.5, esp. pp 190-191
16. Lyons, Forms and Limits of Utilitarianism, Op Cit, p.191. Lyons adds "useful" to Hart's description, and he also emphasises a point which Hart does not stress: that the practice must be *de facto*, already in effect.
17. See R. Nozick, Anarchy, State, and Utopia, New York, 1974, pp 90-95, and M.B.E. Smith, "Is There a Prima Facie Obligation to Obey the Law?" in Yale Law Journal, April, 1973
18. "A Plea for Excuses", in J. O. Urmson and G. J. Warnock (eds), Philosophical Papers, Oxford, 1970, p.191
19. Anarchy, State, and Utopia, Op Cit, pp 90-95
20. Ibid., p.95
21. Ibid., p.94
22. On the importance of size for the behaviour of groups and individuals within groups, see Mancur Olson, Jnr., The Logic of Collective Action, New York, 1971, esp. ch.2
23. A Theory of Justice, Op Cit, p.30
24. Reprinted in Ernest Barker (ed), Social Contract, Oxford, 1962
25. John Plamenatz, Consent, Freedom, and Political Obligation, second edition, Oxford, 1968, esp. ch.1 and the Postscript; and J.F.M. Hunter, "The Logic of Social Contracts", Dialogue, June, 1966

26. See Locke, Second Treatise, ch.8, "Of the Beginning of Political Societies"
27. See, for example, Plamenatz's Postscript to Consent, Freedom, and Political Obligation, Op Cit, and his chapter on Locke in Man and Society, London, 1963
28. Op Cit, Part Two, esp. pp 42-44
29. Ibid., p.37
30. Ibid., p.43
31. T. Perry, Moral Reasoning and Truth, Oxford, 1976
32. Ibid., p.85
33. Ibid., pp 85-86
34. Ibid., p.214
35. Hunter, Op Cit, p.43. Hunter's emphasis.
36. Leviathan, ch.13
37. See David Lewis, Convention, Cambridge, Mass. 1969, ch.3, §2
38. See J. H. Sobel, "The Need for Coercion", in J. R. Pennock and J. W. Chapman (eds), Nomos XIV: Coercion, Chicago, 1972
39. Sobel has shown that collective goods will sometimes not be provided even when the parties are benevolent and/or not at cross-purposes. See his "Farmer's Dilemma" and "Hunter's Dilemma" in Ibid.
40. For a fuller discussion on this point see D. Lyons, Forms and Limits of Utilitarianism, Op Cit, pp 165-166

## PART SEVEN

### CIVILITY AND ORDER

Essential to the classical idea of justice is a purportedly radical distinction between one general interest and a multiplicity of particular interests. Indeed, a similar dichotomy seems indispensable to both egalitarian and non-egalitarian versions of the idea. Such a distinction, however, stands and falls with two interrelated assumptions: (1) that society can be adequately grasped through the concept pair 'whole and part', and (2) that all fundamental human values are mutually compatible, can be woven together into a single political web. Reinterpreting the ancient concept of justice in order to make it plausible for modern societies, so it was argued in *Part Two*, we are compelled to abandon both of these assumptions.

Aristotle made *to koinē sympheron* the ultimate touchstone of a justly organised polis; the despotic city, in contrast, is ruled *pros to idion sympheron*.<sup>1</sup> Elaborating on what he took to be much the same dichotomy, Aquinas distinguished between the *bonum commune* fostered by a legitimate monarch and the *bonum proprium* pursued by tyrants and usurpers.<sup>2</sup> Machiavelli followed the same lead by opposing the *benefizio commune* to the selfish aims of rival *fazioni*.<sup>3</sup> Hobbes too (though in a quite anti-Aristotelian way) contrasted the "one Will" of the sovereign to the 'plurality of voices' which the sovereign thoroughly unites into one.<sup>4</sup> Rousseau, as we have discussed at great length, constructed his entire theory of legitimacy on a fundamental dichotomy between *une volonté particuliere* and *la volonté generale*. Finally, Hegel was likewise unswerving in his contrast between *Privatwohl* and *allgemeine Wohl des Staates*.<sup>5</sup> The decisive question of post-Hellenic political philosophy, so it would appear, is whether power and authority are exercised (well) for the sake of the harmonious political whole or (badly) for the sake of an uncoordinated individual part. Because of the constraints inherent in a whole/part schematization of society (affirmed, though in quite different ways, by all of the above) there seems to be no third alternative.

Closely allied to this idea of justice is the classical notion of freedom. Again following what they take to be Aristotle's lead, many modern philosophers have made freedom dependent on the 'integration' of the individual (part) into the political community (whole). In this case, too, there appears to be no third alternative between atomistic isolation and engulfment in the 'brotherhood' of the state.

The most disquieting aspect of this traditional discussion is the (not quite Aristotelian) suggestion that political arguments can only be rational so long as they appeal to an underlying unanimity. Only a *consensus omnium*, it is implied, can rationally 'ground' the social whole. If all values are harmonious, of course, there can be (in the final analysis) no justification for dissent or disagreement. Rousseau, in many ways bent on retrieving the seamless unity of Spartan life for modernity, claimed that society is unthinkable unless there exists a 'point' in which all particular interests are superseded: the general will. When considered in abstraction as a sophisticated rendering of the notion of 'citizenship', the general will functions as a powerful heuristic device; when conceived literally as the 'public interest' - a reification of the 'common good' - it serves as an instrument of tyranny. Arguments such as Rousseau's, we want to argue, when taken *literally* rather than metaphorically, aim at renewing the pre-modern nexus of unanimity, ontology and political justification discussed in *Part Two* and *Appendix Three*. Unfortunately, as societies become more and more differentiated, both the old idea of justice as an expression of 'the common good' and the old idea of freedom as the integration of an individual into a *political* brotherhood lose their original clarity. This seems inevitable, however, since modern *homonoia* (that which is 'shared' in a *Gesellschaft*) has become highly abstract. Whatever 'understanding' still underpins our public perceptions has lost most of its previous content. It offers little or no moral inspiration or human depth.

To be sure, all theories can be misused. Perhaps 'good' theories are even more vulnerable than 'bad' theories. Nonetheless, totalitarian misuse of the theory of the general will has been so persistent and widespread that it cannot altogether be dismissed as mere misfortune. Consider, as a telling example, Lukács' well-known essay on "Reification and the Consciousness of the Proletariat".<sup>6</sup> Society is a congeries of diverse perspectives, Lukács argues. Each individual perceives the total society from a particu-

lar vantage point due to his location in the cycle of production, distribution and consumption. But only the proletariat has an undistorted vision of the 'totality' of society, of what society is *really* like. This is because, given the perspective of historical materialism, the particular interests of the industrial working class are 'identical' with the general interests of the whole society. Moreover, and here comes an additional totalitarian plummet, Lukács does not attribute such redoubtable perceptiveness to the "empirical proletariat". These latter, he solemnly notes, may well be ensnared by bourgeois (particularistic) ideology. As a consequence, he ends up appealing to the "vanguard of the proletariat", that is to say, to Lenin's self-appointed and self-perpetuating party.

Lukács himself is only marginally important. The structure of his argument for "democratic centralism", on the other hand, appears paradigmatic for totalitarian misuses of the concept of the general will. Ultimately, his claims depend on the ancient beliefs that all human values are mutually compatible, and that it is possible to reach an exhaustive understanding of *die gesellschaftliche Totalität* from one point of view. Lukács emphatically believes that society is a closed totality or 'whole' which can be comprehended (like Aristotle's "easily surveyable" *Gemeinschaft*) from a single perspective. As a result, he also believes that the Party can produce a perfect society (one where all values are realised simultaneously) simply by 'universalizing' this one correct perspective. Faced with *de facto* differences of opinion, as a matter of fact, the apologist for totalitarianism knows exactly what to think; he resorts to what might be called a 'temporal serialization of *homonoia*'. We all agree, says he; it simply takes some of us longer than others to realize the fact. The Party has forged its way into the future; anyone disagreeing with the Party is surely lagging behind in the past. Ever since the *Republic*, a convenient way to justify the coercive manipulation of citizens has been the Platonic appeal to 'pedagogic sovereignty'. A principal target of Locke's *Second Treatise*, one recalls, is that "conceit of authority" which (elaborating on Plato's bad analogy) construes rulers as fathers and citizens as sons.<sup>7</sup> To disgruntled children, of course, a father or teacher can always say: "You will only understand tomorrow the reasons for what I am making you do today." Fathers and teachers, so it seems, are 'ahead' of children in time. There may be 'equality' in teaching, but there is no 'simultaneity'. Lukács, it appears, simply translates this pedagogic model (not

utterly implausible for a *Gemeinschaft*) into a justification for the totalitarian coordination of *Gesellschaft*. Such a model, as we said, allows him to 'immunize' his conviction that there is only *one* truth against the factual incongruities of a highly differentiated society. The 'true self' of a dissident always agrees with the Party; only his "empirical self", trapped in the past, has diverged. In a situation like this, in fact, it is almost the duty of a virtuous regime (as "midwife of the future") to grate away empirical incrustations and allow a man finally to express what he - and everyone else - truly believes.

The tyrannical implications of these arguments are quite unconcealed. But we might briefly explain the sense in which they are apophradic (or anachronistic). The Greek word for 'obey' (*peithesthai*) literally means "to be persuaded". *Political* obedience in a city-state was restricted to fully adult citizens, to men who could understand arguments and reasons *at the same time* as they are put forward. *Political* authority, as a consequence, was quite unlike the 'diachronic' authority of a father over his sons or a teacher over his students.

Implicit here is the idea, already encountered in Aristotle, that the polity can be structured and steered like a 'conversation'. The complexity of modern society makes this now unimaginable. Nonetheless, a tricky anachronism at the core of totalitarian thought can be spied in the idea that whenever a citizen 'obeys' (no matter what 'empirical' explanation there might be), he has *eo ipso* 'been persuaded'. Because the Party occupies the future while the dissident occupies the past, language is not an appropriate medium for such 'persuasion'. The only recourse is 'rational coercion', the corruption of what Rousseau calls forcing a man to be free. At the nadir of his entanglement in Fascism, Giovanni Gentile said that the blackjack is a spiritual force, and he too implied that by coercing a man it is possible to produce genuine conviction.<sup>8</sup> It is sometimes argued that statist violence and coercion only acquired public legitimation when the explicit goal of politics became 'efficiency'. And, in fact, since one cannot coerce a man to be rational, noble or virtuous, coercion has no significant place in the 'persuading' and 'being persuaded' of Aristotelian praxis. But one of the main characteristics of totalitarianism (and the one which concerns us most) is that it commits acts of violence and coercion on the basis of alleged 'moral legitimacy', not merely on the basis of



a (presumed) 'technical legitimacy'. What is doubly terrifying about the *apophradic* subordination of all spheres of life to politics is that a totalitarian regime (our paradigmatic *unjust* society) can now employ the efficient techniques of an advanced society to produce the ideological illusion of national unanimity and a homogeneity of *moral* perspectives. Equally frightening, the residual allurements of lost *Gemeinschaft* has made (and continues to make) many Western intellectuals perceive totalitarian integration as a *morally* attractive alternative to individualist-capitalist-bourgeois society.

As we explained in *Part Two*, the idea that a society is a political whole made out of individual parts has often been associated with the notion that some exceptionally worthy ('higher') part may be taken as 'representative' of the whole. Only a single religious, economic and political focus, it seems, was able to give early societies enough 'centralization' to make them 'hang together'. The unity of a religious world view, moreover, lent a background homogeneity and coherence to the cosmos which contributed substantially to group coordination and solidarity. With these characteristics of *Gemeinschaft* in mind, we have tried to argue, we can understand the sense in which totalitarianism exploits a widespread modern desire to 'turn back the clock'.

Our suggestion against totalitarians like Lukács, in other words, is that political rationality now depends on the recognition that no single perspective can be safely universalized. Society, we want to argue, is no longer *eusunoptos*. It has become something like a loose nexus of numerous subsystems and life-spaces; and a rational conceptualization of social justice and legitimacy depends on an explicit acknowledgement that no single point of view has a definitive primacy or any special relation to the old 'ontological' foundations. An adequate approach to modern society, it can be seen, demands the simultaneous appeal to a variety of non-harmonious values and uncoordinated system references. The historical obsolescence of the Aristotelian whole/part (or universal/particular) schematization of society can therefore shed light on why arguments originally employed for praising the 'moral polis' could be surreptitiously co-opted for the defense of, in J.S. Mill's phrase, the "moral police".<sup>9</sup> A party bureaucracy can claim a monopoly on truth *only if truth is conceived as monopolizable*, that is to say, as univocal and 'of a piece'. If a regime can

manage to 'identify society and polity' it need not recognize social interests with which it might have to compromise. In sum, if there is only one common good, one overarching and all-encompassing principle of right, then it is at least plausible for a single political group to corner and centralize the instruments of social control. In the intimacy of a pre-technological city-state, as Vico suggests,<sup>10</sup> a relative monopoly on truth and justice might have been a pragmatic justification (e.g., it might have been indispensable for the production of an economic surplus). In industrial and post-industrial societies, however, a good case can be made for the thesis that efficiency depends upon a large degree of decentralization; and, if this is so, then a centralized monopoly on truth can only be 'legitimated through some sort of *moral* appeal.

With regard to the limitations of the social contract, it is our contention that the contractarian metaphor can provide us with adequate criteria for ascertaining whether or not we live in a (near) just society and, consequently, aid us in determining whether or not, as citizens, we are under an obligation to obey the laws of the state. However, it is equally clear that the contract of itself cannot provide the blueprint for a 'moral polis', that is, a society to which we automatically have a civil obligation. Where the Rousseauan enterprise collapses is in its dream of *reform*, of regenerating *homonoia* and all that such a revival/revolution entails, in particular, the reification of a univocal perspective on a small homogeneous society of like-minded citizens. Where it stands is precisely on the ground of analytical abstraction, of modelling the disjunction between the just society and the totalitarian state. Paradoxically, it is left to the quasi-contractarian Locke to exploit the *Gesellschaftliche* implications of the contract metaphor, and to the 'hybrid' contractarian Rawls to bring together the strands of the notion as the foundation for a liberal (i.e. *Gesellschaftliche*) theory of justice. Insofar as even this most sophisticated rendering of contractarianism implies a theory of the 'moral development' of mankind, it too falls down. Ultimately, the contractarian metaphor can provide a solution to the problem of civil obligation only by elucidating the features of *de jure* civility and order; but it cannot fashion for us the *de facto* circumstances in which the problems of civility and order will evaporate. In other words, it cannot make us 'better' citizens of the 'best' state, but only more aware persons in more sensitive milieux.

In short, our aim in this *Part* is to explore the arguments for and against a kind of political rationality independent of the *apophradic* fiction of a univocal general will. Adapting a phrase from Kenneth Burke,<sup>11</sup> we will term this new sort of rationality 'perspective by incongruity'. A successful readjustment of the old ideas of justice and legitimacy, we have already suggested, depends on a theory of society complex enough to incorporate a plurality of uncoordinated system-references, none of which should be granted uncontested primacy. We want, in other words, to construct a theory of social morality without the aid of either (a) the idea of value-consensus or (b) the whole/part schematization of society. Fortunately, there is a 'second tradition' in Western political philosophy, beside the one which was mentioned at the beginning of this *Part*. This 'second tradition', in a vague and sporadic way, always repudiated the old dependence of legitimacy on social holism and on an easy compatibility of all human values. In the next section, we will indicate what we take to be the peculiar origin of a systematic association of political rationality with value incongruity. In the following sections, we will then turn briefly to a few of the ways in which Machiavelli, Hobbes and Rousseau each set out to combat incongruity for the sake of an 'integrated state'.

In section seven we will first say something about the relevance of de Tocqueville to our argument and will then go on to explain how the idea of life-space differentiation can be used to clarify the basic difference between Epictetus and Mill. Only the political thematization of complex social incongruity, we will argue, can make *Gleichschaltung* improbable and ensure the pursuit of numerous unharmonious and equally urgent values. Using Habermas as a point of reference for both Rousseau and Rawls, section eight will relate the problem of civil obligation - the contractarian strand of the thesis - to the problem of order - the Vichian strand - and discuss the decline of *consensus omnium* as, paradoxically, the concomitant of the rise of civility.

## I

The Collapse of Antiquity

The collapse of pagan antiquity was accompanied by a portentous innovation: the institutional split between *imperium* and *sacerdotium*. Behind this dualism, of course, lay the double heritage of Israel and Greece. Judaic culture, indeed, was characterised by a 'totalization' of religion analogous to the Hellenic 'totalization' of politics. Perhaps the most striking achievement of Christianity was its successful integration of these two heterogeneous strands of ancient civilization. In fact, this amalgamation produced what may be regarded as one of the 'secrets' of political rationality in the West: the historical unlikelihood of a *double totalization*. Throughout the Middle Ages, in any case, men were presented with two distinct and quite incommensurable realities: sovereignty on one hand, salvation on the other. The fact that both religion and politics implicitly claimed a kind of universality led, by the end of the fifth century, to the Gelasian doctrine of the 'two swords'. This doctrine eventually became entrenched as the Western alternative to Byzantine caesaropapism or the Eastern tendency to transform the church into a civil institution. It eventually became common in the West to regard any reunification of sacred and secular authority as a backsliding into paganism and perhaps as a ruse of the devil. Such perspective by incongruity, as the investiture controversy shows, was no comfortable solution.<sup>12</sup> Yet it was one of the first and most crucial steps in the differentiation of society and polity, in the proliferation of quasi-autonomous life-spaces which eventually made it quite impossible to regard advanced European society as a political whole made out of subordinated parts. In response to such institutionalized incongruity, political philosophy should (and at times did) feel compelled to loosen the bonds between rationality and unanimity which had been taken for granted in Judaic and Hellenic antiquity.

Western ideas of individual freedom and spiritual autonomy, in any case, are difficult to imagine without this original 'split' between imperial and clerical 'domains'. Against the power of a centralized state the Stoics had offered men the leverage of natural right and universal reason. Unfortunately, since armed authorities could always claim a superior 'insight' into what is naturally right, such an offering was more uplifting

than helpful. The emergence of the Christian church as the organized (and 'grounded') guardian of man's spiritual life, however, gave the Stoic idea of universal rights a powerful institutional embodiment, an embodiment legitimated through a 'dualistic' world view. Whatever freedom an individual gained was due less to rights which inhered in his natural person than to the fact that he was now considered a *locus of intersection* between two semi-autonomous realms: sacred and secular, faith and citizenship, the soul and the body. The 'autonomy' of each domain, as was explained in *Appendix Three*, was guaranteed by a 'temporal disjunction', by the incommensurability of finitude and infinity. As a result of his irrepressibly twin nature man's 'right to freedom from systematic interference' gained a new conceptual and institutional content. The 'other worldly' church, on the one hand, could defend men against encroachments by the state; while secular authority could protect men from the growing power of ecclesiastics.

The idea of rationality through incongruity (inchoate in this dualism of *imperium* and *sacerdotium*) extends in a philosophical tradition from Seneca. The essential (and largely implicit) message of this tradition is that justice and right are not merely independent of unanimity and a homogeneity of moral perspectives; they are actually impossible without the maintenance of clashing principles. One might call this a theory of *concordia discors*, with the proviso that 'harmony' here connotes no higher synthesis or unifying overview, but merely the intrinsic reasonableness of unresolved incongruity.

(We might interpolate a word here about Adam Smith. His idea of an "invisible hand", even though it suggests a complete coincidence of particular interests with an encompassing common interest, does not conflict with this argument. The hidden 'congruity' which Smith and Mandeville announced was restricted to the economic system alone. As a result, it does *not* guarantee a coordination of goals between economy, family, science, military, politics, education, religion, and so on.)

Modern ideas about individual freedom, to repeat our claim, could hardly have been generated without early clerical guarantees of spiritual autonomy, guarantees based on the 'temporal incongruity' of finitude and infinity. The same sharp differentiation between religion and politics underlies what we believe to be a modernized theory of legitimacy. This

bifurcation went so deep, in fact, that it already made it implausible to conceptualize society in Aristotelian (i.e. pagan) terms as a whole made out of parts. In other words, as soon as religion ceased to be civic religion, as soon as it acquired an unambiguous autonomy from secular authority, individuals gained an extra-political (in some sense, 'otherworldly') foothold from which to resist the power of rulers. Since an individual now belonged to two 'autonomous' systems, he was no longer just a helpless particle encapsulated within a coordinated political whole. As a result of the irreversible differentiation between *imperium* and *sacerdotium* there was no longer *one* overview adequate to the total nexus of society. Polity and society could no longer be thought to coincide. Historically, of course, constitutional limitations on politically centralized authority have always been conceded in acts of compromise between one source of power (say, the king) and another (say, the church or the nobility). The individual has been a *tertium gaudens*. Modern democracy, too, is the product of an analogous process of compromise between quasi-autonomous life-spaces, interaction contexts each of which thematizes the rest of society from its own non-encompassing yet unassimilable perspective. Once Western society had become highly differentiated on the basis of such institutional horizons, widespread socialization into the Protestant ethos of individual privacy and industriousness *seemed* to absorb some of the rights-defending tasks formerly assigned to a powerful church. This was especially attractive since an individual's (non-worldly and non-social) *conscience* provides a convenient juncture for infinity to erupt into the finite world. As a consequence, the self-understanding of modernity (lacking a theory of functional life-space differentiation in society) contained the erroneous - Lockean - conviction that an industrious individual can be a reliable bulwark against political tyranny. To counteract this belief, it is important to keep in mind the social 'contextualization' of modern individualism within the highly differentiated nexus of life-spaces that were outlined at the end of *Part Two*. This will help us replace the simplistic opposition of individual and polity with a concept of society complex enough to allow for intra-societal incongruity.

Now, it could be argued that Plato and Aristotle had no idea of modern 'political rights' precisely because religion in the Hellenic polis had not yet been differentiated in contrast to the polity. Indeed, to follow Aristotle at his least 'contemplative', we might say that the idea of a

human but non-political life was quite absurd. Because of what we are calling its 'totalization' of politics, the city-state could (without too much distortion) interpret itself as a whole made out of parts. When Goffman, for example, says that a modern insane asylum is a whole made out of parts, he is in some respects alluding to an underlying analogy with the Greek city-state. Normally, if asked whether Mr. Jones' liver is a part of the social system, we tend to reply: no, it is an element in the immediate environment of the social system. In a lunatic asylum, however, inmates are more or less exhaustively 'contained' within the system. As a result, they have a hard time applying any extra-institutional leverage to secure what they see as their rights. In a very important sense, then, Burckhardt's *Griechische Kultur* makes the polis seem like an *ergastolo*, like a penitentiary for lifers.

Cute analogies aside, totalitarianism is always accompanied by 'neo-pagan' attempts at de-differentiation or *Gleichschaltung*. In this sense, totalitarianism has gone to school with Hellas. Its typical goal is the reabsorption of religious motivations into a 'pre-Christian' cult of the state; *duties* of service and devotion should come to replace *rights* of freedom and self-determination.

Christianity, as mentioned, was particularly well-suited for stabilizing a differentiation between the *civitas divina* and the *civitas terrena*. Unlike the civic religions of Greece, it was based on politically unassimilable concepts like infinity and human universality. Neither infinity nor universality can be comfortably fitted into the temporal and particular strictures of a worldly state. Thus, since the Emperor could not *be* the Pope (and celibacy ensured the irreversibility of this differentiation)<sup>13</sup>, each had to *compromise* with the other.

The totalitarian reemergence of a *theologia civilis* made it possible to evade this post-Christian need for the state to gain legitimacy through compromise with an incongruous (i.e. non-political) dimension of reality. Even more distressing, modern 'state religions' have been able to exploit the Christian concept of infinity which was unavailable to the Greeks. Neither Hitler nor Stalin represented 'neo-paganism' in a direct way because both held the goal of politics to be *perfection*, that is to say, a monotheistic re-divinization of the secular world. This is what Voegelin

decries as "the radical immanentization of the Christian eschaton".<sup>14</sup> Notoriously, terrestrial paradise is an end which seems to justify every thinkable means. Since Hellenic politics did not aim at infinity (a goal *heterogeneous* with all known human life, i.e. with life which has had a chance to disappoint us) the polis cannot reasonably be called totalitarian in the modern sense. A polytheistic world view, moreover, allowed for a certain amount of non-schismatic disagreement and incongruity both among *poleis* and within every single polity. Nonetheless, by interpreting itself as a political whole made out of individual parts, the Hellenic city-state left a major legacy to modern tyranny.

## II

### The Two Cities

Doubtlessly, the theoretical abyss which opens up between Augustine and the Greeks originates in the Christian idea that man has fallen from grace through Adam's sin. Most important for our purposes is the fact that the idea of man's fallen state was articulated in a germinal but quite explicit distinction between society and polity. Man is by nature a social animal, claims Augustine. He was social in his primal innocence, he is social in this world and he will be social in heaven. Even the life of the saints is social.<sup>15</sup> But man is *not* by nature a political animal. When the Visigoths sacked Rome in 410, it became clear to all those whose world had been shattered that worldly politics is simply a necessary evil: it results from *culpa*, not from *natura*.<sup>16</sup> It is both a punishment for Adam's sin and compensation for the loss of order attendant to the Fall.

As it has been argued throughout this thesis, *it is very difficult in light of the theory that man is a political animal, to restrict the legitimate functions of the state*. By appealing to the goal of eternal salvation, in contrast, Augustine has no trouble in viewing the state as an adjustable means for a fixed end outside itself, as merely a precondition for an essentially non-political goal. For Aristotle, as was explained in *Appendix Three*, the state is both an ordinance of nature (*physis*) and the culmination and fulfilment of man's destiny. For Augustine, in contrast, the state expresses man's fall from 'nature', and therefore receives a



quite restricted role within the general economy of individual salvation. Aristotle's idea that "legislators make citizens good by forming good habits in them"<sup>17</sup> defies ready translation into Christian 'redemption history', since salvation cannot be legislated. The post-Christian state, as a consequence, is granted the narrowly delimited function of establishing the order and security necessary as a precondition of man's non-political struggle for salvation: the goal of politics becomes *pax* and *salus publica* rather than glory. Both peace and 'social welfare' are clearly means to further ends. In line with this 'temporal disjunction' of finitude and infinity, the individual's inward (that is, non-social) 'conscience' becomes the locus of redemption and grace. Crucial for the complexity of the relation between Hellenic politics and totalitarianism is the fact that the old idea of individual salvation through communal participation became impossible on the Augustinian interpretation of the 'two cities'.

As a footnote to the new idea of political rationality through social incongruity (rationality which can dispense with the old schematization of society as a coordinating whole made out of coordinated parts), one might mention the widely influential treatise *De Potestate Regia et Papali* written by the Dominican John of Paris circa 1302. This pamphlet was probably the first systematic exposition of Aquinas' version of the doctrine of the two powers. Rational politics, we may read it as arguing, demands the recognition that there are *two* not quite congruous 'general wills'. Some twenty years later, in Marsilius of Padua's *Defensor Pacis*, the Aristotelian tradition produced an argument for a completely secular state. John, however, presented the more moderate case, which is why he is more relevant to the present discussion. Indeed, he follows Aristotle chiefly in the idea that rationality entails the striking of a middle course between two extremes. The two extremes he wants to avoid are (a) the Erastian claim that the papacy is utterly otherworldly, and hence has no right to earthly property or dominion, and (b) the papist claim that the Emperor's sovereignty is dependent on papal sanction. What John argues is that both powers are 'autonomous': since they are both directly derived from God neither can be violated by the other. The only real overview is literally 'out of this world'. To be rational, in other words, we must avoid granting absolute primacy either to the *imperium* or to the *sacerdotium*. John admits that the priesthood is 'higher' and 'more noble' than the monarchy, but he denies that this abstract ranking requires the subordination of the author-

ity of the latter to the authority of the former:

"For who would say that, because the teacher of letters or the instructor in morals orders all the members of the household to a more noble end, namely, knowledge of the truth, the physician too, who pursues a lower end - namely, the health of bodies - is subject to him in the preparation of his medicines?"<sup>18</sup>

This, in its most *germinal* form, is the logic of uncoordinated social differentiation. What distinguishes it from Plato's regimented "division of labour" is the absence of any ultimate guardian of conformist *homonoia* and the *one* true perspective. Such an affirmation of incongruity is crucial to any idea of justice and legitimacy which does not depend on an appeal to unanimity. De-differentiation (or *Gleichschaltung*) means going to the instructor in morals when we are sick. Totalitarian centralization is irrational not because it violates an eternal law of nature, but because it flouts an achievement of social history. It appeals to the 'true centre' of society when society has already developed an irreducible plurality of centres.<sup>19</sup>

### III

#### A Single and Indivisible Sovereign

The consolidation of modern national states in the fifteenth and sixteenth centuries shattered the myth of the universal *imperium* (which always understood itself as unsynchronized with the *sacerdotium*) and therefore concealed temporarily the importance of systems- and life-space-differentiation for political philosophy. The Inquisition had already begun to re-voke the painfully exorcized ghost of 'civic religion'. Finally, with the rise of national states, 'mediating institutions', i.e., institutions which mediate between sovereign and citizen, (clergy, nobility, free cities and parliaments) which previously had been able to resist the authority of monarchs, fell victim to a new centralization of royal power. In this context, writers as different from one another as Machiavelli and Hobbes both found that they perceived virtue in the idea of the 'pagan state' where polity and society were not yet differentiated. In spite of the deep dissimilarity between their positions, Machiavelli and Hobbes were on common ground

as anti-clerics. Both thought that the church was the major *divisive* force in their societies, the power most responsible for fostering the discomforts of perspective by social incongruity. As a consequence, both recommended what (with many provisos in Hobbes' case) we might call a 'neo-pagan' subordination of religion to politics. Machiavelli still wrote in the spirit of classical notions such as 'freedom' and 'immortalization'; his entire thought centred on the concept of *virtù*. In Hobbes, on the other hand, all such echoes of Aristotle have vanished. Nominalist and materialist as he was, he allowed 'freedom' to dwindle to a dim flicker of tolerated inwardness, and identified glory with vanity, with just another force inappropriately disarranging social orderliness and legalistic tranquility.

In the next section, we want to suggest why Machiavelli's passionate defense of ancient liberty subtly changed (in the modern context) into what seems like a clinical defense of 'princely' tyranny. This is the inevitable consequence, it will be argued, of trying to de-differentiate a complex society on the model of the ancient city-state. In the following section, we will go on to explore briefly how Hobbes' 'scientific' defense of absolutism, though fiercely anti-Aristotelian, made a daemonic contribution to the totalitarian elimination of all social (that is, non political) constraints upon the force which a sovereign might employ against his subjects.

We should make one more remark before turning to Machiavelli. Unlike ancient *eleutheria*, the kind of freedom which is possible in modern *Gesellschaften* (what we have termed 'freedom in the traffic') depends on that same series of social cleavages which militates against *Gleichschaltung*. Obviously enough, when monasteries were expropriated (providing wealth for the rising middle class), the extra-political leverage of the *sacerdotium* was severely impaired. This seeming loss of differentiation, however, concealed a *new* principle of differentiation between polity and society which, not surprisingly, eventually became the foundation for modern liberal theories of political rights and freedoms. The old distinction between *sacerdotium* and *imperium*, indeed, was replaced by a new distinction between economy and polity. The disruptive effect of this new development on the old theory of politics, however, was difficult to discern at first. The rising merchant and industrial class itself understood absolute monarchy (with dynastic legitimacy) as the most effective type of

government for suppressing factional rivalry among 'mediating institutions'. An all powerful king, as Vico says, can "equalize the strong with the weak",<sup>20</sup> and thereby preserve the peace necessary for the flourishing of free trade. In fact, one might argue that the initial trend toward centralizing government under a single and 'indivisible' sovereign (which may have seemed like a 'neo-pagan' reintegration of society) was actually a function of the emergent differentiation of the economic sphere. At the beginning, in any case, the nascent bourgeoisie was still not powerful enough to extract large-scale constitutional guarantees from the monarch.

#### IV

#### Apophradism and Incongruity

This exceptional set of circumstances allowed modern political philosophy to begin by reintroducing both the ancient whole/part schematization of society (without too much implausibility) and the attendant idea that all values are congruent with one another. Although the philosophers we have considered and will now discuss are all rich in subtlety (and even internal incongruity), the economy of our argument requires that we largely restrict the following to a somewhat stylised account of what is *apophradic* in their thought. What interests us most is the structural concealment of life-space (or functional subsystem) differentiation, which also explains the genesis of totalitarianism in the matrix of Hellenic philosophy.

There is nothing half-hearted about the plea, with which Machiavelli prefaces his *Discorsi*, for political leaders to imitate antiquity. Both princes and republican rulers, he admits, 'admire' *le virtuosissime operazioni* of the ancients. Nonetheless, they stubbornly refuse to imitate what they admire. The cause of this moral inconsistency, Machiavelli conjectures, lies in an erroneous belief that between ancient and modern times things have changed - "as if the heaven, the sun, the elements and men had in their motion, their order and their potency, become different from what they used to be."<sup>21</sup> Although Machiavelli rejected 'classical utopianism' for realistic goals, he always insisted on the immediate relevance of ancient examples for orientation in modern politics.

The paradox of Machiavelli has always been that a man who fervently believed in liberty gave a ruthless boost to tyranny. *The Prince*, it is well known, does not help us overmuch in our attempts to distinguish legitimate from illegitimate regimes. The explanation of this fact lies partly in the distressing state of the Italian pentarchy during Machiavelli's lifetime: *battuta, spogliata, lacera, corsa*.<sup>22</sup> Aristotelian *aretè*, as we argued in *Part Two* and *Appendix Three*, flourished in a medium of 'combative collaboration'. Through language and *mores* and on the basis of a polytheistic world view, a citizen could achieve glory in a unique yet communal way. Machiavelli too locates the goal and culmination of politics in *virtù*. Thus, when Habermas, for example, claims that Machiavelli is already and exclusively concerned with the technical (Hobbesian) problem of survival and no longer with the practical (Aristotelian) problem of moral perfection, it seems at first that he is mouthing nonsense.<sup>23</sup> What he means to say, however, is something like this: given the chaotic and disunified character of early sixteenth-century Italian society, the only 'agora' or public arena in which human affairs might be 'hammered out' was one of intense competition or war between 'sovereign' states. What makes war so essential for Machiavelli's theory of *virtù* is not any technical calculation about survival, but rather his perception that the only remaining field for distinction and honour is the battlefield. The 'virtuous' self-assertiveness of the prince in external affairs, of course, demands in turn the cohesion and obedience of citizens in internal affairs. Princely *virtù*, in other words, presupposes a 'coherent' society, which the 'artistic' prince might secure by imposing the appropriate *form* on the *matter* of his subjects. According to Machiavelli, there are three factors responsible for the lack of unity in Italian states: the decadent nobility, the unassimilable church and the wandering mercenary droves.

One of the largest impediments to the establishment of republics, Machiavelli argues, is the recalcitrant factionalism of *gentiluomini*. These landed-gentry have utterly lost the ancient gift of *il vivere politico*. Their deepest yearning is plush survival, not *virtù*. Thus, their independence must be broken by a strong, centralized monarchy:

"The reason for this is that, where the material is so corrupt, laws do not suffice to keep it in hand; it is necessary to have, besides laws, a superior force, such as appertains to a monarch, who has such absolute and

overwhelming power that he can restrain excesses due to ambition and the corrupt practices of the powerful."<sup>24</sup>

Perhaps the best commentary on this passage from the *Discourses* is Machiavelli's famous contrast, in *The Prince*, of the French and the Turkish kingdoms:

"The Turkish empire is ruled by one man; all the others are his servants. The one ruler divides the empire into *sandjaks*, in charge of which he places various administrators, whom he changes and varies as it suits him. But the king of France is surrounded by a long established order of nobles, who are acknowledged in France by their own subjects and are loved by them. They have their prerogatives; the king cannot take these away from them except at his own peril."<sup>25</sup>

From the standpoint of our argument, at least, what is at stake here is the relation between politics and incongruity. According to Machiavelli, there are only two types of principality. In the first, sovereignty is undivided; provincial authorities are utterly dependent on the prince for their power. In the second, there is a profound splintering of authority; the rank of each noble is established independently of centralized power, *per antichità di sangue*. Countries of the first type (like Turkey) will be fiercely resistant to foreign conquest, since there are no rowdy barons who could bear the seeds of faction into the heart of the country. A principality like France, by contrast, is always resistant to centralized control; hence it is relatively easy to invade, though the invader will find it just as difficult to control as did the former prince. Differentiation, and this is our main point, always militates against a united front in war. And war, as we noted, being the last surviving locus of glory and honour, is Machiavelli's focal concern. As a consequence, he believes that the uncoordinated status of nobles makes them the enemies of both princes and republicans.

A parallel (and equally apophradic or 'anachronistic') hostility toward differentiation in centres of authority can be found in Machiavelli's remarks on the church. Consider this "Nietzschean" contrast between Christian 'slave' morality and the sinew-tightening ethos of pagan religions:

"Our religion has glorified humble and contemplative men, rather than men of action. It has assigned as man's highest good humility, abnegation, and contempt for mundane things, whereas the other identified it with magnanimity, bodily strength, and everything else that conduces to make men very bold. And if our religion demands that in you there be strength, what it asks for is strength to suffer rather than strength to do bold things. This pattern of life, therefore, appears to have made the world weak, and to have handed it over as a prey to the wicked, who run it successfully and securely since they are well aware that the generality of man, with paradise for their goal, consider how best to bear, rather than how best to avenge, their injuries."<sup>26</sup>

One consequence of Christian otherworldliness and loss of pride is that politicians no longer dare 'use' religion the way the ancients did. Unable to bridge the 'temporal disjunction' between finitude and infinity, and *hence* unable to dominate the clergy, secular authority suffers the most woeful chastening Machiavelli can imagine: the factional dissolution of the state and its easy susceptibility to alien invasion. Notice how the disunifying role of the church is neatly linked to the factionalism of the landed-gentry mentioned above:

"The church has neither been able to occupy the whole of Italy nor has it allowed anyone else to occupy it. Consequently, it has been the cause why Italy has never come under one head, but has been under many princes and *signori*, by whom such disunion and such weakness has been brought about, that it has now become the prey, not only of barbarian potentates, but of anyone who attacks it. For which our Italians have to thank the Church and nobody else."<sup>27</sup>

Only the Swiss, Machiavelli goes on to say, preserve today the ancient 'integrated' way of life. For Italy, in contrast, factionalism runs so deep that only a heroic *nuovo principe* (above and beyond homiletic examination and reproof) might, through military prowess, make politics once and again a world of glorious *virtù*.

The "Mortall God"

Hobbes (unlike Machiavelli and Rousseau) does not go out of his way to praise the ancients. His railing against "Aristotelity" may be seen as part of an attempt to foster a 'quasi-pagan' fusion of religion and politics, an attempt which is based on Hobbes' (paradoxically Aristotelian) refusal to differentiate between polity and society. Despite (and in part as a consequence of) our remarks in *Part Three*, Hobbes' very concern with Christian eschatology led him to reassess the relation between man and deity, citizen and church. Because he wants to make the very *validity* of Scripture dependent on governmental sanction and thus eliminate a major restriction upon the force of the state, Hobbes occupies a peculiarly pivotal position in the history of etatist coercion and the 'party line'. The *Leviathan* makes such a violent break with the classical tradition of political philosophy, however, that it can hardly be considered apophradic in a direct sense. Still, both Hobbes' deemonic conflation of persuasion with force, which we discussed at the beginning of this *Part*, and his socially unmediated opposition of the individual to the civil state, make it imperative that we add to the analysis presented in *Part Three*.

What makes Hobbes quite unlike classicizing philosophers (and what makes him, as some say, "the father of modern liberalism"),<sup>28</sup> is (1) his mechanistic-Galilean or non-teleological concept of natural law, and (2) his nominalist lack of interest in 'the whole', in the *Gemeinschaft* as a religious fraternity. Vico repudiated Hobbes' work, one might recall, because he thought it impossible to *deduce* the "covenants" of civil society from the natural passions of individuals. Hobbes wanted to construct a rigorous science of politics on the basis of man's innate fear of violent death: "For every man is desirous of what is good for him, and shuns what is evil, but chiefly the chief of natural evils, which is death; and this he doth by a certain impulsion of nature, no less than that whereby a stone moves downward."<sup>29</sup> In response to such statements, Vico acutely claimed that "an excessive amount of attention to the natural sciences" had resulted in a situation where the science of politics lies almost abandoned and untended.<sup>30</sup> In this sense, Vico wanted to defend Aristotle's distinction between *phronēsis* and *epistēmē*, between prudence and rigorous science,



against a reductive attempt to apply Galileo's methods to the realm of ethical self-realization: "it is an error to transfer the method of natural science into the prudential conduct of life."<sup>31</sup> By transforming political philosophy into a rigorous science, Hobbes eliminated Aristotle's teleological idea (retrieved and modified by Machiavelli) that the goal of the state is to foster virtue and 'character formation' in communal praxis. He replaced this idea with the mechanistic and legalistic notion that the aim of the state is to guarantee order, security and survival.

The content of the state is a 'set' of atomistic individuals, responding like automata and related to each other through mutual distrust and covenants. For this reason, Hobbes does not even entertain the possibility that political consensus might be achieved through conversation or persuasion. The only method suitable for statist coordination is force or the legally institutionalized threat of force. As a consequence, the "unity" which Hobbes wants his Leviathan to achieve is both more coercive and abstract than anything in the mainstream history of political thought. The cool irony of the pragmatist is audible in a phrase which Hobbes repeats throughout his writings: *Non habebis Deos alienos*. Vengeance is mine, saith the state, for I am a "mortall God".

All Hobbes' political works, as he says, were occasioned by "disorders of the present time".<sup>32</sup> These disorders, he agreed with Machiavelli, were in large part due to the pervasive Gelasian distinction between the 'two swords', to the old temporal disjunction of *imperium* and *sacerdotium*. Indeed, anyone who makes "the distinction between Temporall, and Spirituall Domination"<sup>33</sup> implies that there may be "two Sovereigns over the same people."<sup>34</sup> For Hobbes such a doctrine is tantamount to sedition.

Thus, even though Tönnies and others are right to contrast Hobbes' theory of *Gesellschaft* with Aristotle's theory of *Gemeinschaft*,<sup>35</sup> the basic assumption of *Leviathan* allows it too to be understood as promulgating a nominalistically modified whole/part schematization of society. Strictly speaking, Hobbes' nominalism made it impossible for him to regard the state as an organic 'whole' but, on the other hand, his political theory required him to see the state as a 'whole', therefore, by way of compromise, the state was pictured as a factitious or artificial whole. This does not affect our argument, however, since what is here being claimed is simply

that, like Aristotle, Hobbes could not coherently distinguish polity and society. According to Hobbes, in fact, it is still a question of either/or: either sovereignty is absolute and undivided or society becomes a "dissolved multitude".<sup>36</sup> If middle-level institutions (and again it is mainly a matter of church and nobility) claim any source of authority independent of the civil sovereign, they must be regarded as enemies of the state, fomenters of faction and civil war:

"And as Factions for Kindred, so also Factions for Government of Religion, as of Papists, Protestants, &c. or of State, as Patricians, and Plebeians of old time in *Rome*, and of Aristocraticalls and Democraticalls of old time in *Greece*, are unjust, as being contrary to the peace and safety of the people, and a taking of the Sword out of the hand of the Sovereign."<sup>37</sup>

Indeed, to understand why Hobbes spent nearly two-thirds of *Leviathan* gouging and filliping ecclesiastics about their claim that the church is prior to the state, one need only recall this sort of comment about the 'temporal disjunction' of *imperium* and *sacerdotium*: "The most frequent pretext of Sedition and Civill Warre, in Christian Commonwealths hath a long time proceeded from a difficulty, not yet sufficiently resolved, of obeying at once, both God, and Man, then when their Commandments are one contrary to the other."<sup>38</sup> Behind Hobbes' notorious criticism-quashing claim that "no Law can be Unjust",<sup>39</sup> lie lengthy arguments to the effect that, on *a priori* grounds, "there can be no contradiction between the Laws of God, and the Laws of a Christian Commonwealth."<sup>40</sup> Following *Romans XIII*, he supplements this claim with the assertion that resistance to an infidel or heretical sovereign is likewise contrary to God's express will.

The illiberal and coercive temper of Hobbes' thought, in other words, follows from his conflation of all semi-autonomous mediating institutions with the granular *bellum omnium contra omnes*. The sovereign must be legislator, judge, administrator and champion bundled up in one. Legitimacy is unthinkable, according to Hobbes, without a radical centralization of force. There is no *summum bonum* which might unify men into a moral community; but there is a *summum malum* from which the terror-stricken 'atoms' flee into the protective and coordinating arms of the mighty Leviathan.

This unswerving defense of absolutism, as discussed in *Part Three*, stems in part from Hobbes' 'modernized' (Galilean) concept of rationality. Indeed, consider what remains of the despised Aristotelity:

"When a man *Reasoneth*, he does nothing but conceive a sum total, from *Addition* of parcels; or conceive a Remainder, from *Subtraction* of one sum from another; which (if it be done by Words) is conceiving of the consequence of the names of all the parts, to the name of the whole; or from the names of the whole and one part, to the name of the other part."<sup>41</sup>

The legitimacy of an absolute monarch, Hobbes argues, is 'analytically implicit' in the physical make-up and passions of each particular citizen. Likewise, individual loyalty 'follows' from the bare existence of the 'society integrating' sovereign. Putting aside our perplexity at why states are not already and automatically the way Hobbes says they 'mechanically' must be,<sup>42</sup> we may say something more about the crucial non-Hellenic distinction between state and society. What makes such a distinction unfathomable from Hobbes' point of view is that it prevents the whole being presented as an artificial structure composed of covenanting parts.

His deep-seated commitment to this scheme, in fact, helps explain how Hobbes can paradoxically assert both (1) that it is never justifiable to resist the civil sovereign, and (2) that, if such resistance succeeds, it *thereby* becomes just.<sup>43</sup> Now, the first thing to understand about this paradox is that the civil sovereign is considered the principle of unity without which society could not be a 'fictive' whole or an "Artificial Man".

"A Multitude of men, are made *One Person*, when they are by one man, or one Person, Represented; so that it be done with the consent of every one of that Multitude in particular. For it is the *Unity* of the Represented, that maketh the Person *One*. And it is the Representer that beareth the Person, and but one Person: And unity, cannot otherwise be understood in Multitude."<sup>44</sup>

First of all, one should again note the nominalist thesis that there is no communal 'wholeness' without political 'subsumption'. In the light of this idea, as we said, it becomes quite impossible to distinguish society from polity in such a way as to ensure constitutional powers on the limitations

of the sovereign. Although Hobbes clearly says that the state has no *right* to ask an individual to contribute to his own destruction, such claims do nothing to temper his commitment to absolutism and political coordination. The only 'domain' which, following *Leviathan*, cannot be subsumed under political control is the de-socialized inwardness of the silent and survival-oriented individual. This is just another way of saying that Hobbes cannot distinguish between society and polity but only between the all-mighty state and the solitary individual. Hobbes' reference to popular consent is likewise revealing. Since the absolute (unquestionable) authority of the sovereign is the condition *sine qua non* of civil society, it is also the condition *sine qua non* for the meaningful use of words such as 'right' and 'wrong', 'legitimate' and 'illegitimate'. Popular consent can only mean that the people agree that the sovereign is legitimate. But, on Hobbes' account, there is no standard in relation to which men might agree, unless the sovereign has uncontested power. Thus, Hobbes can claim both (1) that the sovereign is always 'right', and (2) that sovereignty exists in a dimension of brute force where concepts like 'right' and 'wrong' do not apply. In essence, the sovereign has the same kind of 'legitimacy' as the rude individual in the state of nature; he has a right to whatever he can get. He is only delegitimated when he is overpowered.

By trying to 'ground' politics rationally, Hobbes evoked anger and distrust among the royalist defenders of Stuart legitimacy. It is not difficult to see why; in the final analysis, he made the inviolability of the crown compatible with the automatic rightness of its ruin.

In spite of their shared anti-clericalism, Machiavelli and Hobbes are separated by a philosophical abyss. The principal difference between them can be spied in Hobbes' thorough repudiation of teleology and his interpretation of (what Machiavelli would have called) *virtù* as an enticement to vanity and (hence) to civil war. The state marshalled for honour and power is replaced by the state organized according to order and law. But putting social and political philosophy on a mechanical-causal 'foundation', of course, Hobbes dismissed the possibility of evaluation of the sovereign's commands in the light of superior standards from the start. This too is unlike Machiavelli. The abyss is bridged on one point, however. Both defended the centralized state as the only 'solution' to a faction-racked society. Nevertheless, finally, what distinguishes Hobbes' absolute monar-

chy with no constitutional limitations from totalitarian regimes in the twentieth century is the absence of a claim to either 'moral integration' or the emotionally satisfying self-realization of individuals in 'citizenship'. This nominalist deficiency, however, was amended by Rousseau and his apophradic glorification of Sparta and the Spartan way of life.

## VI

Corps Moral et Collectif

In spite of Hobbes' failure to distinguish between society and polity, his state is so legalistic and abstract that it offers none of the moral comforts normally associated with life in *Gemeinschaft*. Indeed, where Rousseau differs most from Hobbes is in his double Aristotelian conviction that (1) the state can be 'subjectified' as a family or 'colloquy', and (2) the individual can 'realize himself' in political participation. Rousseau's admiration for Hobbes, on the other hand, stems from their shared commitment to the conflation of society and polity, and to the related idea that the 'state' has absolute supremacy over its members. This idea, in turn, at least so we want to claim, stems from the either/or situation which is thrust upon us if we schematize society as a political whole made out of individual parts, *un tout dont on fait partie*.<sup>45</sup> Quite unlike Hobbes, as discussed in *Part Four*, Rousseau puts supreme emphasis on the ('religious') fraternity and solidarity of the *corps moral et collectif*<sup>46</sup> - which is the way he depicts the just society (or, as some would have it, his ideal of a renewed pagan state). This moral collectivism, said Benjamin Constant, makes the *Social Contract* "which is often invoked on behalf of liberty, the most terrible weapon of all types of despotism".<sup>47</sup> Considering Rousseau's repeated claims that no individual freedoms are lost or transgressed in the *de jure* state, this denunciation of Constant's may be too strong; yet, it contains a grain of truth. At the very least it illuminates the disparity between ideal and reality forever present in Rousseau.

The Greeks, in any case, and especially the Spartans, always gave Rousseau hope for outwitting modern bourgeois corruption. In a passage which we have quoted before, he says: "Ancient politicians incessantly

talked about morals and virtue, those of our time talk only of business and money."<sup>48</sup> One of Rousseau's main goals, in other words, was to undo the damage of modern times and "revive love of virtue in the hearts of citizens."<sup>49</sup> But, what is wrong with modernity? The main problem, as Rousseau sees it, is the dis-integrated quality of everyday life. "We have physicists, geometers, chemists, astronomers, poets, musicians, painters; we no longer have citizens."<sup>50</sup> The point of Rousseau's early blast against the arts and sciences is that both modes of expression undermine the seamless unity of city-state life. There is no art or science in Geneva!

Now, since the essence of society is its unified wholeness, a society can suffer no more onerous misfortune than having "two states in one".<sup>51</sup> Not surprising to readers of Machiavelli and Hobbes (and the absence of surprise is the cost of our 'high altitude' descriptions), Rousseau sees one of the most disruptive forces in modern society in the dualism between the "eagle" and the "cross".<sup>52</sup> Pagan religion, Rousseau observes, was a life- and society-integrating force; Christianity is not. Indeed, according to Rousseau's hermeneutic, Christianity disrupted what was then a prevailing homogeneity of society:

"...Thus matters stood when Jesus made his appearance, bent on establishing a spiritual kingdom on earth - an enterprise which forced a wedge between the political system and the theological system, and so undermined the unity of the state. Hence the internal divisions that... have never ceased to plague the Christian peoples."<sup>53</sup>

What cure for this grievous disunity if not an absolute and indivisible sovereign? It was in his repudiation of the 'split' between *sacerdotium* and *imperium* that Rousseau felt most akin to Hobbes:

"Only one Christian writer, the philosopher Hobbes, had clearly perceived both the disease and the remedy. He alone has dared to propose that the eagle's two heads be reunited, i.e., that everything *else* be subordinated to political unity - in the absence of which there will never be a well-constituted state or government."<sup>54</sup>

Elsewhere, and without lingering over the 'coincidence', Rousseau mentions that unity and unanimity are founding principles in only two kinds of society: societies which are totally free and societies which are utterly

enslaved.<sup>55</sup>

Most of what is disturbing in the *Social Contract*, in fact, is connected with Rousseau's naive conviction that "the total alienation to the whole community of each associate, together with every last one of his rights"<sup>56</sup> is a guaranteed path to freedom and 'virtue'. The disjunction of the general will and the will of all is discomfoting for similar reasons. Although there is solace in Rousseau's admission that citizens have rights utterly inviolable by their 'sovereign', it is hardly encouraging to read that only the 'sovereign' can decide what these rights are.<sup>57</sup> The fact that Rousseau lodges 'sovereignty' in 'the people' and thereby distinguishes sharply between the sovereign (the general will) and the government (a mere tool of the general will), does nothing to mitigate the totalitarian implications which Constant (among a host of others) rightly observed in the *Social Contract*. Rousseau's outrage at the Gelasian dualism of *imperium* and *sacerdotium* reveals his deep commitment to a whole/part schematization of society. Such a schematization, it can be seen, forced Rousseau (as it had previously forced Hobbes) into an either/or situation: "It is of the essence of sovereign power to be illimitable; it is either omnipotent or it is nothing."<sup>58</sup> Furthermore, as was argued in *Part Two*, the constitutional limitations which Montesquieu and Locke placed on sovereignty ultimately depend on their tacit rejection of this same whole/part scheme. Rousseau's *liberté* is an illusion since it depends on an apophradic appeal to *homonoia*, on the demand that, as an 'integrated' *citoyen* of Geneva, I agree, on all matters of public concern, with everybody in town (see *Appendix Seven*).

## VII

### Mill and Epictetus

Since, (if our thesis is correct) renewals of the ancient whole/part schematization of society leads inevitably to defenses of 'princely' tyranny, absolutist coordination and the "ethical state", it is not surprising that arguments for democracy often appeal to incongruities and cleavages within society, rifts which might provide a bulwark against despotic *Gleichschaltung*. One subtle theoretician of the role of differentiation and incongruity in politics is Alexis de Tocqueville. Although his self-

declared "corporativist" position is ultimately quite unlike our idea of functional life-space differentiation, it is well worth mentioning. Basically, de Tocqueville thought that local self-government, a free press, an independent judiciary, a separation of church and state, indirect elections and a general proliferation of middle-level associations would make it impossible (or at least improbable) to coordinate an entire society "from above". The very style of *Democracy in America*, with its sudden twists and turns and surprising shifts of perspective, helps us understand the institutionalized incongruity which makes it unlikely that America - at least as de Tocqueville knew it - could be turned into a tyranny over night.

In *The Ancient Regime and the French Revolution* de Tocqueville elaborates upon the background of this theory. One of the well-springs of the Revolution, so he argues, was the systematic undermining of the aristocracy accomplished by Louis XIV. Cancelling the autonomy of the *gentiluomini*, one recalls, was one of Machiavelli's chief 'holistic' desires. Louis XIV, at any rate, wanted ministers utterly dependent on him, not on semi-independent nobles who (with their own feudatories and their own local responsibilities) could resist centralization. By sweeping the aristocracy off the land and into the playhouse of Versailles, the crown managed to demolish the only reliable defense against despotic coordination. When the people finally tired of privilege without responsibility they brought down the monarchy. By then, unfortunately, there were no more local or mediating institutions which could resist the despotism of centralized terror.

In *Democracy in America* de Tocqueville obviously wants to suggest that free associations can, in the modern 'democratic' world, perform a tyranny-resisting function analogous to that of the defunct nobility. What he sketches, with some provisos, is a society whose very lack of "wholeness" (i.e. lack of potential for centralization) is its greatest political asset, its sturdiest defense of freedom.

Moreover, de Tocqueville's subtle and largely implicit juxtaposition of the *ancien régime* and modern democracy has a lot in common with Vico's "logic of historical incommensurables". For the same reason it can be fruitfully contrasted with Hegel's 'synthesis' of the ancient polis and modern civil society. Hegel's method assumes an identity of 'thought' with holistic integration: to think  $x$  and  $y$ , I must weld them together in an



encompassing whole. To truly 'think' Aristotle and Locke I must fuse them into a "capitalist agora". Both Vico and de Tocqueville proceed quite differently. In his conclusion to *Democracy in America*, de Tocqueville says that democracy and aristocracy are like two utterly different individuals: they are *incomparables*. Instead of 'integrating' the old and the new, he allows each to illuminate the other from a distance. This method, it seems clear, involves a Vichian recognition that some old values are inevitably lost, that history is not a purely cumulative *Gang* but, rather, a simultaneous gain and loss. There is little use in trying, as Hegel did, to retrieve long-vanished *eleutheria* - an insistence on resurrecting the past only leads to a mortification of the present. More distressed than Hegel at the losses of the past, de Tocqueville was also more lucid about the burden of the future. This alone suffices to make him one of the great Vichian thinkers of modernity.

Equally relevant to the theory of perspective by incongruity is de Tocqueville's friend and contemporary, John Stuart Mill. In the following pages we will rephrase one of the central arguments of this thesis in terms of a contrast between Mill's *On Liberty* and that masterpiece of the later Stoa, Epictetus' *On Freedom*. The main aim here is to show how Mill's concept of 'negative freedom' (unlike Epictetus') can be given positive content by appealing to the complex structure of modern *Gesellschaft* society and specifically to the distinction between polity and society, or the underlying reality of functional life-space differentiation.

The idea of freedom *from* politics (apparently shared by Epictetus and Mill) originated in the Hellenistic repudiation of Plato's and Aristotle's ideal of "sharing in the common life". The philosophies of withdrawal, protest, indifference and escape which flourished throughout the Greek world during the fourth and third centuries B.C. can best be understood as strategic reactions to the startling rise of Macedonia and the attendant obsolescence of the city-state as a significant unit in military and political affairs. Alexander's decision to integrate his Greek and barbarian subjects certified the eclipse of Aristotelian politics. The Epicurean movement (to which Aristippus belonged) finally came into its own, promulgating successfully the doctrine that the only 'good life' is the life *outside* the city-state. Indeed, 'the good' began to be seen as ultimately private, as finally resolvable into the avoidance of pain.

The extent to which Epictetus continues this old anti-Aristotelian tradition can be gathered from the opening words of *On Freedom*: "He is free who lives as he wills."<sup>59</sup> In the *Politics*, one should recall, Aristotle was quite harsh about a similar ideal of a society where "each man lives as he likes". About this ideal, he said: "This is a mean and false conception of liberty. To live by the rule of the *politeia* ought not to be regarded as slavery but as salvation."<sup>60</sup> Against Hellenic "salvation" through political participation Epictetus asserts: *ho akolutos anthropos eleutheros*, "the unhindered man is free".<sup>61</sup> Echoing Aristippus, he claims that political office is a needless burden and anxiety. The only way to guarantee freedom is to keep a distance between oneself and other men, to keep *aparapodistos* or "unentangled".<sup>62</sup> From Epictetus' point of view, Aristotle's 'language-mediated intersubjectivity' seems like just another senseless encumbrance on *eleutheria*. "For what is it that every man is seeking? To live securely, to be happy, to do everything as he wishes to do, not to be hindered, not to be subject to compulsion."<sup>63</sup> The question is how to avoid coercive restraint. Epictetus' answer lies in ataraxic withdrawal into an untouchable inner space or *interior domus* where no other man can enter.

"Diogenes was free. How did that come about? It was not because he was born of free parents, for he was not, but because he himself was free, because he had cast off all handles of slavery, and there was no way a person could get close and lay hold of him to enslave him. Everything he had was easily loosed, everything was merely tied on. If you had laid hold of his property, he would have let it go rather than followed you for its sake; if you had laid hold of his leg, he would have let his leg go; if of his whole paltry body, his whole paltry body; and so also his family, friends and country."<sup>64</sup>

Freedom, in other words, is not self-realization in communicative praxis but rather self-abnegation in solitary retreat: "For freedom is not acquired by satisfying yourself with what you desire, but by destroying your desire."<sup>65</sup> In sum, since self-mastery requires a man to be "alone in the world",<sup>66</sup> Epictetus must be said to have rejected the old equation of 'to live' with *inter homines esse*.

Verbally, at least, Mill's idea of negative freedom shares much with Epictetus' depiction of *eleutheria*. Mill too locates the core of liberty in the "inward domain of consciousness",<sup>67</sup> and speaks of it as "the part of

a person's life which only concerns himself".<sup>68</sup> He even says, provoking many an Aristotelian censure, that "the only freedom which deserves the name is that of pursuing our own good in our own way."<sup>69</sup> Lumping together Epictetus and Mill, in fact, Hannah Arendt claims that "our philosophical tradition is almost unanimous in holding that freedom begins where men have left the realm of political life inhabited by the many and that it is not experienced in association with others but in intercourse with one's self."<sup>70</sup> Behind this anachronistic conflation of Epictetus and Mill, however, lies Arendt's refusal to comprehend the social evolutionary differentiation between polity and society. She too always presents her readers with an 'either/or' situation: either you are for Aristotle or you are against him; either you lead a *political* life or you are alone. The only non-political "association", she claims elsewhere, is group labour.<sup>71</sup> This, however, is precisely where Mill differs from Epictetus. *The positive content of liberty*, we may read him as arguing, *is not withdrawal into inner silence but, rather, variegated participation in the multiple interaction contexts of a pluralistic society*. Man can only realize himself and unfold his potentialities as a unique individual (which is what Mill advocates) only *inter homines*: in contexts of inter-subjectivity and combative collaboration. But in a *Gesellschaft* this realm is multiplex and not unique; it is incongruously distributed throughout various life-spaces and not exclusively limited to the 'political sphere'. The point of Mill's negative freedom, as a result, is not so much to keep the manipulative fingers of the state locked-out of my *interior domus* as to prevent 'ignorant' politicians (and conformist public opinion) from trying to regiment the various interaction contexts of my life. Mill does not *quite* say this, of course; but the fact that he does not praise the solitude of the later Stoa should be clear from his construal of 'freedom of thought' on the model of mutual falsification, correction and public debate. Man is not free in pure inward contemplation, but, rather, in the 'combative' space of public criticism and reciprocal refutation. This explains Mill's belief that freedom of the inward domain of consciousness is "practically inseparable"<sup>72</sup> from the right to *publish* what we think. The contrast with Hobbes (who wanted "outward conformity" unimpugned by "inward conviction")<sup>73</sup> is telling. As Vico knew, we have now replaced the old *homonoia* with a new corrigibility. But this merely makes intersubjectivity less predictable; it does not eliminate it altogether.

What is missing in Mill is an adequate concept of functional life-space differentiation. If he had conceived 'science' as a system, he might have found it easier to translate his ideas about freedom of discussion into a non-political concept of positive freedom, of freedom to *realize oneself* in contexts of combative collaboration. It would also have allowed him to understand the structural relevance of 'freedom in the traffic' to our highly differentiated society. Our "inward domain of consciousness" is not a walled Epicurean garden but an active voyaging in the interstices of uncoordinated life-spaces. Important here is the idea that life-spaces in a complex *Gesellschaft*, unlike de Tocqueville's corporativist 'mediating institutions', make totalizing claims. Each life-space thematizes total society from its own perspective. In science one can see this easily, for the physicist, for example, will claim to be talking about 'everything', including the most refined (academic) constellations of energy and mass, while the sociologist, for example, will likewise claim to be talking about 'everything', including the social phenomenon of scientific research in physics. In a sense, both are right: neither is complete, nor can either claim an exhaustive overview. But even more emphatically than in the middle ages, the plurality of totalizations prevents the complete integration of individuals into an engulfing institution. The Graeco-totalitarian attempt to subordinate all spheres of life to politics is not so much a violation of the 'eternal rights' of individuals, as a flouting of an achievement of social evolution, an anachronistic denial of the functional differentiation of modern society into a plurality of incongruous perspectives and divergent values with no unifying overview, or 'true centre'.

Perhaps what prevented Mill from formulating an argument such as this was his residually positivist conviction that there really is only one 'truth', entailing eventual unanimity in matters of public policy. Often, his commitment to 'tolerance' seems to depend on the fact that no man *yet* knows the truth. To move beyond tolerance, in any case, and toward combative incongruity, we must appeal to a theory of functional life-space differentiation. This, in fact, is our answer to Strawson, to his request for an integration of "incongruous ideals" and a common morality based on "social structures".<sup>74</sup>

## VIII

The Speculative and the Existential

"Now a well-ordered society is also regulated by its public conception of justice. This fact implies that its members have a strong and normally effective desire to act as the principles of justice require. Since a well-ordered society exists over time, its conception of justice is presumably stable; that is, when institutions are just (as defined by this conception), those taking part in these arrangements acquire the corresponding sense of justice and desire to do their part in maintaining them."<sup>75</sup>

To assert that all rational persons in particular circumstances would choose certain principles by which to govern their conduct is *not* to say that once having been exposed to these principles rational persons would embrace them and develop a sense of attachment. The first assertion refers only to the 'deduction' of principles, their origin in the wills of rational persons - their Kantian groundwork, as it were - while the second is a statement about the genealogy of moral precepts and the foundations of moral psychology. The distinction is significant insofar as Rawls is concerned because it illuminates a dichotomy at the heart of his contractarianism, indeed, a *dilemma* confronting all contractarians, namely, how to bridge the gap between the ideal typical circumstances and characters of the 'original position' (however envisioned) and actual circumstances and personalities. On the one hand, one may adopt a Kantian posture and talk in terms of the underpinnings of our 'sense of justice', i.e. those ideas to which we appeal when considering what is right and fair. Rawls acknowledges that this is in fact what all persons do when *speculating* upon such matters and, as we have seen in *Part Six*, this speculative and suppositional aspect of contractarianism is what lends it its philosophic appeal. However, to the extent that one wishes to discuss *actual* persons and extant principles one must qualify the purely conjectural with reference to the predilections, habits and methods of non-speculative persons who simply live their lives, as it were, without reference to the philosopher's 'original position'. In other words, in order to achieve his ambition of formulating a universal theory of justice Rawls must discuss, and account for, the development of moral precepts; and in order to establish the continuity of his principles of justice through generations or across the hiatus separating the original position and actual circumstances, Rawls

must enlighten us as to the moral psychology of those beyond the original position. The task, then, is to blend the Kantian and the empirical in such a way as to justify the leap from the speculative to the existential.

Without launching into a discussion of Rawls' elaborate moral psychology or his revision of Piaget and Kohlberg,<sup>76</sup> it is possible to subject his *Gesellschaftliche* contractarianism (and even moreso, Rousseau's *Gemeinschaftliche* version) to a Vichian critique. Indeed, by now the political, if not the philosophical, deficiencies of 'true' contractarianism (as opposed to Locke's 'quasi-contractarianism') are apparent. While serving as a genuine and fruitful conceptual solution to the problem of civil obligation, contractarianism collapses as a *model* of civil society. Rather, it is a sophisticated heuristic device by means of which we may fashion 'protomorphs' of civility and order and thence full-blown models of *civitas*; but as a blueprint, the image is a mirage. Why? Because the 'genuine' contractarianism of Rousseau and Rawls presupposes a 'totalisation' of politics (a failure to distinguish between polity and society) reminiscent of the Hellenic city-state which cannot be reproduced within highly differentiated *Gesellschaften*. The very basis of the contractarian metaphor as a *model of civil society* (rather than as a synecdoche of rational reflection on civil society) is the double Aristotelian claim that, firstly, the state can be 'subjectified' as a family or 'colloquy', and, secondly, the individual can 'realize' himself in political participation. Plausible for the polis and Swiss cantons, both of these ideas warp under the pressure of complex societies and in turn lead to personal and governmental deformations.

With the collapse of kerygmatic guarantees, so we have argued, political philosophy must attempt to reconstruct the old distinction between rationality and irrationality within the framework of social evolution. Our focal concern, therefore, has been with the irrationality of political anachronism (apophradism, as we have termed it), particularly with the widespread apophradic desire to recreate the domestic holism of an early *Gemeinschaft* within a highly differentiated *Gesellschaft*. The Hellenic ideal of subordinating all spheres of life to politics, when transferred into a complex and uncoordinated non-totalitarian - or 'nearly just' - society can only issue in coercive totalitarian integration. (The bitter paradox of a *means* - the contractarian method as a way of determining

whether or not a society is just - distorting itself when projected as an *end* - the contractarian method as a putative reification of the just society.) Totalitarianism, we have tried to demonstrate, is not irrational because it violates man's eternal nature but because it distorts the flow of history by endeavouring to regenerate the past in the future: it appeals to the 'true centre' of society when, as we have said, society has already developed an irreducible plurality of centres. The strength of contractarianism lies in its recognition of this pluralism and its characterization of the just society as one tolerant of 'difference'. Its weakness, however, lies in its insatiable desire to minimize differences and achieve homogeneity. One may draw the analogy of a society of persons each of whom applies judicial reasoning to matters of public policy transformed into a society of robed judges.

The problem, of course, does not lie exclusively with contractarianism. Indeed, if anything, the opposite is the case. However, the danger of misconstrual is everpresent (as Rousseau bears ample witness). The difficulty is that in drawing up parameters of civility and order the temptation to articulate and defend a rational, univocal and universally binding criterion for the critique of social systems becomes well nigh overwhelming.

Take, for example, the work of Jürgen Habermas,<sup>77</sup> an avowed non-contractarian who, in many ways, provides us with a striking parallel to Rousseau and Rawls. Like Rousseau and Rawls, Habermas recognizes that purely stipulative accounts of justice lack cogency. He realizes that man has both contingently arisen in evolution and developed in unforeseeable ways through history. As a consequence, he despairs of obtaining a 'universal principle' from heaven. Nevertheless, as a Marxist, he regards the alternative of an 'irrationalist' relativism or an *ad hoc* conventionalism to be more than merely philosophically unacceptable. Ethical scepticism, so he believes, even when it does not foster the glorification of instinct, blood and dark shirts, cannot help enervating the struggle for political reason. Consequently, it is said to smooth the path for a wideningly illegitimate employment of elitist coercion. In fact, throughout his work, Habermas has set himself the paradoxical task of formulating a leftist *standard* of social criticism which though contingent in its origins has become constitutive of critical rationality itself, which is both a product

and a presupposition of human action. In sum, we may say that Habermas' basic project is to work out a post-Darwinian reformulation of the egalitarian doctrine of unimpugnable natural rights.

For purposes of brief exposition it is possible to divide Habermas' main argumentation strategy into a 'critical moment' and a 'constructive moment'. When he is being predominantly critical, Habermas aims at the refutation of all positions which maintain that 'reason' (i.e., the ability to justify oneself in discussion) is only theoretical or contemplative and, as a consequence, that practice must ultimately be a matter of unjustifiable habit or irrational choice. In such cases, Habermas' *bête noire* is 'decisionism', or an assumption of the subjective indeterminateness of ends. This involves him in an extensive attack on positivism, which, as he interprets it, makes 'reason' coextensive with deductive operations *plus* the technical selection of optimally efficient means for preestablished ends. On its terms, the evaluative discrimination among ends has no cognitive status. The answer to practical questions (like "What should our goals be?") cannot be true or false. The continuum between ethical neutrality and 'decisionism', so Habermas suggests, should be transparent.

The constructive moment of his work has to do with renewing the claim of egalitarian natural right in the context of a curious 'linguistic turn'. Arguing against Weber's reduction of legitimacy to a plurality of factually accepted legalities, Habermas, like Rousseau, in particular, wants to formulate a 'transperspectival' and univocal criterion of the good life, a standard reflecting the ideal of a classless society, of universal self-government through unrestricted and coercion-free public discussion. He claims to have arrived at this standard by reconstructing the fundamental norms of rational communication (as Rawls 'reconstructs' the fundamental norms of human nature) though he does not conceal the fact that this 'reconstruction' implies the combined retrieval of two crucial concepts of German idealism: autonomy and universality. Thus the key to neo-Marxist 'communicative ethics' is the normative idea of an uncoerced reciprocal recognition of all men as autonomous and distinct individuals. This ideal value is, aptly enough, as with Rousseau and Rawls, both contingent and necessary. According to Habermas, its normative force presupposes the absence of mechanical predictability, but now has become inextricably and necessarily embedded in the 'deep structure' of sociocultural life. This



necessity (what makes the idea 'constitutive' of critical reason) is thought to have both an evolutionary and a historical aspect.

On the one hand, Habermas sees the 'cultural break with nature' (c.f. *Part Two*, Section one) as marked by the institutionalization of ordinary language as the dominant medium in which intersubjective relationships both develop and are maintained. Furthermore, the theory of ordinary language communication purportedly furnishes us with a germinal ethics. The 'deep structure' of colloquial intersubjectivity, so he tentatively asserts, already 'anticipates' an idea of egalitarian social justice which entails the achievement of universal human autonomy - that is to say, equal rights for all men to satisfy their socially-interpreted needs and to participate in *all* relevant processes of political decision-making. For example, the competent speaker of a natural language (to reproduce one of Habermas' more striking arguments) must already have mastered the transformational generative rules, in something like Chomsky's sense, which allows him to correctly employ pronominal shifters.<sup>78</sup> Now, to use the words "I", "you" and "we" properly, a speaker must recognize the correlative legitimacy of every other speaker's using the same words in more or less the same sense. To be communicatively competent, Habermas claims, an interlocutor *must* recognize, at least tacitly, the right of every other man to be an autonomous subject, equal in all important respects to himself. This purportedly anthropologically-invariant structure of ordinary language communication leads Habermas toward a 'naturalized ethics' which, in turn, forms the basis for his post-Darwinian (indeed, post-Vichian) doctrine of natural right. *Ego*, Habermas argues, can only maintain its identity through some kind of equal reciprocity with an *alter ego*. Becoming a subject (and Habermas here refers to Mead) cannot be separated from learning to see ourselves through the eyes of another (a refinement of what we earlier termed 'beneficent *verstehen*' - see *Appendix Five*). Reciprocal recognition can thus be universalized into the elemental principle of a rational or post-conventional moral life. Moreover, exclusively monological (strategic and instrumental) action provokes an automatic sanction: loss of personal identity. If a speaker were steadily to violate the underlying logic of speech acts, of acts of speaking/hearing, the coherence of his self-definition would be called radically into question. If he were consistently to flout what Habermas calls the "universal pragmatic maxim" of truthfulness, for example, if he were always to lie, then after a while he would no longer know what he was saying.

According to Habermas, this practical mechanism, whereby ego-identity (constituted in the medium of colloquial intersubjectivity) can be threatened with abysmal collapse, exhibits how a transcendental argument - one which reconstructs the fundamental regulative conditions for rational communication - can bear a normative burden. It provides the functional underpinnings for a theory of man's second (linguistic) nature, of a boundary which none of us can transgress with impunity, at least not continuously and not for long.

On the other hand, there is a historical aspect to this issue which the appeal to anthropological constants might appear to slight, if not to ignore. Habermas is certainly aware that a full-blown 'Enlightenment morality' was not coeval with linguistic communication. He knows further that Western egalitarianism, for instance, is to some degree a 'secularized' version of the Pauline doctrine that all men are equal before the one God. Likewise, he knows that the abstract interchangeability or anonymity of experimenters in modern science, and especially the universality of equal exchange on the capitalist market both nurtured the liberal idea of justice and hence contributed to making civil rights, including suffrage, universal. All he requires for his 'quasi-transcendental' *foundation* of a universalistic and egalitarian ethics is acceptance of the idea that these developments, though originally improbable, have now become in a certain sense irreversible. Furthermore, Habermas believes that he can deal with the historical genesis (and thus, variability) of ostensibly universalistic moral principles by tracing-out in a Rousseauan fashion, a hypothetical logic of social evolution, by constructing, as he said in his less tentative days, an empirically-flasifiable philosophy of history. The evolution of worldviews, moral systems and cult practices, he postulates, follows a set of empirically describable regularities: from sacred to secular, heteronomy to autonomy, tribal particularism to human universalism and so forth. These 'observable' tendencies, Habermas argues, all point indirectly to the underlying anthropological or linguistic invariants (especially to the ideal of a classless society or of a universal reciprocal recognition among individually autonomous men) which were originally kept 'inactive' by external factors such as scarcity. In general, one can view this proposed 'logic of social evolution' as a phylogenetic analogue to the theories of Kohlberg and Piaget as to the ontogenetic genesis of 'universalistic' moral principles. To be formulaic and with a proviso about increa-

sed subtlety, Habermas responds nicely to the description which Troeltsch gave of Marx: he is both a sociological relativist and an ethical absolutist.<sup>79</sup> Indeed, one might say the same about Rousseau, if not Rawls.

What makes this final position untenable is Habermas' (and Rousseau's and Rawls') commitment to an association of human rationality with an eventual *consensus omnium*. Communicative ethics is doubly naive since it tries to combine Marx's belief in the possibility of a society utterly free of all inner cleavages with Kant's notion that 'transcendental reflection' can unearth principles upon which all men will necessarily agree. Since every course of action on which men embark is going to produce contingencies and problems which they did not (and could not) foresee, the idea of a guarantee or certified ground for choice seems additionally irrelevant. Of course, we have principles, but they are cultural achievements and are not rooted in evolutionary bedrock. There is an unavoidable moment of risk in every consequential step we take. How are pronominal shifters and pragmatic universals going to help us when we come to real moral dilemmas - say, the termination of a seventh-month pregnancy or the production of plutonium? We would expect Habermas and his colleagues to say: why, all we have to do is to institute a practical discourse in which everyone affected has a right to his say and where the best argument is accepted unanimously: the literal application of the contractarian method as a model of civil behaviour rather than as a notional heuristic device. But what world is Habermas talking about? He seems to be spinning out words instead of thoughts. Who precisely is "everyone affected"? Unborn children and future generations seem not unlikely candidates - yet, there might be organizational difficulties in getting them to exert their prerogatives of role-exchangeability in present discussions. Democratic rationality, so Habermas suggests, requires the "ideal simultaneity" of all men (not to mention 'ideal communication' - an absolute conceptual scheme *à la* Kant in which we all know what we and others are saying and do not want to say: an idealized dialectical situation). But how can a simultaneity which is unthinkable be ideal? And in any case, who among the real (more than ideal) participants decides which argument is 'best'? Only a *consensus omnium* decides, responds Habermas (with a Rousseauan and Rawlsian echo), clearly unimpressed by the idea that modern society is too complex to be steered on the basis of unanimity. This is truly a remarkable construction. An unthinkable community (as opposed to the conceivable but highly unlikely

community in Rawls' original position) comes to an unthinkable consensus about issues which in real life are always ambiguous, many-sided and recalcitrant to 'grounded' or risk-free decision. Without this fantasy, Habermas claims, we would sink to the depths of irrationalism and despair. There is nothing Habermas fears more than awakening one morning and discovering that he has been transformed into Carl Schmitt.<sup>80</sup> This fear is so overwhelming that it has caused him to abandon the argumentative kernel of his earlier works, of those essays in which he was still under the influence of Adorno's radical critique of ontology. The basis of this early position was a repudiation of the Graeco-positivist idea of 'pure theory'. Indeed, it takes little insight to see that Habermas has revived 'pure theory'. His naturalized ethics is part of a project which involves more than the mere deduction of an 'ought' from an 'is'. We do not have to deny the intricate connection between the way things are and the way they should be to see Habermas' misstep here. He has no justification for saying, even if all his 'knowledge in the service of life' arguments are correct, that there is only *one* way in which things ought to be. Moreover, Habermas has no right to suppose that the array of linguistic 'facts' he marshals for his case are open to one interpretation only. He makes the critical mistake of presupposing that natural language forms a consistent totality; and while we suspect that language performs a variety of functions and is built up in a piecemeal fashion, we are allowed to hold, even by his argument, that language is inconsistent and therefore incapable of generating consistent universals. As with Rawls' analysis of "natural duties", what Habermas presupposes might be true of artificial, but not *natural*, language.

It is no accident if Habermas' idea that archaic man's "first sentence expresses unequivocally the intention of universal and unconstrained consensus"<sup>81</sup> and Rawls conception of natural duties remind us of Vico's railing against the "conceit" of those philosophers "who will have it that what they know must have been eminently understood from the beginning of the world." Indeed, both Habermas and Rawls - much more so than Rousseau - want to renew precisely that kind of foundationalist philosophy of politics which Vico wished to demolish in the *New Science*. Significantly, Vico did not accept the Cartesian alternative of foundationalism versus irrationality. What we have called the 'second strand' of this thesis, in fact, attempted to sketch in outline a Vichian concept of political rationality which has neither ultimate guarantees nor transcendental foundations. In

*Part Two* it was argued that Vico was able to sustain a commitment to reason without appealing to transhistorical canons of justice or unchanging natural rights. Following the *New Science*, of course, we can never say that a political regime violates the eternal law of nature or that a citizen, simply by virtue of his citizenship, is under an obligation to obey the laws of his *patria*. But this does not, as Habermas might suppose, plunge us into the grim depths of 'decisionistic' unreason. We *can* consider the 'character' of a state and determine whether or not we are under an obligation to obey its laws, not by grounding civil obligations in immutable principles, or by fixing when and how we have consented to obey the laws of a state; but, firstly, by carefully considering what kind of a state warrants our obedience, and, secondly, with the aid of the contractarian metaphor, we can develop a conception of a state - a 'just state' - to whose authority we could reasonably assent. If we find that the state in which we live meets this conception or approximates it, then, following the principle of fairness, we know that we have an obligation to obey its laws. Of course, this is not to say that when we know this we know all we need to know. Like all theories of civil obligation, the social contract *assists* us in learning whether we have a civil obligation. If we do, then we know that, *ceteris paribus*, we ought to obey them. As remarked in the conclusion to *Part Six*, this does not tell us everything, but it does tell us a great deal.

If we believe, with Vico, that social evolution introduces non-trivial transformations into human society, then it is possible, among other things, to consider normative arguments in terms of historical anachronism (or what we have termed 'apophradism'). In *Appendix Three* and *Part Seven*, in fact, it was argued that the Hellenic identification of polity and society, when naively transferred to highly differentiated societies, invariably generates illusory expectations and unrealizable values. The paradigmatic unjust state - the totalitarian state - is irrational because it necessarily fails to recognise the problem of civility: it sees only the problem of order. Yet, if nothing else, the rise of the modern state has been characterised (and haunted) by the many and various dilemmas surrounding the problem of civility. What was secondary for Hobbes, in other words, had acquired immense importance for Locke, not simply as a matter of personal taste but as a reflection of the times, as a recognition of the events and ideas that separated the two philosophers. That is to say, the 'texture' of time as the stuff of history, not the mere passing of days.

PART SEVENNotes

1. Politics, W. D. Ross (ed), Oxford, 1957, 1279a 17 and 30.
2. "On Princely Government", Book I, ch.i, in D. Bigongiari (ed), The Political Ideas of St. Thomas Aquinas, New York, 1953.
3. Discourses on the First Ten Books of Titus Livy, Book One, preface, C. E. Detmold (trans), The Prince and the Discourses, New York, 1950
4. Leviathan, Part II, ch.17
5. G.W.F. Hegel, The Philosophy of Right, T.M. Knox (trans), Oxford, 1978, sec.126
6. "Die Verdinglichung und das Bewusstsein des Proletariats", in Geschichte und Klassenbewusstsein, Berlin, 1970
7. para.68
8. Quoted in H.S. Harris, The Social Philosophy of Giovanni Gentile, Urbana, Illinois, 1966: "All force is moral, for it is always directed at the will; and whatever method of argument is adopted - from sermon to blackjack - its efficacy cannot be anything but its power to convince men in their hearts and persuade them to agree." p.176
9. J.S. Mill, On Liberty, M. Warnock (ed), London, 1969, ch.IV, passim.
10. New Science, T.G. Bergin and M.H. Fisch (trans), Ithaca, N.Y., 1970, para.1100
11. K. Burke, Permanence and Change, New York, 1935, pp 95 ff
12. Walter Ullmann, Principles of Government and Politics in the Middle Ages, London, 1961, pp 91 ff
13. Celibacy was always one way for the clergy to remain relatively independent of secular authority, since by not having families they could not pose a 'dynastic' threat. Cf. a humorous passage in Locke's Second Treatise, para.76
14. Erich Voegelin, The New Science of Politics, Chicago, 1974, p.163 and passim.
15. The City of God, Book XIX, v, "socialis vita sanctorum", H. Bettenson (trans), Harmondsworth, 1972
16. Ibid., XIX, xv

17. Nichomachean Ethics, I. Bywater (ed), Oxford, 1898, 1103b 4
18. "On Kingly and Papal Power", in R. Lerner and M. Mahdi (eds), Medieval Political Philosophy, Ithaca, N.Y., 1963, p.414
19. John's argument, it must be admitted, is not so subtle; but it remains suggestive.
20. New Science, Op Cit, para.283
21. Discourses, Op Cit, Introduction, p.105
22. The Prince, Op Cit, ch.26
23. Theory and Practice, trans. J. Viertel, Boston, 1973, fourth edition, "The Classical Doctrine of Politics in Relation to Political Philosophy", pp 41-81
24. Discourses, Op Cit, I, 55, p.255
25. The Prince, Op Cit, ch.IV, pp 15-16
26. Discourses, Op Cit, II, 2, p.285
27. Ibid, I, 12, p.152
28. "If we may call liberalism that political doctrine which regards as the fundamental political fact the rights, as distinguished from the duties, of man and which identifies the function of the state with the protection and safe guarding of those rights, we must say that the founder of liberalism was Hobbes." Leo Strauss, Natural Right and History, Chicago, 1968, pp 181-182
29. De Cive, in B. Gert (ed), Man and Citizen, New York, 1972, ch.1,\$7
30. Vico, On the Study of the Methods of Our Time, E. Gianturco (trans), New York, 1965, ch.VII, p.33
31. Ibid., p.35
32. "A Review, and Conclusion", in Leviathan, M. Oakeshott (ed), Oxford, 1955, p.467
33. Ibid., I, 12, p.77
34. Ibid., II, 22, p.153
35. Ferdinand Tönnies, Community and Association, C.P. Loomis (trans.), London, 1974
36. Leviathan, Op Cit, II, 19, p.127
37. Ibid., II, 22, p.155
38. Ibid., III, 43, p.384

39. Ibid., II, 30, pp 219-220
40. Ibid., III, 43, p.395
41. Ibid., I, 5, p.25
42. Ignorance and superstition defeat legal orderliness: "The fear of Darkness, and Ghosts, is greater than other fears" (II, 29, p.215), presumably even greater than the fear of violent death. Thus, even before the mechanical laws of sovereignty come into play, the state must re-educate its subjects, purge them of their fear of "spirits invisible".
43. Proverb:  
     Treason doeth never prosper,  
     What's the reason?  
     Why, if it prosper,  
     none dare call it treason.
44. Leviathan, Op Cit, I, 16, p.107
45. Social Contract, G.D.H. Cole, trans, London, 1973, I, vii, p.176
46. Ibid., I, v, p.173
47. Henri Benjamin Constant de Rebecque, "Principes de Politique", in Oeuvres, Paris, 1957, p.1105
48. Discourse on the Arts and Sciences, The Second Part, in G.D.H. Cole, edition.
49. Ibid., passim.
50. Ibid., p.22
51. Social Contract, Op Cit, IV, ii, p.249
52. Ibid., IV, viii, p.271
53. Ibid., IV, viii, p.270
54. Ibid., IV, viii, p.271
55. Ibid., IV, ii, p.249
56. Ibid., I, vi, p.174
57. Ibid., II, iv, p.186
58. Lettres écrites de la montagne, in Oeuvres Completes, Paris, 1964, Vol.3, p.826
59. Epictetus, "On Freedom", Book IV, ch.1, sec.1, in The Discourses as Reported by Arrian, J. Sandford (trans), London, 1928; See J.M. Rist, Stoic Philosophy, Cambridge, 1969, esp. ch.14
60. Politics, Op Cit, 1310a 34-36



61. "On Freedom", Op Cit, ch.1, sec.1
62. Ibid., I, i
63. Ibid.
64. Ibid.
65. Ibid.
66. Ibid.
67. On Liberty, Op Cit, "Introductory", p.137
68. Ibid., ch.IV, p.206
69. Ibid., "Introductory", p.138
70. Hannah Arendt, "What is Freedom?", in Between Past and Future, New York, 1968, p.157
71. Ibid., p.148
72. On Liberty, Op Cit, "Introductory", p.138
73. Leviathan, Op Cit, Part III, ch.42
74. P.F. Strawson, "Social Morality and Individual Ideal", in Freedom and Resentment, London, 1974
75. J. Rawls, A Theory of Justice, Op Cit, p.454
76. Jean Piaget, Moral Judgment of the Child, trans. M. Gabain, New York, 1965; Lawrence Kohlberg, "The Development of Children's Orientation Toward a Moral Order", Vita Humana, VI, 1963, and "Stage and Sequence: The Cognitive Developmental Approach to Socialization", in D.A. Goslin (ed), Handbook of Socialization Research and Theory, Chicago, 1969.

Rawls seems to have ignored the epistemological foundations of cognitive development theories as found in Piaget's work in particular: especially, Genetic Epistemology, E. Duchiworth (trans), New York, 1970; Psychology and Epistemology: Towards a Theory of Knowledge, A. Rosen (trans), New York, 1971

77. Jürgen Habermas, Theory and Practice, J. Viertel (trans), Boston, 1973, fourth edition; Legitimation Crisis, T. McCarthy (trans), London, 1976; Knowledge and Human Interests, J. J. Shapiro, (trans), London, 1972; with Niklas Luhmann, Theorie der Gesellschaft oder Sozialtechnologie?, Frankfurt, 1971; Technik und Wissenschaft also Ideologie, Frankfurt, 1968.
78. Theorie der Gesellschaft oder Sozialtechnologie, Op Cit, p.105 and passim.
79. Ernst Troeltsch, Der Historismus und Seine Probleme, Vol.III, of Gesammelte Schriften, Tübingen, 1922, p.314

80. See Hans Albert, "The Myth of Total Reason: Dialectical Claims in the Light of Undialectical Criticism", in A. Giddens (ed), Positivism and Sociology, London, 1974, esp. §3 .
81. Technik und Wissenschaft als Ideologie, Op Cit, p.163

## APPENDIX ONE

### I.

Traversing different paths toward divergent ends, the Machiavellian and the Calvinist shared a similar awareness of the human condition and espoused in common a pragmatic policy outlook, so to speak, in terms of which, it was argued, man could make the best of an unavoidably unfortunate situation. Equally committed to an ethic of action, Machiavelli and Calvin saw man's struggle for survival as a contest between growth and decay. Growth entails men working in harmony, forever striving for more complete control over mind and body: self-reliance and discipline. Decay is the result of disunity, self-indulgence and, most importantly, half-hearted or insincere efforts at achieving self-reliance and discipline: inefficiency. Consequently, the life-policy of the sensible man (of him who prefers growth to decay) is the efficient pursuit of self-reliance and discipline through action rather than contemplation. "How can a man know himself", asks Goethe, "Never by observation, but through action. Try to do your duty and you will know what is in you. And what is your duty? Your daily task."<sup>1</sup>

Arising from a crypto-evolutionary conception of History writ large as the chronology of human survival in general, and individual histories as particular records of 'natural selection' within the species, as it were, the Machiavellian perspective on man stripped the struggle for survival of any cosmic meaning and all spiritual dignity. As Hegel was later to reiterate, "the course of world history stands outside of virtue, blame and justice." Consequently, as individuals and as members of collectivities we seek to exist as best we can in the light of past experience and what we know at first hand. Most people have no pretensions to power outside the immediate sphere of their survival or any desire to frame legislation for their fellows. Most wish to subject themselves to the authority of another rather than assume authority themselves; and so, it follows, according to Machiavelli's reasoning, that it is the limited ambitions of the many that grant the few power and authority, providing, of course, that the latter substantially satisfy the circumscribed demands of the former. Similarly, the Calvinist perspective on the human condition emphasised the

tentativeness of survival, urging the individual to play his part in the building of disciplined order out of uncertainty. While having regard to a spiritual end the Calvinist knew neither what that end was, other than God's glorification, nor the nature of Him who determined it. All the Calvinist did know was that his duty was to survive as best he could in accordance with the scriptures until he assumed his destiny under the divine will. Since divinity is beyond human comprehension it is sinful to speculate on the divine and unwise, indeed, immoral to ignore the temporal. The 'great chain of being' with its fecund and benevolent God ordering the natural hierarchy of things, so beloved of the neo-Platonists, Christian Aristotelians and Anglicans had no place in Calvin's theology. The drama of Satan's rebellion evaporates in a universe founded not on God's arbitrary domination but on his cheerful productivity and incessant fiddling. Where is the sense of wicked, bloody human history in a feudal 'body celestial'? Rather than some Renaissance mathematician presiding over a geometric universe, the Calvinist God is a levelling Master smashing all contrived symmetry and intermediate power. His boundless mastery so dominates the universe that nature, as it were, loses its generative capacity, because all potentiality emanates from an 'arbitrary' Will. That is to say, *tele* which had been *immanent* are relocated in a *transcendent* God (a view foreshadowed by the medieval nominalists).<sup>2</sup> Gone is medieval pluralism and the balancing act of angels, popes and kings; swept away by the trembling wrath of a betrayed God permanently estranged from mankind. The Fall alienated man from God, from nature, from his fellows, and no blessed, other-worldly reunion will relieve this current misery. Only the disciplined activity of self-controlled men in this less than perfect world can reconstruct some semblance of order and thereby alleviate the estrangement between men, if not between man and God. There is no succour in this world, runs the argument, God didn't ordain a welfare-universe; and since there is no one to turn to - there being no intermediary between man and God - all help is self-help only.

Paradoxically, one could argue that, in a sense, Calvin removed God from temporal affairs precisely by making Him ubiquitous and 'omnicausative'<sup>3</sup>: the rationale for everything, yet a rationale devoid of a calculable reasoning accessible to mankind. Unable to 'hide in everything', as it were (in the manner of Spinoza's pantheistic deity), but refusing the passive role of Platonic demiurge, Calvin's God is at one immanent, tran-

scendent and sovereign. As 'transcendent reality', "God is the principle of all being (*ratio essendi*) and as transcendent idea, God is the formal principle of all knowing (*ratio cognoscendi*)."<sup>4</sup> The critical ontological distinction of creator and creature (not as artificer and artefact, but as the wellspring of existence and creation *ex nihilo*) defines God's transcendence as existential priority and independence. Ontologically, the world is utterly dependent upon God, its finitude nestling within the limitless expanse of His purpose. God's immanence is manifest, for Calvin, not as Spinozic pantheism but, rather, as 'revealed handiwork' i.e. nature as His 'good works'. "We are in the process of forming a living conception of God when we work on the perfection of the specific scientific disciplines," contended Schleiermacher<sup>5</sup>, reinforcing the Calvinist wonderment with nature as God's glory. Immanence as action in the world, then, as active participation rather than passive inherence. Thus, divine sovereignty must appear not merely as a pietist epithet, but, in a manner reminiscent of Henry of Ghent and Duns Scotus<sup>6</sup>, as an ethical category and metaphysical axiom. Immanence and transcendence culminate, as it were, in God's sovereignty. Insofar as His singular presence is experienced by His creatures it is, for Calvin, uniquely understood as divine will. Only through vigorous assertion of universal divine sovereignty can it be confidently proclaimed that God "rules unconditionally and irresistably in all occurrence."<sup>7</sup> "The operation of this God," writes Karl Barth, "is as sovereign as Calvinist teaching describes it. In the strictest sense it is predestinating."<sup>8</sup> Writing on man as subject to history (interestingly enough without once mentioning Calvin) the Lutheran Rudolph Bultmann neatly captures the Calvinist perspective on God as that of Hebraic man: 'Job's brother'.

"The man of the Old Testament knows nothing of an order of nature, governed by law, comprehensible in terms of rational thought. But he believes in a God who has created the world and given it into the charge of man as the place for his dwelling and working. Man conceives God as the ruler of history, who directs the historical process to a goal, in accordance with His plan. Therefore he is sure that there is an order in all occurrences, although not one which is intelligible to reason. Certainly human life is weak, fragile, and ephemeral, but the word of God stands unshaken, and man can rely on it. God is indubitable authority, and man has to be obedient, but in this very obedience he is quite safe and secure and gains his 'true existence'. "<sup>9</sup>

Politics, as "the art of making possible that which is necessary"<sup>10</sup>, emerged as the practical expression of Calvinist ideology, the individual Calvinist no longer racked by dreams of salvation but earnestly striving to make this life less anxious at his departure than it was at his entrance. In the manner of Marlowe's Tamburlaine, Calvin's new man was subject to control rather than humility, and was obliged to serve not a moral sovereign but a powerful man.<sup>11</sup>

The policy outlook embedded in both the Machiavellian and Calvinist conceptions of the human condition flowed from their mutual sensitivity to the uncertainty of life, a pathological fear of anarchy and an abiding concern with method, both as mode of investigation and procedure for attaining ends. It seems paradoxical that each thinker in his own way so devoted to enhancing social order felt compelled to spell out the essential instability of this world. But, clearly, the paradox was necessary to illuminate the dangers confronting order; not that it was contrived in either case as a simple heuristic or dramaticism - both related what they saw and reasoned, more often than not with a disarming honesty that worked against their calculable interests. Yet each heightened the tension inherent in the antithesis of order and chaos so as to more pronouncedly veer from the general drift of European thought that confronted the state's and man's temporal finitude in terms of the 'great chain', or some similar Platonistic theological metaphor, rather than in terms of moral and political stability in an interminable flux of irrationality. Stability, argued Machiavelli and Calvin, is the basis upon which a functioning society is built: an order of reasonable expectations springing from discipline and efficiency. The state serves primarily as an instrument of repression by which stability is forced upon men otherwise predisposed to the wanton pursuit of personal interests: in the *italiano volgare* of Machiavelli, men dominated more by *fortuna* than *virtu*. However, the state arose neither from a calculated pursuit of stability, as argued by some contractarians, nor from an extension of 'the family', with its organic stability and natural affections. Rather, it may be taken from Calvinist and Machiavellian thought, what was later to emerge as 'the state' lay nascent in the first instance of one 'savage' chieftain or family head forcing his will upon another. The cumulative tribalization of savages sprang from repression rather than reasoned reflection and mutual consultation. Though hardly in itself a legitimating device, repression created the conditions under

which men could later rationalize their collective existence in terms of legitimating fictions, such as the contract, and thereby retrospectively establish a groundwork for obligation as superior to mere obedience.

Luther had a similar view. "Let no one think that the world can be ruled without blood," wrote Luther, "the sword of the ruler must be red and bloody; for the world will and must be evil, and the sword is God's rod and vengeance upon it."<sup>12</sup>

Despite the considerable differences between Luther and Calvin in style and teaching - not the least of which was Luther's doctrine of introspective religiosity; religion proper as that paradoxically incommunicable communion with God - both theologians emphatically concurred in their mutual abhorrence of secular rebellion. Though virtually an ecclesiastical anarchist, Luther, even more than Calvin, deferred to the offices (if not the incumbent officers) of temporal stability as the guardians of Christian civility. His obsessional loathing of crowds and distrust of the peasantry fuelled an already inconsistent conception of civil authority as essentially holy: that mechanism by which personal religiosity is enhanced through collective stability.<sup>13</sup> "It is in no wise proper for anyone who would be a Christian to set himself up against his government," warned Luther, "whether it act justly or unjustly."

"There are no better works than to obey and serve all those who are set over us as superiors. For this reason also disobedience is a greater sin than murder, unchastity, theft, and dishonesty, and all that these may include."<sup>14</sup>

The explicit imperative of obedience common to both Luther and Calvin, enmeshing the citizen and the state to the exclusion of the Church, manifested itself, on the one hand, as Luther's drive to recapture the primitive 'purity' of early Christianity, and, on the other, Calvin's iconoclastic determination to shed the 'Word' of 'Metaphor', of accumulated clerical accrescences that, firstly, challenged the literal authority of revelation and, secondly, sullied the simple harmony of the sacred covenant, *the Word*. The urge to simplify and purify, however, carried with it great risks. The tension between church and state during the later middle ages had focused on the struggle for mundane political ascendancy; the authority of the church as the custodian of doctrine went unchallenged, since it was the *implementation* of doctrine, not its formulation, that was in dispute. What

made the Reformation a political revolution rather than an exercise in dissent, or a mere adjunct to rebellion, was the conscious transformation of the *sacerdotal/regnal* conflict into a 'crisis of faith', that is, a questioning of the church's 'right', firstly, to formulate doctrine; secondly, to definitively arbitrate in doctrinal matters; thirdly, to stratify the clergy in the tradition of Peter rather than levelling it in the tradition of Christ; fourthly, to monopolise the maintenance and dispensation of the sacraments; and, fifthly, to serve as the medium, indeed, the subject of faith. Combined, these aspects of papal Catholicism comprised the 'visible' church so ably defended by Aquinas as the link between divine grace and the temporal world, forged in the crucifixion, tempered by the sacraments, and polished by the 'chosen community', as it were, through whom divine truth is interpreted and communicated.

As the medium of salvation, then, the church stood with God as the subject of faith (salvation being its object) through whose authority revelation acquired veracity and, consequently, divinity. The individual believer does not confront God in a 'personal' relationship on a daily basis; rather, so dogma has it, he is ushered into the mystical body of Christ via the rites, whose sanctity lies in the idea of the church as His temporal incarnation. Revelation is thus unavailable to the individual outside of this eternal, unchallengeable authority since it consists in nothing other than the ecclesiastically endorsed record of divine intervention in the affairs of men, and of forewarned events and circumstances on earth and elsewhere. To question this total authority, to throw into doubt this unity of belief, was to make problematical not only the unique canonical domination of revelation, but also, most importantly, to cast into uncertainty the totality of ecclesiastical jurisdiction over the spiritual import of temporal affairs. That is to say, no matter what tensions characterized the relationship between the *sacerdotal* and the *regnal* within the community of the church, it was the sacred fellowship of the church that encompassed the laity, not vice versa. The vast cathedral chambers of catholicity enclosed nations and utterly humbled individuals. The church, not individual conscience, was the dispensation of God. Grace was the prerogative of ecclesiastical authority as received through the sacraments. To talk of irresistible grace, salvation outside the church, was to shatter the mystery of that delicate balance between punishment and reward. Ultimately, the fear of individual freedom of conscience as the



greatest affront to universality - that dread of particularity because its very smallness constitutes a challenge to the splendour of largeness - served as the catalyst for clerical reaction to the Reformers. It was the recognition that authority is total else it is nothing that brought down the charge of heresy on those who would draw a distinction between individual conscience and the will of the church. Moreover, the circumvention of the church by the reformers through direct appeal to scripture as *the* embodiment of divine authority, as the word of God then and now, furnished worship with 'simplicity', 'purity' and 'certainty'. The mediation of priests muttering sacramental incantations no longer being required, salvation became a function of people in 'direct' communion with God. "Every Christian is a priest," said Luther, "every believer is his own priest."<sup>15</sup> Only faith is required, faith in God and His Word. Though written with application to the church, St. Anselm's formulation of Augustine's anti-rationalism neatly precis the spirit, if not the animus, of Reformation theology: "I do not try to understand in order that I may believe but I believe so that I may understand. For I believe this too, that unless I had faith, I would not understand."<sup>16</sup>

In 'depoliticizing' religion - by setting apart the law of God, Gospel, Church and state<sup>17</sup> (as the embodiment of public order) - Luther sought to affirm the direct, 'primitive' relationship between God and man. Since humanity exhibits no uniformity of grace and faith the task of the true Christian, argued Luther, is to participate in the establishment of a pure, voluntary fellowship of believers whose immersion in the Gospel would (through personal example and the gradual increase in piety amongst men) alter the nature of political conduct. The suspension of the church in a web of canon law, indulgences and bureaucratic procedures represented for Luther the politicization of faith and, by implication, through reliance upon a system of sanctions, the denial of the unique power and authority of the Gospel. Luther's assault on the Church hierarchy was only in small part, and mainly at the beginning of his mission an attack on secularism, corruption, nepotism, bureaucratic rigidity; it was an attack, rather, on an institution that had dared to interpose itself between God and man and to claim the right of mediating in a situation in which no mediator, except Christ, was welcome. The political and economic profits accruing to confessed Lutherans in Saxony, Hesse, Prussia and the imperial cities of Germany - and they were, for many, considerable - should not obscure the

profound introspectiveness of Luther's teachings. The extremists who arose so widely in his wake testify to the emotions that Luther's preaching, his writings, his very presence unloosed in pious and disoriented men. If - as many reasoned after 1517 - there was to be no Pope, no separate priesthood, no pilgrimages, no interceding saints, there was no need for formal clerical institutions at all. Faith in God and a divine sign in man were all a true Christian needed; or, as others, less individualistic, put it: the communion of saints was sufficient unto itself.

However, this was not Luther's view, even though some of his early pronouncements could be interpreted in this way. Throughout, his ideal was the communion of saints, united in the invisible church of the faithful. But the peasants' rebellions of 1524 and 1525, as well as inexorable political realities, drove Lutheran rulers, and Luther himself, into a less exalted conception of church and state. In a world of hostile neighbours and fanatics at home, the secular princes and city governments came to assume the position of little popes within their domains. No longer a universal autocracy governed by Rome, the church became a local tyranny governed by its duke or council. As Luther's political thought developed in response to calamitous political events, it became clear that the state must assume certain functions (notably education and what passed as 'welfare') that had once been the province of the Church, and must supervise, moreover, the good conduct and uniform practice of churchmen. Luther did not think rulers free from sin; on the contrary, he never tired of telling them they too were liable to damnation. But he did take seriously St. Paul's injunction that the powers that be are ordained of God; it follows, then, that a Christian owes his state obedience and nothing but obedience. A true Christian is free, but Luther interpreted this freedom in a subjective sense: a Christian is free in his heart, no matter how oppressive the regime under which he might live and suffer. Thus Luther, the great liberator, became the uncomfortable proponent of state churches subservient to state governments.

From the perspective of *personal* (Christian) *religious* conscience, however, Luther attacked the Roman Church as the defender of *Gesellschaft* legalism and enemy of *Gemeinschaft* intimacy in matters of belief. Insofar as the church had become, through Aquinas and the 'realists', the vehicle for *ratio* in theology, it had betrayed the four principles of Christian

belief as identified by all the dissenters and around which Reformation theology developed: the unique authority of the scriptures, the priesthood of all believers, justification by faith alone, and, pursuant to *solo fide*, good works not as religious acts entered in some salvational ledger but as the natural by-product of 'Christian liberty':

"Behold, from faith thus flow forth love and joy in the Lord, and from love and a joyful, willing, and free mind that serves one's neighbour willingly and takes no account of gratitude or ingratitude, of praise or blame, of gain or loss."<sup>18</sup>

As mentioned, Luther's rebellious progression, from the relatively moderate protest at Wittenberg to the irreparable breach at Worms, represented much more than a fundamental break with papal authority over corruption, bureaucratization and the centrality of scripture. Paradoxically, in the light of Luther's condescending attitude towards common folk, the heart of the Lutheran revolution lay in the revival of Wycliffe's notion of the invisible church as a communion of spiritually free men.<sup>19</sup> "The Christian man is of all men the most free because he is not dominated by rules and does not pretend that he is carrying out laws," writes Roland Bainton by way of paraphrasing Luther's *The Freedom of the Christian Man* and *The Sermon on Good Works*,

"He is simply giving expression to his gratitude to God and to his love for his neighbour. The Christian man is of all men the most bound, but the obligation laid inescapably upon him is from within. The essence of Christian morality is the imitation of Christ, not in the medieval sense of doing just what Christ did but rather in behaving after the pattern of Christ, who, being rich, for our sakes became poor; who, being on an equality with God, for us took the form of a servant and a felon; being innocent, yet on our behalf, he assumed guilt which was not his own. Even so must the Christian become a Christ to his neighbour, so identifying himself with the neighbour as even to assume guilt for which there is no personal responsibility. This ideal also can never be adequately attained. The Christian is bound every day to fail, yet he is not sunk. He is at once a sinner and yet saved. If he makes no pretense to goodness but in humility and gratitude endeavours to conform himself to the divine purpose, he will be able to carry on despite every shortcoming."<sup>20</sup>

The essence of this doctrine is participation in the way of the Word; ingressions into the Word's life- (and after-life-) force by participating in

daily activities with an awareness that through faith one enters Christ's *corpus mysticum*. Individuals do not so much serve as priests unto themselves in this fellowship; rather, each believer is a priest to his brothers, all of whom, through acceptance of Christ, are eligible for free forgiveness. The community of Christians, then, serves as the locus of God's Word, the mysteries of which silently permeate the deeds of each believer as he relates to his fellows. Without fellowship there can be no communion, and without that there can be no salvation. It is the bond that liberates.

Likewise, according to Luther, the bond of civility as epitomized in the state is a 'liberating enslavement'. The state is essentially holy, in that its divinely appointed function is to facilitate stable, harmonious relations between men. Luther "paves the way for the exalted theory of the State entertained by Hegel," wrote Figgis, "(He) is as much the spiritual ancestor of the high theory of the State, as the Jesuits ... are of the narrower, utilitarian theory."<sup>21</sup> Regardless of Luther's ecclesiastical libertarianism, it may be said without fear of contradiction that in the realm of public affairs he recoiled more from anarchy than tyranny. And, given his dependence upon the temporal powers of Saxony, Luther needed little reminding that the ready fusion of necessity and convenience - as in the need to survive and the fortunate concurrence of ripe circumstances - generate a theology all their own. Unlike the Calvinists, the followers of Luther (as distinct from his early peasant admirers) found themselves in the happy situation of princely favour and a milieu disposed toward spiritual revolution. The rapid alignment of forces against the church and the crumbling Holy Roman Empire generated a crusading atmosphere conducive to hastily rationalized marriages of convenience. Moreover, it seemed only natural that in the battle with Antichrist the forces of righteousness should be elevated to a quasi-divine plane, at least. Hence Luther's beatification of princely potentates as the guardians of God's earthly realm. The political kingdom is secular and rational, asserted Luther; the religious kingdom embraces spiritual faith freely attained. Each is God's work; each must function in its own manner.<sup>22</sup> The lay powers were thereby sanctified by Luther in direct inverse relation to his laiti- zation of the ecclesia.

## II

Calvin departed from Luther, and the sectarian chiliasts teeming in the latter's germinal wake, on two related grounds, both largely derived from a methodological principle rooted in what might be termed an epistemic, rather than a Gnostic, conception of divine authority. The two grounds for departure were really opposite extensions of Calvin's notion of 'order'. The first extension was in the direction of the 'private', the uniquely individual apprehension of the Spirit as developed by Luther under the influence of the nominalists. Individual conscience is, as it were, suffused with the Holy Spirit, yet, because of God's gift of 'free will' it is open to corruption; it is vulnerable precisely because the human (intentional) aspect of salvation resides in the bringing of sinful man into communion with God. It is the self-conscious, reflective movement of man into that which is truly his soul, the knowledge of which is rendered him through revelation, that promotes (though does not necessarily guarantee) his regeneration and, ultimately, salvation. Salvation is made possible, in the first place, by God's preordination from all eternity certain of mankind through grace to salvation and eternal life. But, if eternity is to be achieved, each man must embark upon his own journey to complete the cycle (from God's initial appointment to residence in Paradise) since few are certain of their election until the circle is closed. God's order is perfect, in that it is God's order, and history is the saga of its completion. The universe is, literally, God's 'activity', as both the product of his intention and the object of his attention. Likewise, 'predestination' is the 'action' by which God immutably determined all events: the realization of purpose, not merely a statement of will.

Where Luther was seemingly overwhelmed by the mysteries of faith - "Old sorrow stirs, the wounds again have smarted, Life's labyrinth before my vision lies"<sup>23</sup> - Calvin projected faith into a broader framework bounded by the totality of God's activity in relation to man: the order of things. Predestination, then, served not as the seminal principle of Calvinism, but as the logical and *practical* implication of Calvin's syllogistic reasoning from God's omnipotent majesty through the nature of things to a profile of salvation and the role of everyman. Concerned as he was with release from guilt and the peaceful reconciliation of the soul with God's will, Luther stopped at just that point where Calvin departed into the farther reaches

of Reformed theology. It was almost as if the purgation of guilt and the ecstasy of peace in faith exhausted Luther, making it necessary for him to stop in the midst of faith, as it were, incapable of delving into its practical ramifications. Calvin, on the other hand, was not content merely to inquire of its prerequisites; he sought to fathom the implications of justification by grace (through faith) and, in so doing, make available a public ecclesiology within which to situate a Christian soteriology. Insofar as this endeavour negated the priesthood of all Christians, it devalued the Lutheran emphasis on individual conscience as spiritual guide and critic, and engendered the first serious rift between the two reformers. God and His glory stand above salvation as the focus of Christian ambitions, contended Calvin - justification from the free gift of God alone, to praise the glory of His grace.

The formulation of an all-embracing Christian ecclesiology flowed naturally from Calvin's analysis of the Spirit and man, and represented the second extension of the idea of 'order'. The fusion of the two kingdoms, ecclesiastical and civil, within a single moral schema meant for Calvin an affirmation of the Spirit in human conduct: that the church polity comprising as it does a Christian commonwealth may, indeed, must influence its *doppel-gänger*, the secular polity, in accordance with the Word. The true church thus constitutes the living fusion of Spirit and Word: an organism not only in its teleology but in its internal coherence as well. The uneasy plurality of Luther's two kingdoms intimated a diminution of God's authority - though, needless to say, Luther emphatically declared otherwise<sup>24</sup> - and nurtured in its introversion an egoism utterly repugnant to Calvin. Obedience to the gospel, not personal reconciliation with God, marks Christian duty, and only through relentless individual sacrifice to the rigours of obedience would the visible church thrive. The supreme intangibility of Lutheranism was thus set aside for the most palpable of all churches. Moreover, the almost schizophrenic tensions induced by parallel participation in two distinct polities, demanded of the Lutheran, were initially relieved and then re-channelled by Calvin. It made no sense for Calvin to talk of the 'confusion' of two kingdoms, there being only one Kingdom, one Monarch. His mortal agents rise and fall in accordance with His will, and if it be the way of things that there are kings and citizens then *it is the 'internal' logic of this system, not its raison d'etre, that is liable to human analysis.* Men, Christian or other-

wise, are in need of government because God predisposed them towards civility.<sup>25</sup> The 'integrity' of man, which is properly analogous to the order of the world, is reflected in the soul which, through its capacity to transcend nature, makes man central in the order of creation. There is an 'integrity of order', then, that arises from the mundane teleology of the world, superimposed on the mechanics of life as the divinely appointed 'function' of nature, namely, human well-being. "The whole order of the world is arranged to serve the felicity of man," asserted Calvin, "Certainly, if anything in heaven or on earth opposes man, the integrity of order collapses."<sup>26</sup> To say, with Luther, that "(if) all the world were composed of real Christians, that is, true believers, no prince, king, lord, sword or law would be needed"<sup>27</sup> would be, according to Calvin, a denial of the essential humanity of the believer. Man is the noblest of God's creations precisely because he possesses *ratio*, *religio* and *politia*. It is in the condition and development of the *ordinem politicum* that man demonstrates his rationality, its textures, uses and abuses. "Just as man was made for meditation upon the heavenly life," argues Calvin, "so it is certain that knowledge of it was impressed on the soul.

"And certainly man would be destitute of the principal use of his understanding if his felicity, the perfection of which is to be united with God, were hidden from him; whence the principal action of the soul is to aspire thither. Therefore, the more anyone seeks to approach to God, the more he proves himself to be endowed with reason."<sup>28</sup>

The order of man, then, the *imago Dei*, is the product of God's gift of reason and its realization. Activity is the key here, the construction, maintenance and pursuit of human order as the exercise of God's gift; an aspect of *religio* just as important as *conscientia* and the *sensus divinitatis*. Each individual is party to the *ordo politicus* by virtue of his humanity, which entails the further responsibility of protecting and enhancing the innate *imago Dei* as the determining of human agency in the world. That is to say, human integrity flows from the conscienceful nurturing of the *imago Dei*, being that which in man reflects the divine glory and, therefore, justice:

"As God in the beginning formed us according to his image, that he might excite our minds to a desire for virtue and to meditation upon the heavenly life, so, lest the great nobility of our race, which distinguishes us from brute

beasts, be buried by our indolence, it behooves us to recognize that we were provided with reason and understanding, so that by leading a holy and honest life, we may press on to the appointed end of a blessed immortality."<sup>29</sup>

The *complexio oppositorium* of the two extensions of order, the private and the public, manifests itself in the *ordinatio Dei*, the Word. However, the living reality of the Spirit and the Word is realized in human agency, in the affairs of men as servants imbued with the Will of their Master. "God acts among the angels and demons just as among the inhabitants of earth"<sup>30</sup>: His order is complete in every respect; consequently, as parties to this process of completion, or fulfilment, men conjoin that which is ultimately subjective and that which is unrepentently public. The realm of conscience *is* the realm of politics. Yet, since the Fall and the subsequent withdrawal of the Spirit from public participation in worldly affairs to remain 'hidden', working 'quietly' to avert utter chaos - man has sunk into confusion and inertia. Hence the necessity for righteous men to re-establish human integrity through the reconstruction of *ius civilis*, just civility. As God ordained the Fall, so did he ordain man's struggle to transform the world. But, given that "man falls, therefore, the providence of God so ordaining; but he falls by his own fault"<sup>31</sup>, man must wrestle with free will and the "secret impulse of the Spirit". Free will is a loaded gift wanting of special attention lest its benefits turn to sorrows. Discipline and obedience to the essence of the Word: herein lies the regeneration of integrity, in the confluxion of the visible and invisible churches.

The methodological principle underpinning Calvin's notion of the order of man as the reflection of divine glory is the singular authority of revelation: as the "essential Word" of God, as the sole expression of *ordinatio Dei*. Whereas Luther began with *solo fide* and thence developed his soteriology, Calvin began with knowledge of the "infinite fulness of God" as the prerequisite to personal knowledge and matters of faith.<sup>32</sup> Luther could find no way of determining personal election and, weighed down by this insecurity, was incapable of escaping the struggle for faith and certitude. The need to be 'reborn', as it were, so utterly intangible and subjective, virtually overshadowed the pre-eminence of God - as though the believing were more profound than the belief. In sharp contrast, Calvin shied away from the deeply subjective, constantly focusing attention upon



that which can be apprehended. The sincere profession of faith, coupled with a rigorously self-conscious Christian deportment and love of the sacraments, sufficed the Calvinist's thirst for certitude, though it did not grant him certainty. The glorification of God is man's *telos*, said Calvin, not the attainment of salvation. Be content with what one *can* know and do, and further these capacities with the utmost vigour. Salvation as a means, then, not as an end, is Calvin's message: God chose man, man did not choose Him, and each stage of salvation is an unfolding of this Choice. As *ordinatio Dei* the Scriptures serve as the "true touchstone whereby all doctrines must be tried"<sup>33</sup> and, in collaboration with the Spirit uniquely tender an understanding of faith: "What God pronounces through men, he seals on our hearts by His Spirit. Thus faith is built on no other foundation than God himself."<sup>34</sup> In other words, with regard to faith and all matters exegetical, Scripture provides the sole source and 'principle' for procedure, substantively and methodologically.

The question of theological methodology, or, rather, the bundle of problems concerning the principles and methods of a valid Christian theology served as one of the crucial turning points around which the Reformation coalesced and in terms of which Calvin, in particular, assailed the Church of Rome. Principal among Calvin's objections to the conduct of the papacy and its canonist bureaucracy was the conflation of Scripture and papal authority. The Scriptures, for Calvin, are superior to dogma, not only because they constitute God's message to man but because man is not entitled or empowered by God to fashion doctrine:

"God deprives man of the power of producing any new doctrine in order that He alone may be our master in spiritual teaching, as He alone is true, and can neither lie nor deceive. This reason applies not less to the whole Church than to every individual believer."<sup>35</sup>

The Church councils, however,

"at their own caprice, and in contempt of the word of God... coin doctrines to which they ... demand our assent, declaring that no man can be Christian unless he assent to all their dogmas, affirmative as well as negative, if not with explicit, at least with implicit faith, because it belongs to the Church to frame new articles of faith."<sup>36</sup>

The root of dissension is clear: God's sovereignty entails the inviolability of his unique doctrine as revealed in Scripture; consequently, any attempt at framing new doctrines directly calls into question God's perfect Mastery. "If faith depends upon the word of God alone," asks Calvin, "if it regards and reclines on it alone, what place is left for any word of man?"<sup>37</sup> In doctrinal matters, it is God who is active, not man, and it is His 'movement' that is traced by conceptually impotent observers. Man is doctrinally passive, according to Calvin, and must seek to utilize Scripture as given, not to reshape it.

The problem immediately presented itself: if the doctrinal methodology of the Church floundered on a basic principle of procedure, what alternative method of procedure was available to theologians? The answer was simple and devastating. Since the Church could not serve as a well-spring of doctrinal authority, Scripture must stand alone as dogma. By presenting two initially compatible and interdependent realms of authority with regard to the Will of God as first conflicting and then mutually exclusive perspectives, Calvin shattered the very unity in universality upon which the Church rested. What were hitherto considered consanguine were in future to be regarded as exact opposites, and the balance of the Christian world, determined as it was by the harmony of overlapping spheres of authority, had been upset. Indeed, the very basis of belief for many Christians - the Church as paternal guide - had been rendered problematical. Unable and unwilling to explore the maze of theology, most people then (as now) were content to be guided by the 'guardians' of the Word, as it were, and craved instruction in what to believe. Religious belief for many rests as much, if not more so, on the authority of the guardians as it does on personal commitment to the deity. Calvin's assault upon the authority of the Roman Church thus constituted an attack against the foundations of religious belief for most people: they had been set adrift in the vortex of uncertainty from which the Church had for so long protected them. Such tension could not be long sustained and a new refuge of authority had to be found, which, once more brought Calvin full circle to the unchallengeable supremacy and uniqueness of Scripture. The task, then, was to 'package' Scripture, so to speak, so as to make the authority of the Church superfluous. Moreover, the urgent task of all the reformers was to establish a viable basis for civil harmony against the divisive energies released by the fissuring of an entrenched universal authority.

The Church was not merely one force among many in Christendom: it *was* Christendom, and presided over the many forces of its various aspects. The pope may indulge in the struggles of the arena as one of a number of combatants, but the Church as idea (if not in practice) stood above the conflict: it knitted the fabric of Europe after its own pattern and constituted, until the Reformation, the embodiment of Europe itself. Denial of the Church was tantamount to rejection of the unity of Christendom and, consequently, the feudal order that transcended national boundaries. The real political problem raised by the Reformation, argues Garrett Mattingly,

"was how to re-create a sense of moral unity in a world whose sense of religious solidarity has been lost, how to find ethical bonds strong enough to bind those monstrous amoral leviathans, the sovereign states, now freed from the restraint of religious sanctions, how to subordinate to the general good the egotistic power-drives of organisms which, by the very law of their being, seek only safety and aggrandizement. The Reformation had raised this question but it had never solved it...."<sup>38</sup>

However, the question supposedly posited by the Reformation had been formulated long before Luther. Conjectured and considered solutions had been in the air throughout the so-called 'Dark Ages', more often than not extinguished in *autos-da-fé*, or occasionally, as with Ockham, Wyclif and Marsilius, quietly preserved and later refashioned. Leviathan was not a product of the Reformation; rather, its apologists sought to harness the winds of change to their advantage: to ground the post-feudal order in 'legitimate' doctrinal soil. Given the rush of ideas and events in the early sixteenth century, the need to supplant canon law and assert the singular sovereignty of the state in its domain necessarily entailed, more often than not simultaneously, the temporal legitimation of propitious spiritual heresies and ecclesiastical legitimation of secular heterodoxy. *Res publica Christiana* had succumbed to the Prince. Protestantism no more parented Leviathan than it gave rise to capitalism. It did, however, in certain parts of Europe and at critical times nourish both. Via this consequential mid-wifery did it assist in making northern Europe "the forge of the human race"<sup>39</sup> and a cockpit of dissension. At the eye of the storm lay one idea amongst many (novel in its application if not its advocacy) that constituted the calm kernel of surrounding turbulence: disciplined personal participation in a full Christian life. The Calvinist imperative of conscientious labour in public affairs negated passivity as a public virtue. Obedience, then, not as compliant inertia but as self-controlled

participation founded in knowledge and application of the Apostle's Creed. "A Man's whole Life is but a Conversion", wrote James Fraser,<sup>40</sup> echoing Calvin's dictum that "Believers, while they make progress in the faith, continually aspire to fresh additions of the Spirit."<sup>41</sup> Motion, activity, a quickening of the desire to know and articulate personal discoveries made of each Calvinist a potential rebel, dictator, preacher or guardian, but never a slave:

"They felt themselves to be living in an age of chaos and crime and sought to train conscience to be permanently on guard, permanently at war, against sin. Debate in Puritan congregations was never a free and easy exchange of ideas; the need for vigilance, the pressures of war were too great to allow for friendly disagreement. What lay behind the warfare of the saints? Two things above all: a fierce antagonism to the traditional world and the prevailing pattern of human relation and a keen and perhaps not unrealistic anxiety about human wickedness and the dangers of social disorder. The saints attempted to fasten upon the necks of all mankind the yoke of a new political discipline - impersonal and ideological, not founded upon loyalty or affection, no more open to spontaneity than chaos and crime. This discipline was not dependent upon the authority of kings and lords or upon the obedience of childlike and trustful subjects. Puritans sought to make it voluntary, like the contract itself, the subject of individual and collective willfulness. But voluntary or not, its keynote was repression."<sup>42</sup>

Disciplined popular responsibility in public affairs, grounded in *citizenship* rather than mere membership of society or traditional function, i.e. duty *qua* man, not duty *qua* serf, is the critical notion that sets Calvin's theological politics apart from Luther's. For the latter it was a Christian's duty to endure evil rather than to resist it, while for the former,

"we ought to take the same care of our brethren's bodies as we take of our own; for they are members of our body; and that, as no part of our body is touched by any feeling of pain which is not spread among all the rest, so we ought not to allow a brother to be affected by any evil, without being touched with compassion for him."<sup>43</sup>

Humanity entails human, i.e. 'species', responsibilities, according to Calvin, and nowhere is this burden more pronounced than in the preaching of doctrine:

"for the Holy Spirit has so regulated the writings which he has dictated to the prophets and apostles that he detracts nothing from the order instituted by himself; and the order is, that constant exhortation should be heard in the church from the mouth of pastors."<sup>44</sup>

As the organum of the Spirit the preacher 'interprets' Scripture, that is, simplifies it in plain language so as to "penetrate to the consciences of men, to make them see Christ crucified, and feel the shedding of his blood."<sup>45</sup> Yet preaching must be effectively heard so "that believers should exercise themselves in good works".<sup>46</sup> In other words, preaching as illocutionary activity is fulfilled in resultant perlocutionary acts: the 'sense' of preaching, as it were, lies in what men do in its wake. Through the preacher the Word becomes incarnate in civil action. This contrasts with the Catholic view that the priest presents the Word and what action one takes is dependent upon one's place in the order of things. For Calvin, *all men are equal in that the Word makes uniform, direct and immediate demands upon them.* Once more, activity fulfils the Word, as though good works necessarily flow from the acceptance of a divinely ordained practical syllogism. Without pursuing an Aristotelian analogy (Calvin was not much taken with Aristotle) it may be said that Calvin took good exegesis to be the clear explication of the 'logic' of Scripture, insofar as this entails sorting out exactly what is required of the believer in leading a good, i.e. 'holy', life. This does not mean that men must thereby subject the Word to their critical scrutiny, but, rather, that men must assess "whether it is His word that is set before them, or ... human inventions."<sup>47</sup> Discernment, then, precedes participation. How else could discipline serve as a bridle to restrain and a spur to arouse lest it be derived from "the Spirit of Wisdom?"<sup>48</sup> The argument is necessarily symmetrical because each premise is prefaced by an enthymeme acknowledging a single Will as the font and end of all things. Providence renders history pleonastic as the unfolding arithmetic of an established equation. The syllogism, so to speak, lies embedded in Scripture, awaiting practical action to round it out; yet before this can take place each premise must be articulated and publicized. Participation thus entails "a twofold examination of doctrine, private and public"<sup>49</sup>: the private involving matters of personal faith, the public performances required by faith.

The keystone underpinning participation, from the Calvinist perspec-

tive, is God's authorship of the universe. Divine will, manifest in creation *ex nihilo*, becomes authority as revealed in the Word. Knowledge of God's authorship, then, unlocks in part the mysteries of divine authority and, by entailment (explicitly in revelation and implicitly in the doctrine of *imago Dei*) the bounds of human 'authority'. The Word intimates the Spirit to man: it instructs man in the knowledge of God and the knowledge of himself. In other words, it makes the receptive audience party to the divine scheme of things and, therefore, an instrument of order. Reiterating the Petrarchan theme of *docta pietas* (learned piety) long advocated by those within the Humanist tradition of Budé, Nicolas of Cusa and Erasmus, Calvin emphasised scholarship as the counter to Catholicism's doctrine of 'implicit faith' (the possibility of faith without knowledge). Knowledge would instil piety, and this knowledge was to be found in the Scriptures via careful reading and devout interpretation. Though hardly an admirer of Robert Gaguin, Calvin no doubt approved of the former's assault on the medieval exegetes and their elegant obscurantism. "We should actively rejoice in the felicity of this age," chanted Gaguin, "in which, although many other things have perished, many men of genius are nevertheless incited, like Prometheus, to seize the splendid torch of wisdom from the heavens."<sup>50</sup> 'Seizure', unthinkable; 'utilization', certainly. Calvin's pedagogy was Humanist in its passion but of dogmatic orientation. Circumspect analogies never let one forget that Calvin sought a distillation of Christian teachings, not a more ornate classical metaphor. Order rooted in divine authority is the Calvinist obsession - a fixation shared by all the Humanists - yet it is a totality for Calvin, alien to the latent pluralism of Petrarch and the scandalous libertarianism of Pico della Mirandola. Man is not free to move among all possibilities, to shape himself as he pleases, thundered Calvin, yet man can be holy in his worldly calling. A profound shift in emphasis and utter rejection of breezy *joie de vivre* but, ironically, a similar practical goal: a world of Godly order achieved through personal reflection upon the nature of things and a faith steeped in knowledge.<sup>51</sup>

"Faith consists not in ignorance," declared Calvin, "but in knowledge."<sup>52</sup> The reciprocity of Word and Spirit discerned in revelation makes possible sober faith, as distinct from "visions or oracles in the clouds"<sup>53</sup> We must be careful, however, not to confuse 'knowledge' with 'reason' in Calvin's lexicon: Reason is subject to the Word and may be invoked when

consonant with revelation. Knowledge is faith:<sup>54</sup> faith in Christ as the mediator between God and man as revealed in Gospel. What we can 'know', then, is limited to God's will with regard to man. One 'knows' the Word by reading it, believing it and, finally, acting upon it.<sup>55</sup> "He who knows how to use the Scriptures properly, is in want of nothing for salvation, or for a holy life."<sup>56</sup> Though this summation appears paradoxical in the light of Calvin's providential doctrine, it need not be regarded as enigmatic when stood against his reflection on the avoidance of 'disgrace': "I think we are in no danger, if we simply maintain what the Scripture delivers."<sup>57</sup> That is to say, within the limits of what we do 'know' there is only one way to approach grace. God's intentions outside the bounds of knowledge necessarily determine what will be, but that is beyond our faith. Given what we know, *the pursuit of God's order is the one avenue to grace available to us*: it falls within the scope of revealed authority and delegated right (the righteousness with which each man capitalizes on his knowledge). Not so much 'cognition', then, but 'persuasion' as the hallmark of knowledge, since one 'knows' Scripture but cannot rationally proceed into it, as it were, and confront its historical content. We are persuaded by the veracity of God, not by a demonstration of reason: "The knowledge of faith", wrote Calvin, "consists more in certainty than in comprehension."<sup>58</sup> The entire argument seemingly devolves into an intricate redundancy focused upon the initial premise of divine omnipotence. From this first step we move to the second premise of divine revelation as the singular public expression of God's will, and then a third premise outlining God's demand for His glorification in the restoration of worldly order. The conclusion drawn from the above is encapsulated in the deceptively simple demand that each man should be made to live a fully Christian life. Yet, a fully Christian life is the glorification of God as set forth in the Word of the Creator. Because faith is certain it is called knowledge by Calvin; and it is certain because it derives from the font of all knowledge. The absolute authority of Scripture leaves no room for doubt. And, as we shall see, with the fulfilment of the covenant Calvin's ecclesiological circle is complete.

The 'church' for Calvin is the 'history' of God's reign among men, not to be identified with 'Romanism' or exclusively conceived of as a 'visible' institution. It is, in other words, an *ecclesiae collectione*, a gathering together of "people to call upon God."<sup>59</sup> The need for this coming together

stemmed from the Fall and the precarious position in which man's rebellion placed God's order. As the centre-piece of mundane order, man embodies the divinely-inspired possibility of righteousness: the voluntary submission of free will to justice. Yet the Fall placed all terrestrial order in jeopardy; it disturbed the balance of creation and gave rise to what lay nascent in the providential scheme: the restoration of human dignity through the perpetual resurrection of faith. In this continuity of belief from generation to generation lies the thread of the church: "As all things were created for the sake of man, so all men were destined to be of use to the church."<sup>60</sup> Beginning with the Abrahamic covenant the church grew from the general election of the people of Israel as a nation separated from other nations: a people profoundly aware of their inviolable communion with God.<sup>61</sup> In this reception of His seed into His faith by way of general election God made possible the future salvation of all mankind. *The covenant brought the church into being, and, in so doing, made public the principles of order underpinning human relations and the mutual responsibilities weighing upon God and man.* The tenuous supremacy of harmony over division, order over chaos, was thus codified in deontic terms as a bond of obligations binding individuals and communities to the *ordinatio Dei*. The Fall and subsequent rebellions notwithstanding, *the covenant remains eternal and inviolable as the public marriage of ordinatio and ordo*; for the covenant flows from the mercy of God, argued Calvin, not from human dignity.<sup>62</sup>

"When order was trodden under foot, the covenant was made void. Why indeed was the covenant continued, and what was its design, if not that all things should aptly and rightly be joined together among themselves? Thus in the church, we see that God is concerned for order...."<sup>63</sup>

The covenantal inheritance of Israel, the progeny of the patriarch Abraham,<sup>64</sup> served as a seed within a matrix. The promise of universal salvation must therefore focus upon the fruit of the matrix as the guide to redemption. The advent of Christ, according to Calvin, and, indeed, the vast majority of Christian theologians, widened the scope of general election to embrace all nations and make salvation available, if so ordained, to a mankind now grafted, so to speak, onto *genus Abrahae*. Yet, within the context of this general election there is a more restricted degree of election arising from God's taking "to himself out of that multitude those whom



he wished: and these are the sons of promise, these are the remnants of gratuitous favour."<sup>65</sup> Individuals are granted salvation (though the offer is given in 'secret', as it were) by way of God determining in himself what he wishes (or wished) to become of each man. Awareness of this particular election comes by way of a 'call' into the covenantal community - presumably a moment of perspicuous introspection - which becomes an 'effectual' calling when subjective accommodation with the Spirit realizes itself as an 'objective' condition manifest in regenerative activity, i.e. continuous labour on behalf of order and the illumination of the Spirit. Faith does not underpin election, since it arises from God's will, but faith makes possible an intimation of election through its facilitation of the call, should it be there for any individual. The knowledge embedded in faith, or, rather, constitutive of faith, is ultimately intuitive and flows from total spontaneous immersion in the Word as God's glorification and the nourishment of order.

"Thus God's covenant is established with us, because we have been once reconciled by the death of Christ; and at the same time the effect of the Holy Spirit is added, because God inscribes the law upon our hearts, and thus his covenant is not engraved on stones, but in hearts of flesh."<sup>66</sup>

Erich Voegelin (in *The New Science of Politics*)<sup>67</sup> characterizes Calvin's work as "the first deliberately created Gnostic koran," the borrowed term 'koran' here denoting a work that serves "the double purpose of a guide to the right reading of Scripture and of an authentic formula-<sup>68</sup> tion of truth that... (makes) recourse to earlier literature unnecessary". "A man who can write such a koran", writes Voegelin,

"a man who can break with the intellectual tradition of mankind because he lives in the faith that a new truth and a new world begin with him, must be in a peculiar pneumopathological (sic) state."<sup>69</sup> Hooker, who was supremely conscious of tradition, had a fine sensitiveness for this twist of mind. In his cautiously subdued characterization of Calvin he opened with the sober statement: 'His bringing up was in the study of civil law': he then built up with some malice: 'Divine knowledge he gathered, not by hearing or reading so much, as by teaching others'; and he concluded on the devastating sentence: 'For, though thousands were debtors to him, as touching knowledge in that kind; yet he (was debtor) to none but only to God, the author of the most blessed fountain, the Book of Life, and of the admirable dexterity of wit."<sup>70</sup>

While Calvin's work may be adequately described as 'koranic' in part - he sought to give instruction in the Word but not to the exclusion of all previous wisdom and certainly not in competition with the early Christian church - its location in the mainstream of 'revolutionary' Gnosticism represents a critical misplacement of the work *in toto* and a serious misconception of Calvin's christology. The trinitarian eschatology of Joachim of Flora is nowhere to be found in Calvin's work. History, for Calvin, is the product of the *ordinatio Dei* and grows organically, as it were, out of the order of creation. The Spirit, which proceeds from the Father and the Son, is "spread abroad through all parts of the world" and "preserves that which he formed out of nothing"<sup>71</sup>, yet the Spirit operates within the context of "those things which (God) has decreed in his counsel."<sup>72</sup> The trinity is not superimposed on history, rather it underlies history, firstly, in God as the Creator, secondly, in the Son as the Redeemer, and, thirdly, in the Spirit as that which "sustains, quickens and vivifies all things in heaven and on earth."<sup>73</sup> The Calvinist enterprise stood in direct opposition to Joachite anthropopatheia, militating against the projection of human passions and modes of life onto the deity and then back into worldly affairs under a mystical mantle. Calvin regarded all such projection and reflexivity as a reflection of man's linguistic impoverishment and the necessity of accommodating divine intention, the limitations of language and lowly human understanding.<sup>74</sup> Consequently, any attempt to 'mythologise' God, particularly in response to millenarian aspirations, met with a distinctly Augustinian disdain. 'Christ in his church' was as powerful an image for Calvin as it was for Augustine; the difference between the two lay in the former's reconstruction, rather redefinition of the church as the human organism of order organically related to its participants, not, as Augustine arguably would have it, the church as but a skeleton to provide niches for the faithful. The Joachite pursuit of symbols derived from an esoteric knowledge remained alien to a system founded on eminently communicable notions rooted in everyman's capacity to apprehend his 'essential' being. The 'saints' were not prophets or leaders in the messianic sense; nor was their understanding of the Word necessarily peculiar to themselves. Moreover, they were deemed capable by their fellow communicants properly to interpret the Spirit within the Word and translate its intentions into rules of behaviour. Indeed, the very structure of the *Institutes* sprang from a tacit rejection of *gnōsis* in favour of *pistis*, a faith identified with *epistēme*. "True and substantial wisdom principally consists of two

parts", wrote Calvin, "the knowledge of God, and the knowledge of ourselves."<sup>75</sup> In answering the problems posed by this double-faceted knowledge Calvin identified the boundaries of divinely ordained realms of authority, theologically and temporally. No more could be said, as it were, though it could be stated more clearly; and it was to the task of clarification that Calvin principally addressed himself. Pursuant to this labour was the mission or propagating the Word and in so doing furthering the efficacious restoration of order in the world.

Despite a similar emphasis upon salvation, the Gnostics and Calvinists differed in virtually every other respect. One is closer to the mark in depicting Calvin and his followers as 'Kerygmatics', people devoted to the proclamation of that which is supposedly evidential rather than mystic dualists offering an otherwise hidden glimpse of a reality existent on two planes, those of the world and God, with man tentatively poised between the two as the product of both. The negative God of the Gnostics, completely removed from the natural order, generating no natural law, supreme yet transmundane, touching man only at the point of salvation is more the stuff of a Puritan incubus than a Calvinist sermon.

Similarly, one must reject Karl Jaspers' musings on the 'Protestant' world view as Gnostic dramaticism. "History was a sequence of acts of human pride and obduracy", wrote Jaspers,

"In the world there could be no guidance other than faith - a faith detached from the world, which allowed man a secular existence in the world but put his proper life elsewhere. Reason itself was corrupt, and the only truth lay in worldless isolation or in common prayer...."<sup>76</sup>

Nowhere can be found a better example of the confusion generated by conflating Luther and Calvin and calling the product 'Protestantism'. For all their similarities they remained disparate thinkers and practitioners, Luther always verging on the Gnostic, indeed, Manichean brink of a temporal dualism perhaps ultimately resolvable in Armageddon; while Calvin systematically wove a monistic cosmogony, relentlessly tying together seemingly incompatible threads certain of the consistency and strength of the underlying pattern. As Walzer put it, in practical terms "(the) Lutheran saint, in his pursuit of the invisible kingdom of heaven, turned away from poli-

tics and left the kingdom of earth, as Luther himself wrote, 'to anyone who wants to take it.' Calvin was driven by his worldly and organizational commitments to 'take' the earthly kingdom, and to transform it."<sup>77</sup>

Calvin's deity informs the universe, His creation, at each stage and in each aspect of its being. Man, as the centrepiece of this universe is no more free to relinquish his temporal responsibilities than God is free to be anything less than omnipotent and omnicausative (even in restraint). The tension pervading man's condition springs from the dichotomous circumstances of his existence: as God's creation and effigy. As a most marvelous self-directing creature man must struggle with those Faustian impulses towards complete autonomy and self-gratification; while in humble awareness of the divine image resident within him man senses a personal involvement in the natural-supernatural nexus. To 'know thyself', then, is at once to know one's 'self' and God, and thereby reconcile divergent aspects of human integrity in a rapidly enlarging and dislocating post-Fall world, a world always threatening to devour the 'image' yet forever offering salvation. The conditions of salvation, however, demand complete submission to the *authority* of creation, as authorship and legislature, further demanding a knowledge of the divine 'common law', as it were, and its enforcement. The esoteric, universal 'knowledge' of the Gnostics thus evaporates in Calvin's hands, wherein knowledge becomes, to all intents and purposes, an intelligent empirical familiarity with and acceptance of the Word, on the one hand, and, on the other, an honest assessment and disciplining of one's self. The combination of 'faith', 'knowledge', 'authority', 'reason' and 'control' is therefore quite simple for Calvin, requiring no obscure formulations or hidden information. How, indeed, could there be further relevant information hidden from man's gaze lest we consider the Word to be incomplete, or this slice of time a moment in our 'becoming', so to speak, dependent upon some future revelation in order to secure our 'being'. Given Calvin's refusal to consider the former, the latter supposition is simply taken as possible (the very conception of certainty is rendered problematic because what is certain is dependent upon the contingency of God's will), and construed, if only by implication, as a further reason for placing one's faith in God *qua* God and not God *qua* anything else, however characterized, as 'Him', 'Creator', 'Love', 'Authority'. In the end there is no grand dynamism of opposing and reciprocating wills, but only one Will that creates, separates, connects and redeems in a single world. It

fashioned in its own image that which is at once most distant from and most like itself, generating a cycle of existence uniquely capable of organising experience and participating in moments of self-awakening. And in the clearest moments of self-realization it is understood that the relationship between creator and creature is not coercive but free. Perhaps this, above all else in Calvin is the hardest apprehension to articulate, yet once accepted all else flows without question. "One foot he centerd, and the other turned", wrote Milton, "Round through the vast profunditie obscure.. .."

APPENDIX ONENotes

1. quoted by Max Weber in The Protestant Ethic and the Spirit of Capitalism, Glencoe, 1971, p.232, f.n. 64, ch.IV
2. It is interesting to consider Descartes on this point: there are no final causes in physics because we do not know the *aims* of God.
3. if only in the sense of being a prime mover admitting of no secondary causes.
4. Friedrich Schleiermacher, Dialektik, in Sammtliche Werke, ed. L. Jonas, Berlin, 1839, Div.III, Vol.IV, Pt.II, Appendix A, p.328. (trans. G. Spiegler)
 

"Immanence... presupposes transcendence as a category of differentiation in the sense that individuality and mutuality are simultaneously embraced, and God and man represent distinct though related categories." B. E. Meland, Faith and Culture, New York, 1953, p.58
5. Dialektik, Op Cit, p.328
6. "Duns had largely followed Avicenna in his concepts of univocal being and his proofs of God. It was when he came to examine God's relation to what was outside Him that he broke off sharply. Like Henry of Ghent, Duns refused to see any meeting-point between God as necessary being and the contingent being of His creatures, except through God's will. Where Avicenna had made possible being necessary, since God Himself acted necessarily, Duns and Henry of Ghent made it radically contingent, lacking in itself any *raison d'etre*. This conviction that the contingent could not lead back to the necessary had... led Duns to reject any but abstract notions for proof of God. It led him, equally, to make all knowledge of God stop this side of His will. Beyond expressing God's will to create, this world could offer no explanation of His ways; it certainly could not specify the way in which God worked. Consequently, there is a discontinuity between the divine and the created which is absent from the much more precise order of St. Thomas. Duns in no way subscribed to the latter's specification of the relation between first and second cause to describe God and His creatures." Gordon Leff, Medieval Thought: St. Augustine to Ockham, Ringwood, Victoria, 1970, pp 266-267
7. Karl Barth, Church Dogmatics, Edinburgh, 1958, Vol.3, p.148
8. Ibid., p.133
9. Rudolph Bultmann, History and Eschatology: the Presence of Eternity, New York, 1962, pp 6-7

10. Though a sentimental romantic in the mould of Racine, Paul Valéry produced the occasional aphorism that would have done Calvin proud. However, 'due respect' for Calvin's memory prevents one omitting mention of Bismarck's earlier and much plagiarized definition of politics as "the doctrine of the possible". While a nominal Lutheran of deist conviction and nuptially politic adherence to Pietism, Count Otto, one might say, had a natural Calvinist sensibility unknown in the author of 'Pomegranates'.

11. Adopting what we would now regard as a Hobbesian position on natural man, Calvin saw post-Fall humanity as a disorganized mass of isolated, fearful beasts (see Sermons upon the Fifth Book of Moses, London, 1574, sermon 36). Only complete obedience to God can restore the natural order of things; indeed, the natural order itself being nothing other than a reflection of God's will, all things are merely divinely ordained facts, from the wind and waves to the state. Consequently, it is God who creates and destroys princes: the Fall did not generate political man, God did. And since God's will is beyond human calculation, Calvin was forced to justify even the most vicious despot by protesting to his fellows "yet would God honour him, he knoweth why: therefore must I be content to be subject". (Sermons on the Epistles of St. Paul to Timothy and Titus, London, 1579, sermon 46, on Timothy). Legitimacy did not concern Calvin since it was *naturally* granted to the strong. Obedience intrigued him, though it is no more problematical than legitimacy, springing as it does entirely from forcefulness: "So long as he will have them to reign... kings are armed with authority from God, in that they are able... to retain under their hand and at their appointment multitudes of men..." (Commentaries Upon the Prophet Daniel, London, 1570); "It belongeth not to us to be inquisitive by what right and title a prince reigneth ... and whether he have it by good and lawful inheritance..." (Timothy and Titus, sermon 46, on Timothy); "To us it ought to suffice that they do rule. For they have not ascended into this estate by their own strength, but they are placed by the hand of God." (A Commentary upon the Epistle of St. Paul to the Romans, London, 1583.)

Commenting on Jeremiah's call for Jerusalem's surrender to the Chaldeans, Calvin drew the so-called 'Hobbesian' conclusion that sovereignty commands obedience only insofar as it can enforce obedience: "Though ... the people had pledged to the end their faith to the king, yet as God had now delivered the city to the Chaldeans, the obligation of the oath ceased; for when governments are changed, whatever the subjects had promised is no longer binding... for it is not in the power of the people to set up princes, because it belongs to God to change governments as he please." (Commentaries on the Book of the Prophet Jeremiah, Edinburgh, 1850.)

All quotations are from chapter two of Michael Walzer's excellent study on the political import of Calvinist doctrine, The Revolution of the Saints: a study in the origins of radical politics, New York, 1974.

12. Works of Martin Luther, ed. C. M. Jacobs, Philadelphia, 1915-32, Vol.4, p.32, quoted by Sheldon Wolin, Politics and Vision: Continuity and Innovation in Western Political Thought, Boston, 1960, p.158

13. "The princes of this world are gods, the common people are Satan, through whom God sometimes does what at other times he does directly through Satan, that is, makes rebellion as a punishment for the people's sins.

"I would rather suffer a prince doing wrong than a people doing right."

Luther, quoted by Preserved Smith, The Age of the Reformation, New York, 1920, p.594

14. "On Good Works", trans. W. A. Lambert, Weimar, 1888, Vol.6, p.250
15. "Preface to Latin Writings", in John Dillenberger, ed., Martin Luther: Selections from His Writings, New York, 1961, p.408
16. St. Anselm, Proslogion, trans. M. J. Charlesworth, Oxford, 1965, I
17. The law of God is identified, by Luther, with the commandments and is largely Old Testamental. Of itself it is not a means to salvation, since it makes no provision for forgiveness: it commands and prescribes punishments for breaches of the law. The Gospel, however, according to Luther, opens the way to salvation; for in it lies Christ's message of free forgiveness. In other words, the Gospel reveals the Holy Spirit which, through its influence upon individual conscience, serves as the agency of divine grace.
18. "Preface to Latin Writings", Dillenberger, Op Cit, pp 75-76
19. See K. B. McFarlane, John Wycliffe and the Beginnings of English Nonconformity, London, 1952.
20. Roland Bainton, The Reformation of the Sixteenth Century, Boston, 1956, pp 52-53
21. J. N. Figgis, Political Thought from Gerson to Grotius: 1414-1625, New York, 1960, p.77
22. Immediate political considerations aside, the divine basis of secular authority so enthusiastically supported by Luther as part of God's order arose, somewhat ironically, out of Luther's complete rejection of Augustinian *ordo* as an immanent natural force cementing the universe. Despite Augustine's rejection of politics as a self-sustaining, necessarily auto-regulative facet of social life, he carefully placed the political order within the broader divine scheme of things. Given God's omnipotence, the mere existence of the political order necessitates some good Reason, other than sheer malevolence, for the fact of evil. Within the concordia of the universe all creation plays a part in the ineluctable movement towards an eventual harmonious end. Luther, however, "reduced *ordo* from an immanent to a formal principle without real viability", writes Sheldon Wolin, prefacing a quotation from Luther:

"Order is an outward thing. Be it as good as it may, it can fall into misuse. Then it is no longer order but disorder. So no order has any intrinsic worth of its own, as hitherto Popish Order has been thought to have. But all



order has its life, worth, strength, and virtue in right use; else it is worthless and fit for nothing."

"In abandoning the concept of *ordo* as the sustaining principle within a larger pattern of meaning, Luther deprived the political order of the moral sustenance flowing from this more comprehensive whole. The lack of integration between the political order and the divine order produced a marked tension within Luther's conception of government. The political order appeared as a distinctly fragile achievement, precarious, unstable, and prone to upset. At the same time, the vulnerability of this order created the need for a powerful, repressive authority. In other words, it was not the political order itself that was sustained by a divine principle; it was the secular power upholding order that was divinely derived. It was no idle boast of Luther's to assert that he had praised temporal government more highly than anyone since Augustine. Such praise was necessary once the political order had been extracted from its cosmic context. The divine element in political authority was inevitably transformed from a sustaining principle into a repressive, coercive one.

"Luther's attachment to temporal authority, then, was not the product of a particular stage in his development but was rooted in the conviction that the fallen world of man was fundamentally orderless."

Sheldon Wolin, Politics and Vision, Op Cit, pp 157-158

23. Goethe, Faust, trans. P. Wayne, Ringwood, Victoria, 1975, Vol.I, p.29
24. "It is true that Christians so far as they are concerned are subject to neither law nor sword and need neither: but first take heed and fill the world with real Christians before ruling it in a Christian and evangelical manner. This you will never accomplish: for the world and the masses are and always will be unchristian, although they are all baptized and are nominally Christian.... Therefore it is out of the question that there should be a common Christian government over the whole world, nay, even over one land or company of people since the wicked always outnumber the good. Hence a man who would venture to govern an entire country or world with the gospel would be like a shepherd who should place in one fold, wolves, lions, eagles and sheep together and say "Help yourselves, and be good and peaceful among yourselves; the fold is open: there is plenty of food: have no fear of dogs and clubs." The sheep indeed would keep the peace and would allow themselves to be fed and governed in peace - but they would not live long! Nor would any beast keep from molesting another!" (Works of Martin Luther, ed. Jacobs, Op Cit, Vol.3, p.237) Compare with Calvin: "(The) external administration of the word is necessary if we wish to be disciples.... In vain will they boast of secret revelations, for the Spirit does not teach any but those who submit to the ministry of the church, and consequently, they are disciples of the devil and not of God, who reject the order which he has appointed." (Ioannis Calvini opera quae supersunt omnia, ed. G. Baum, E. Cunitz, E. Reuss, Berlin, 1863-1900, trans. T.H.L. Parker, Edinburgh, 1959 - , "Commentary on Isaiah", 54. 13, CO.37, p.276)

25. "...God has provided the soul of man with a mind by which he might distinguish good from evil, just from unjust, and that, by the guiding light of reason he might see what ought to be followed and what ought to be avoided.... To this he added the will, in the possession of which is choice. By these excellent gifts he distinguished the first condition of man, so that reason, understanding, wisdom and judgment, might suffice not only for the government of earthly life, but also might transcend even to God and eternal felicity. Then he added choice, which directs the appetite and controls all organic movements: and thus will should agree altogether with the government of reason. In this integrity man was empowered with free will, by which, if he wished, he could have obtained eternal life." (Institutes of the Christian Religion, in Ioannis Calvini opera selecta, ed. P. Barth and G. Niesel, Munich, 1926-36, trans. F. L. Battles, Philadelphia, 1960, Book I, chapter xv, section 8)
26. "Commentary on the Psalms", 8•6, CO.31, p.94
27. Works of Martin Luther, ed. Jacobs, Op Cit, Vol.3, p.234
28. Institutes, I, xv, 6. "It remains nevertheless that some seed of political order is universally sown. And this is sufficient proof, that in the constitution of this life, no man is destitute of the light of reason." Institutes, II, ii, 13
29. Ibid., II, i, 1
30. "Commentary on Daniel", 4•35, CO.XL, p.689
31. Institutes, III, xxxii, 8
32. "It is plain that no man can arrive at the true knowledge of himself, without having first contemplated the divine character, and then descended to the consideration of his own." Ibid., I, i, 2
33. "Commentary, I John", 4•1, CO.LV, p.347
34. "Commentary on Genesis", 50•24, CO.XXIII, p.622
35. Institutes, IV, viii, 19
36. Ibid., IV, viii, 19
37. Ibid., IV, iii, 9
38. G. Mattingly, ed., J. N. Figgis, Political Thought from Gerson to Grotius: 1414-1625, Seven Studies, New York, 1970, p.xxii
39. Montesquieu, The Spirit of the Laws, New York, 1949, p.268
40. Memoirs of the Life of the very Reverend Mr. James Fraser of Brea, Minister of the Gospel at Culross...., Edinburgh, 1738, p.91, quoted by O. C. Watkins, The Puritan Experience: Studies in Spiritual Autobiography, New York, 1972, p.40

41. "Commentary on John", 7•38, CO.XLVII, p.181
42. Michael Walzer, The Revolution of the Saints, Op Cit, p.302
43. Institutes, IV, xvii, 38
44. "Commentary on Hebrews", 13•22, CO LV, p.198
45. "Commentary on Galations", 3•1 CO L, pp 202-203
46. "Commentary on Titus", 3•8, CO LII, p.433
47. "Commentary, I Corinthians", 14•29, CO XLIX, p.529
48. "...unless the Spirit of Wisdom is present, to have God's word in our hands will avail little or nothing, for its meaning will not appear to us.... That we may be fit judges, we must necessarily be guided by the Spirit of discernment.... But the Spirit will only so guide us to a right discrimination, when we render all our thoughts subject to God's word." "Commentary, I John", 4•1, CO LV, pp 347-348
49. Ibid., p.348
50. quoted by E. F. Rice, The Renaissance Idea of Wisdom, London, 1958, p.94
51. "For, till men are sensible that they owe everything to God (an awareness dependent on both the knowledge of self and of God), that they are supported by his paternal care, that he is the Author of all the blessings they enjoy, and that nothing should be sought independently of him, they will never voluntarily submit to his authority." Institutes, I, ii, 1
52. Ibid., III, ii, 2
53. "Commentary on John", 15•27, CO XLVII, p.354
54. "For the apprehension of faith is not confined to our knowing that there is a God, but chiefly consists in our understanding what is his disposition towards us. For it is not of so much importance to us to know what he is in himself, as what he is willing to be to us. We find, therefore, that faith is a knowledge of the will of God respecting us, received from his word. And the foundation of this is a previous persuasion of the divine veracity; any doubt of which being entertained in the mind, the authority of the word will be dubious and weak, or rather it will be of no authority at all. Nor is it sufficient to believe that the veracity of God is incapable of deception or falsehood, unless you also admit, as beyond all doubt, that whatever proceeds from him is sacred and inviolable truth." Institutes, III, ii, 6
55. "For the Puritans", remarks J. I. Packer, "true Christianity consisted in knowing, feeling and obeying the truth; and knowledge without obedience, feeling without acting, or feeling and acting without knowledge were all condemned as false religion and ruinous to men's souls." The Practical Writings of the English Puritans, Lond. 1951. p.23

56. "Commentary, II Timothy", 3·16, CO LII, p.384
57. Institutes, II, iv, 2
58. Ibid., III, ii, 14
59. "Commentary on the Psalms", 115·17, CO XXXII, p.192; c.f. Ibid., 75·2, CO XXXI, p.701
60. "Commentary on Isaiah", 44·7, CO XXXVII, p.110
61. "Commentary on Genesis", 25·23, CO XXIII, p.351
62. "Commentary on Daniel", 9·4, CO XLI, p.133
63. "Commentary on Zechariah", 11·10-11, CO XLIV, p.310
64. in whom "we behold the calling of believers, and a sort of model of the church, and the beginning and end of our salvation."  
"Commentary on Isaiah", 41·2
65. "Commentary on Ezekiel", 16·3, CO XL, p.355
66. "Commentary on Daniel", 9·27, CO XLI, p.187
67. Chicago, 1956, pp 138-139
68. Ibid., p.139
69. presumably Voegelin is here referring to Calvin's spiritual condition, his pneumapathology, rather than the state of his lungs.
70. Ibid., p.139
71. "Commentary on Acts", 17·28, CO XLVIII, pp 416-417
72. Ibid., 17·26, CO XLVIII, p.415
73. Institutes, I, xiii, 14
74. "For since the nature of God is spiritual, it is not allowable to imagine respecting him anything earthly or gross". "Commentary on Matthew", 26·39, CO XXIV, p.37; c.f. "Commentary on Matthew", 26·39, CO XLV, p.722.
75. Institutes, I, i, 1
76. Karl Jaspers, Philosophical Faith and Revelation, E. B. Ashton, London, 1967, p.25. "The world was deemed free and autonomous as the realm of sin; for eternity, there was vindication by faith alone. We came to hear that in this World, wholly corrupted by the Fall, we must live subject to the qualities of worldly realms, sinning within them. This was the meaning of Luther's *peca fortiter*: the hope which in this world sustains our spirit amidst unavoidable sin lay solely in faith in redemption outside the world. The world was not an

altogether hostile anti-principle; but in its present state of corruption due to the fall it scarcely differed in essence from that old Gnostic concept." Ibid.

77. The Revolution of the Saints, Op Cit, p.26

## APPENDIX TWO

The decline of authoritative Scripture as the sole source of guidance and inspiration in theology reflected more than the diminished influence of orthodox Calvinism; it heralded, in the late seventeenth and early eighteenth centuries, the emergence of a new Protestant methodology founded upon 'reason' rather than external authority as the formal principle of procedure in theological activity. In a very important sense, faith in reason's ability to determine and appropriate truth for itself had deposed faith in an external authority to sanction the truth. As it was to be with all avenues of human endeavour, theology was smitten by the persuasively simple metaphor of 'science', at first in the mould of Cartesian rationalism and later in the fusion of the empirical and the rational that characterized Kant's 'criticism'. On the one hand there was a fascination with the order of nature, its patterns and principles; while, on the other there was a determined, if not always profound belief in the capacity of rationality to evoke truth through introspection. Though distinct interests, when merged these two lines of thought constituted the thread of rationalism (properly so called) as epitomized in Spinoza's summation: the order of nature is the order of thought.

Human understanding, according to the common tenets of rationalism, is amenable to thoroughgoing analysis and elucidation along logical, if not mathematical, parameters in a similar fashion to the later Newtonian physics. Indeed, the Newtonian model, albeit fashioned after the seminal rationalists had developed their theories, furnished the prime example of rationalist aspirations with its enmeshing of explanation and logically necessary laws in a universal, internally coherent mathematical system. Not that reason lay outside or was merely incidental to the philosophy/theology of the Middle Ages: if nothing else, the works of Aquinas represent a sustained attempt to integrate divine revelation and reason. Nor should the early Reformers be seen as trenchant anti-rationalists focussing all attention upon Christ. The Stoic emphasis upon natural religion influenced Calvin as deeply as did the evangelism of St. Paul. Yet it is clear that 'reason' as it was understood by the Scholastics meant something other, or at least, performed a different role, in the rationalism of Descartes, Spinoza and Leibniz. Aquinas, for example, regarded reason as

the wherewithal to abstract from the existence of contingent being the necessity of its dependence upon God. Reason is a type of intellectual activity by which one moves discursively between facts. The fact of contingency is not apprehended *a priori*, but is grasped *a posteriori* through the senses. Reason does not contribute from its own store, as it were, the material out of which the demonstration of the existence of God and the understanding of His salvation are to be fashioned. One begins with sensation as the font of all knowledge and then proceeds, in a cumulative fashion (as outlined by Aristotle in the *Posterior Analytics*) to build sensation upon sensation and integrate successive data in unified memories which constitute sense experience. This set of experiences generates, by way of discrimination and induction, a primitive understanding out of which grows reasoning: the apprehension of connections and reduction to basic principles.

Now, in the new ('rationalist') approach reason was not demonstrating so much from the world, as from reason itself. The rationalists sought not to verify judgements by reference to experience in a reductive fashion, but, rather, to reveal the power of *a priori* reason to embrace truths about the world. Descartes' *cogito* implicitly assumes that the possibility of thought provides thinkers with a datum over and above the content of the thoughts themselves.

The Cartesian rupturing of monism set reason apart from the physical world in such a way that only God may reconcile the mental and the corporeal. From this approach there follows a new methodological conception. We know of God as a consequence of reason reflecting upon itself (that is to say, from reason's reflection upon its own thinking in the Cartesian sense, the fact that it thinks) rather than as an entailment of what is thought about in thinking (i.e., the world as we perceive it). In this way, as Barth would say, theism has become anthropomorphic. This line of argumentation presupposes, of course, that reason possesses within and of itself information about God and the world: Descartes' 'innate ideas'. Since for Descartes the idea of God is neither adventitious nor factitious, it must have been implanted in our psyches by God when fashioning the human mind. In his letter on the "Programme of Regius" he makes the point even more explicitly:

"He (Regius) proceeds in article xiv, to affirm that the very idea of God which is in us arises not from our faculty of thinking, which is innate, but from divine revelation, or tradition, or the observation of things. We shall easily discover the error of this assertion, if we consider that a thing can be said to be from another, either because that other is its proximate and primary cause, or because it is simply the remote and accidental, which, in truth, gives occasion to the primary to produce its own effect at one time rather than at another.... It cannot be doubted but that tradition or the observation of things is the remote cause, inviting us to attend to the idea of God which we possess, and to exhibit it in presence to our thought. But that it is the proximate cause of that idea can be alleged only by one that we can know nothing of God beyond the word God, or the corporeal figure exhibited to us by painters in their representations of God.... And indeed, it is manifest to everyone that sight properly and by itself presents nothing except pictures, and hearing nothing but words or sounds; so that all which we think beyond these words or pictures, as the significates of them, are represented to us by ideas coming to us from no other source than our faculty of thinking, and therefore natural to it; that is always existing in us in power."<sup>1</sup>

This letter has been quoted at length because it reveals three essential characteristics of rationalist thought as it bears upon theological method. It is because these characteristics manifest themselves in Descartes' thought in a radical way that he can be regarded as the first flower of rationalism in theology.

Firstly, it is being claimed that our conception of God springs from the faculty of thinking itself rather than from the objects of thought. Divine revelation, tradition, and 'the observation of things' are at most the *occasions* upon which we attend to the idea of God which is in itself proper to reason. God is known in our having the capacity to think, not as a contingent product of the chance realization of that capacity. Resident in the activity of thought, then, is the necessary and sufficient material out of which thought reveals and fashions eternal verities.

The second characteristic of rationalist thought which is foreshadowed in the Cartesian passage is a clear-cut nominalism with regard to perception not found in Aristotelian metaphysics or Thomist 'natural theology'. Whereas Aquinas had erected his natural theology upon a 'realist' metaphysics, Descartes set the pattern for a thoroughgoing nominalism. He takes it that the five senses present to us nothing but bare sense-data (indeed,



he considers this is manifest to everyone). Consequently, when empirical investigation can yield no more than this, there is nothing left which can inform us of significant connexions between these sense-data but the faculty of thinking - this is his argument.<sup>2</sup> While 'realist' ontology regarded universals as objective existences which inhered in particulars, nominalism, especially as developed by Roscelin, William of Ockham and Nicolas of Autrecourt, regarded universality as a property of language, and abstractions as predicate terms which refer to contingent facts about individuals. The generalizing and categorial nature of language fosters the use of universals in thought and parlance, thereby generating the illusion of universal substances; but, argued the nominalists, only 'primary substances' (concrete individuals) and singular sensible qualities constitute the world. Relations between objects of reference are not themselves entities but merely modes of connexion which, through affirmative copulae, imply factual conditions enmeshing objects. Descartes argued that otherwise isolated and incoherent messages are connected and placed in context by the faculty of thinking - a development of Ockham's nominalism supplemented with a simplified form of Augustinian Platonism at the level of God, the self, and geometry. The strength of this rationalist position was that the crucial issue of the *informativeness* of any idea could be provided only by reason which, when used properly, is that faculty by means of which we perceive ideas clearly and distinctly. Yet, insofar as the intelligent use of words, according to Descartes, assumes prior possession of innate ideas, we are presented not with the Chomskian argument that what is innate is the capacity to acquire concepts upon which the intelligent use of words is premised; rather, Descartes posits the presence of concepts as quasi-pictures - "intrinsically incoherent entities, combining as they do the properties of material and immaterial images"<sup>3</sup> - thereby reviving the Platonic forms, identified with the ideas in the mind of God by Augustine, and now rendered immanent through a doctrine of the *imago Dei*.<sup>4</sup>

Though a strident nominalism in its outright rejection of extant universals, Cartesian epistemology nevertheless smacks of the moderate nominalism of Peter Abelard: a qualified Platonism that locates universals in the 'deep-structure' of the mind, as it were, rather than in the 'objective' world beyond, and apprehended by the senses. In opposition to the realists, for whom genera and species had existential status, Abelard adopted Aristotle's perspective on the universal as that which can be predica-

ted of several things, like man, whereas the individual is that which cannot be predicated. "Thus the universal was not a word *qua* word," writes Gordon Leff, "but a word which could be predicated of things."<sup>5</sup> Whereas Ockham was to locate the universal in the structure of language as a rule-governed enterprise, Abelard "made knowledge of the universal come through intellectual activity. Through our minds working upon the things encountered in the senses we are able to distinguish their common status. In the final analysis, the universal is a concept which the mind abstracts from the individual: 'because all clear understanding seems to derive from individuals, when we have grasped them through the senses we recall them through the intellect'."<sup>6</sup> Descartes inverted Abelard's ontology to the extent that whereas Abelard regarded universals as resident in sensible things (though representative of concepts comprehensible only when abstracted from sensible things), Descartes regarded universals as incorporeal, innate ideas which the mind projects onto sensible things, imposing its order on the flux of sensation. Thus, for both Abelard and Descartes the universal is exclusively derived from particulars - where Abelard considered individuals as sensible things and Descartes talked of clear and distinct ideas - and once abstracted the universal is independent of 'real' things; though for Abelard this independence is notional - a logical concept - while for Descartes it is transcendental: of the mind and its realm.

Nominalism in Descartes' hands had thus opened the gates of intellection to rationalist enquiry. To the extent that he fashioned a philosophy of heuristics focused on discovery and problem-solving as the hallmarks of rational activity, Descartes anchored his metaphysics in a universal mathematics of indubitable truths: a Euclidean philosophy of mind premised upon a structure of elements uniform in clarity, distinctness and, of course, veridicality. Intuition was given a structure and, consequently, laid open to 'scientific' investigation. Since "science in its entirety", says Descartes in the second rule of the *Rules for the Direction of Mind*, "is true and evident ... (and) arithmetic and geometry alone are freer from any taint of falsity and uncertainty ... (it follows) that in our search for the direct road towards truth we should busy ourselves with no object about which we cannot attain a certitude equal to that of the demonstrations of Arithmetic and Geometry."<sup>7</sup> The noetic element in Descartes so completely overwhelms the perceptual that the central image dominating his

work is not that of man confronting the world (as with Aristotle), but, rather, the mind confronting its own ideas. What for Aristotle represented the last and most difficult stage of analysis was for Descartes merely prefatorial. And in this meditating upon ideas rather than demonstrating and proceeding from premises lies the crux of the empirical rebuttal of Cartesianism: in escaping a Thomist realism of sensible things Descartes opted for an Augustinian realism of the transcendental. His rationalism and nominalism were incompatible.

Hume emphasized this incompatibility by showing that if one adheres to a nominalist conception of the objects of knowledge, then it is logically impossible to derive necessary natural laws from human experience. Presenting his case as a commonsensical expansion on the derivation of ideas from discrete, simple impressions which associate in a somewhat gravitational fashion, Hume argued that all we really 'know' are separable impressions, the ideas they generate and the picture of the world that naturally flows from their 'chemistry'. Consequently, the basic building blocks of a Humean empiricist epistemology are the 'units' of experience itself: the generative impressions that give rise to ideas. Gone are the transcendent Cartesian clear and distinct ideas as quasi-pictorial suspensions of mind and matter: an implied 'ectoplasmic' *organum*. Rather, Hume steers us clear of introspective odysseys and tries not to rearrange the 'furniture of the mind', as it were, but asks us to relax in the armchair of what is immediately at hand. As atoms of experience, then, ideas form lattice structures through constant conjunction and create a world of habitually convivial images. Here surely lie the seeds of an evolutionary conception of human nature, founded as it is on man's phylogenetic characteristics and their survivability: we are what we are, we believe what we believe because inherently meaningless fluxions of chance and 'necessity' have generated circumstances which by accident, indifference and/or suitability have remained with us and through sheer survival have accrued unto themselves the respect and mystique uniquely borne of success. To dig deeper than the crust of sentience is to excavate a philosophical grave, for we are no more than bundles of impressions, argues Hume, and even the associative chemistry that gives rise to particular clusters we identify as 'minds' and 'personalities' is beyond our certain comprehension. We are, in short, sentient packages of self-confirming customariness.

Unwittingly, Hume vindicated and elevated the radical nominalism of Nicolas of Autrecourt, if not with regard to the ontological status of the objects of knowledge then surely insofar as the nature of causality and certitude are concerned. The reduction of all necessity to contingency and the collapse of all inference into habituation renders the entailments of 'cause' and 'effect' meaningless. To argue for the existence of substances or causes from perception, by this view, is to pursue a trivial circularity: to beg the question in an argument rooted in semantics, not tangibles. The very heart of the rationalist enterprise as enunciated by Descartes, had been pierced and rendered useless: namely, that the apprehension of certainty from logical necessities operating on the nature of things is a "fine imaginary republic of which a man may form a plan in his closet,"<sup>8</sup> neither self-evident nor ineluctable, but established conjecture contingent on perception and custom. Science, then, not as true and evident cognition but as the topography of ignorance.

Consequently, the very strength of the rationalist position - its nominalism - was also its fatal weakness. As Descartes' thought was developed, especially by the British empiricists, the incompatibility of the rationalism with the nominalism became more and more obvious. First there was Locke, distilling out the Platonist element in Descartes' thought, who attacked the whole concept of innate ideas and asserted that the mind is a *tabula rasa*. Then Berkeley attacked the concept of abstract ideas, a concept which in Locke had made do for the lack of real universals which could correlate the objects of experience. Finally, Hume showed that when one regards the objects of one's knowledge in this nominalistic way, the possibility of arriving at laws which are necessary and certain must be surrendered. The strength of the rationalist position, indeed its *raison d'etre* and the faith which sustained it, was the goal of the certainty attending logical necessity. This Hume showed to be vain, and therein lies his importance. We have drawn attention to the attractiveness of mathematics felt in this period, and the revolutions in scientific procedure wrought by Newtonian physics. When once the concept of 'necessary law' was attacked, the philosophic justification for the new procedure seemed gravely threatened. So grave was the threat that Kant was stirred from his "dogmatic slumbers" and felt driven to devote himself to the elaboration of a scheme which would salvage necessary laws from the Humean wreck.

The third characteristic of rationalist thought, pervasive in rationalism and empiricism alike despite divergent emphases and ambitions, is the assumption that all men possess and are generically defined by an immutable, ineluctable 'human nature'. In the passage quoted, Descartes refers time and again to what he calls the thinking faculty. This term is but one application of his fundamental position in which mind is properly called 'mental substance'. It is the assumption of rationalism that all men everywhere are endowed with a 'human nature' which is basically unchanging and applies to everybody. As Collingwood has said, in his discussion of the eighteenth century historians, "(They) assumed that human nature had existed ever since the creation of the world exactly as it existed amongst themselves. Human nature was conceived substantialistically as something static and permanent, an unvarying substratum underlying the course of historical changes and all human activities. History never repeated itself but human nature remained eternally unaltered."<sup>9</sup>

It is this presupposition of an unchanging, rational human nature which is common to the leading thinkers of the period; it is the foundation upon which their systems of thought were to be built, and, in particular, it is the foundation which provided the ground for the new approach to theology. Not only is it important that we see this for its own sake, but, further, it is this which explains why rationalism still flourished after the British had done away with the concept of innate ideas. If Descartes' innate ideas were natural as potentialities of the faculty of thinking, i.e. to the human mind as such, spiritual substance, everywhere and always, so likewise the Lockean human understanding is assumed to be everywhere the same. Locke holds out before himself the ideal typical rationalist:

"Though God has given us no innate ideas of Himself- though He has stamped no original characters on our minds, wherein we may read His being; yet, having furnished us with those faculties our minds are endowed with He hath not left Himself without witness; since we have sense, perception, and reason, and cannot want a clear proof of Him as long as we carry ourselves about us.... But though this be the most obvious truth that reason discovers, and though its evidence be (if I mistake not) equal to mathematical certainty; yet it requires thought and attention, and the mind must apply itself to a regular deduction of it from some part of our intuitive knowledge, or else we shall be as uncertain and as ignorant of this as of other propositions which are in themselves capable of clear demonstration. To show, therefore, that we are capable

of knowing, i.e. being certain, that there is a God, and how we may come by this certainty, I think we need go no farther than ourselves, and that undoubted knowledge we have of our own existence."<sup>10</sup>

So it was in following Locke that the English philosophical theists (and, in many ways, their opponents) developed the rationalist tradition. Having rejected the concept of innate ideas, however, the concern was not so much with unfolding from the resources of the mind eternal truths about God, as with the witness to Him, indubitably in nature. The empirical tradition which was developing in England meant that thinkers were more 'open' to nature in this way. This is clear in the fact that the favourite theistic proof of the time was not the Ontological Argument but the Physico-Theological, the argument from design. As Locke expressed the belief: "The works of Nature everywhere sufficiently evidence a Deity."

This emphasis on reason and nature meant that the reasonableness of Christianity was of prime importance. The insistence upon the reasonableness of Christianity in fact provided Locke with the title for his specifically theological work, a work which some regard as the first Deist literature, though it is but the fruit of an age which agreed that the Biblical teachings need only to be properly expounded in order that they be seen as plain and intelligible. Flowing from this rationalist emphasis was a great impatience with elaborate doctrinal system-making. A few simple truths, rationally demonstrable, were all that was necessary. With doctrine reduced to a minimum, and this demonstrated (to the satisfaction of the times) as the intention of the Bible, such a simple dogmatic foundation required some supplementation, and the universal tendency of the times was to find it in a vigorous type of ethics, and a zealously charitable programme. Morality was assumed to be the proper content of Christianity, rather than the absurd and fruitless speculations of the theologians of previous times. This was especially true of the Latitudinarians, but not of them only; this moralism became almost an axiom of theology. Having minimized the speculative element in religion, the Latitudinarians were free to emphasize its practical implications. In stressing our moral duty, they fortified man's faltering purposes by reminding him of the consequences of good works. It was wise to be sober and pious, because virtue brings its own reward. This is true in this world, and immediate advantage is reinforced by the prospect of eternal bliss. *This stressing of moral duty was not really a new*

*theological theme; rather, it was a variation on the same theme of man's inherent rationality, with its consequent certain knowledge of natural laws.*

It can easily be seen that there was inherent in the rationalists a spirit which, while it was welcomed by theologians, generally speaking, as an ally to bolster an unsure faith, in time would turn against theological study as it had been understood, namely, as a function of the Christian Church. This spirit manifested itself in the French encyclopaedists, and especially in the English Deist movement - from Locke's attempt to do no more than disentangle the simple assertion of the Bible of Jesus' Messiahship, leaving aside all else, through Collins' attack upon ecclesiastical superstition and priestcraft, to Tom Paine's sweeping claim that "the idea that God sent Jesus Christ to publish, as they say, the glad tidings to all nations, from one end of the world to the other, is consistent only with the ignorance of those who knew nothing of the extent of the world, and who believe, as those world-saviours believed... that the earth was flat like a trencher."<sup>11</sup> In the place of traditional dogmatics, with its intricate systems of doctrines, relying upon Scripture as some sort of unique record, theology becomes simply an *apologia* for rational conduct. If the Reformers were in danger of dissolving dogmatics into Scripture, now the pendulum had swung the other way. Talk about God had nothing whatever to do with Church or Bible. Yet, a theology is possible: "Are we to have no word of God - no revelation? I answer, Yes; there is a revelation. The word of God is the creation we behold: and it is in this word, which no human intervention can counterfeit or alter, that God speaketh universally to man."<sup>12</sup> And again:

"Religion, therefore, (is) the belief of a God and the practice of moral truth... The belief of a God, so far from having anything of mystery in it, is of all beliefs the most easy because it arises to us... out of necessity. And the practice of moral truth, or, in other words, a practical imitation of the Goodness of God, is no other than our acting towards each other as he acts benignly to all."<sup>13</sup>

Nowadays, Paine's easy optimism seems ironical. As far back as 1739, David Hume had published his *Treatise of Human Nature*, in which, *inter alia*, he delivered a forthright attack upon the concept of spiritual substance. Thus the fundamental assumption of the rationalists was in danger from

Hume, not only by his attack upon the concept of necessary natural laws, but by his reduction of both material and spiritual substance. As Hume put it: "We have no idea of substance, distinct from that of a collection of particular qualities, nor have we any other meaning when we talk or reason concerning it. The idea of a substance... is nothing but a collection of simple ideas, that are united by the imagination, and have a particular name assigned them, by which we are able to recall, either to ourselves or others, that collection."<sup>14</sup> And with this attack upon substance there properly goes a rejection of the idea of 'human nature' - reason - as some sort of fixed, metaphysical entity able to generate necessary existential truths. In fact, Collingwood complains that "his attack on the idea of spiritual substance should, if successful, demolish this conception of human nature as something solid and permanent and uniform; but it did nothing of the kind, because Hume substituted for the idea of spiritual substance the idea of constant laws of association."<sup>15</sup> It was these laws, now mental rather than 'natural', into which substance had been dissolved. But not only did Hume attack, albeit in an inconsistent fashion, this idea of Reason as a permanent entity, he savaged the physico-theological argument beloved by the rationalists of the second, more empiricist phase, in his *Dialogues Concerning Natural Religion*, published in 1779. Tom Paine's "most easy belief" had been shown to be not so easy after all - fifteen years before he ventured to say so!

Not only was rationalist theology shown to be self-contradictory by Hume, Kant, for all his attempts to salvage necessary laws, delivered Reason a crippling blow. It is the burden of Kant's *Critique of Pure Reason* to deny the possibility of Reason's dealing with the transcendent, which he takes to be Reason's illusion, as distinct from the 'Understanding's' knowledge of empirical phenomena. Many have remarked on how Kant's thought is both continuous with the rationalists and yet spells out their defeat. We will content ourselves, for the moment, with noting this fact in one instance relevant to our argument.

"Reason, like understanding, can be employed in a merely formal, that is logical manner, wherein abstracts from all content of knowledge," writes Kant. "But it is also capable of a real use, since it contains within itself the source of certain concepts and principles, which it does not borrow from the senses or from the understanding."<sup>16</sup> Here is a statement



of the role of 'Reason' which has, in different forms, dominated two centuries' thinking. Yet Kant's significance lies in that he went on to ask the question, "Can we isolate reason, and is it, so regarded, an independent source of concepts and judgments which spring from it alone, and by means of which it relates to objects; or is it a merely subordinate faculty for imposing on given modes of knowledge a certain form, called logical - a faculty through which what is known by the understanding is determined in its interrelations, lower rules being brought under higher, as far as this can be done through processes of comparison."<sup>17</sup> And to his question Kant gives a very strong answer in favour of his second alternative. The demand of reason that the understanding be brought into accordance with itself is merely a subjective law for the orderly management of the possessions of our understanding, and does not prescribe any law for objects. The rationalists really wanted both these alternatives, the first to give them a source of data, and the second to provide a frame of reference, both with a 'transcendent' application. Kant denies the first and restricts the second to the 'transcendental', which is always dependent upon the understanding.

From this fundamental position, Kant's critique of theology could have been anticipated. "I maintain that all attempts to employ reason in theology in any merely speculative manner are altogether fruitless and by their very nature null and void," writes Kant, "and that the principles of its employment in the study of nature do not lead to any theology whatsoever."<sup>18</sup> Thus with one fell swoop, Kant applied to all natural theology what was implicit in Hume's attack upon the argument from design. He showed how all the arguments of his day reduced to three, which in turn, he though, reduced to one: the ontological argument. In this way, he sought to show the rationalist character of all the natural theology which had been the fashion in the preceding century and a half. In this, Kant is analysing and rebutting the Wolffian theology of the period. As Kemp-Smith suggests, what Kant is doing here is "as it were, recalling not altogether without sympathy, the lessons of his student years. They enable him to render definite, by way of contrast, the outcome of his own Critical teaching."<sup>19</sup>

The effect was devastating. After the struggles of the seventeenth century the theologians of the eighteenth century, particularly in Germany, welcomed rationalist theology as the heaven-sent rock of certainty upon

which to found their doctrine. Now this rock of Wolffian rationalism was dissolving into shifting sand under the Kantian storm, and thus endangering the whole structure built upon it. It was imperative that, on the one hand, some new source of unshakeable data be elaborated, and, on the other, some new frame of reference be forthcoming in terms of which such data could be interpreted.

Kant had his own answers to these needs; and the formal structure of his inter-related answers shows just how much he was still a child of the Enlightenment. Indeed, in Kant the spirit of the eighteenth century had not only reached maturity and beyond, it had quite simply come to terms with itself. The pure rationalism of Kant's theology - despite the illusion inevitably attending reason's efforts to know what is the case through transcendent concepts unrelated to intuitions - manifests itself when Kant goes on to assert that a proposition like "God exists" is a necessary postulate of reason, although now it is reason in its practical employment, no longer speculative. Here again, the simplicity of the rationalist position shows through. The concept 'God' is considered proper to reason, only now with the restriction that to reason in its theoretic employment, the concept is but an ideal, a regulative idea, a heuristic principle. The existence of the object of this concept, i.e. 'God Himself' (and here is Kant's departure from pure rationalism) is a *subjective necessity* demanded by reason faced with the need to act, to decide a moral issue. Thus there comes to the forefront of theological discussion the word 'subjective', which was to be a key term in all subsequent thinking. The simplicity of which we complain lies in that Reason, albeit now 'practical reason', is able to and does produce *of itself* both the basic data for permissible talk about God, and, further, its own frame of reference.

Yet, insofar as Kant has here explicitly avowed *practical* reason as the proper sphere in which theological construction can operate, he has raised to the level of a fundamental principle of methodology which was but the assumed content of the thought of the period before him. No longer is morality the principal and focal concern of religion; now morality is just one of the *criteria* of meaningful theological statements - one of the defining rules of the game. In this regard Kant elaborated a programme upon which the nineteenth century theologians could go to work. Nevertheless, despite what has just been said, there is a real sense in which Kant

stands at the end of a line, as well as at the beginning of another. For, by and large, the nineteenth century did not follow the rationalism still inherent in Kant's theology of practical reason. In particular, it did not follow him in his fundamental conviction that religious knowledge sprang *simply* from certain innate concepts and subjective necessities of reason, though the general tendency was to hold that religion was still in a sense innate. But in a very interesting way, subsequent theologians took up the problem of the importance of historical knowledge for theology. They became aware that no matter how strongly a moralistic interpretation was put upon religion, still and all, if this religion was to count at all as Christian, it was also involved in making some rather special historical assertions. The significance of Kant lies in his refusing to Reason the right to make existential claims on behalf of concepts. Theology had simply been assumed to be making such claims; its business was with facts, admittedly not the same sort of facts as those of sense-experience, indeed, a rather peculiar sort of 'fact', but still a fact. The dilemma Kant set theology was how to maintain its claim to be making factual assertions, when it was not within the province of Reason to speak about 'what is', to make statements implying the existence of the objects of purely transcendent concepts. Kant tried to inject this factual element, this contact with existence, by means of his 'Practical Proof'. Yet, another way out of the dilemma lay near at hand: historical assertions make factual claims. Could not history supply what reason lacked? The question, however, does not yield a simple answer; history, it was immediately obvious, is not theology. One line along which history seemed relevant was to provide that which would peg the scheme (whatever it was) down to reality. History certified the truth of the scheme; history provided the evidence which proved the faith; history was a living illustration of the dogmatic scheme. This was the new possibility which suggested itself, a possibility which again opened up the question of theological method after the apparent demise of Reason.

The nineteenth century saw the rise of history as a distinct and respectable discipline. There had been forerunners of this, of course. The eighteenth century produced Hume's *History of England* and Gibbon's *The Decline and Fall of the Roman Empire*. There was in the leaders of the Enlightenment themselves an awareness that cultural factors bearing upon the life, habits and customs of people were worthy of consideration.

Voltaire was well aware of this, and Montesquieu placed emphasis upon material conditions such as climate as influences in the development of a people or nation. Yet the historians of the eighteenth century (and here Gibbon affords a typical example) on the whole were merely applying to the writing of history a method similar to what theologians had been employing all along. The role of historical investigation was to provide an illustration or proof of an intellectual scheme held on other grounds. What the system was, and what grounds were admitted, was the real question at issue. According to Bolingbroke, history is philosophy teaching us by examples how we ought to conduct ourselves in the situations of public and private life.<sup>20</sup> It was out of this way of thinking that the notion of a philosophy of history, i.e. of a history which would at once be factually accurate and at the same time philosophically illuminating, was to take its rise. Applied to theology, history was taken to demonstrate the development within the course of events what was to be said about God.

The gradual movement from rationalism to historicism (in Meinecke's sense), then, signified more than a shift in methodology or attention paid to facts and circumstances; it reflected a change in the language of theology and, ultimately, politics. The *imago Dei* as a universal common denominator, as the essence of 'human nature', had itself been transcended by the nominalism common to both rationalism and empiricism. "The essence of historicism is the substitution of a process of *individualising* observation for a *generalising* view of human forces in history," writes Friedrich Meinecke,

"This does not mean that the historical method excludes altogether any attempt to find general laws and types in human life. It has to make use of this approach and blend it with a feeling for the individual; and this sense of individuality was something new that it created. This does not mean that up till then the individual elements in mankind and the social and cultural structures created by man had been totally ignored. But it was precisely the deepest-moving forces of history, the human mind and soul, that had been held captive by a judgement that confined itself to general terms. Man, it was maintained, with his reason and his passions, his virtues and his vices, had remained basically the same in all periods of which we have any knowledge. This opinion was right enough at heart, but did not grasp the profound changes and the variety of forms undergone by the spiritual and intellectual life of individual men and human communities, in spite of the existence of a permanent foundation of basic human qualities. In

particular, it was the prevailing concept of Natural Law, handed down from antiquity, which confirmed this belief in the stability of human nature and above all of human reason. Accordingly, it was held that the pronouncements of reason, though they could certainly be obscured by passions and by ignorance, did nevertheless, wherever they could free themselves from these hindrances, speak with the same voice and utter the same timeless and absolutely valid truths, which were in harmony with those prevailing in the universe as a whole."<sup>21</sup>

As a central element in the mythopoesy of rationalism, Calvinism provided both the ideological and theological justification for the rise of a new theory of natural law: a theory of the *imago Dei* and the Word as the blending of faith and reason. It had served to legitimize and, in part, generate both a qualified nominalist conception of the world and a statist conception of human nature; fertile ground for the generation of contractarian theories of civility and order. Yet the strong rationalist undertones of contractarianism - a qualified nominalism coupled with universal reason and a static conception of human nature - were lost in a post-Kantian world committed to historicist paradigms of thought and action. Regardless of and in many ways blind to its parentage, the new outlook regarded the products of rationalist and quasi-rationalist thought as the fruit of a beneficent or sceptical naïvety; either way, the matrix of contractarianism, its common assumptions and symbols, were now lost in a new set of paradigms and tropes. The critical point, however, is not so much the demise of contractarianism as its rise in the wake of Reformation thought as a blending of the new theology of conscience and the rationalist (and quasi-rationalist, i.e. Lockean) commitment to a sophisticated version of the *imago Dei*. And, when reduced to its fundamental premises, this was little more than the 'natural' integrity to be found in the rational community of language users.

APPENDIX TWONotes

1. Letter xxxviii, in A Discourse on Method, Etc, by René Descartes, trans. J. Veitch, London, 1949, p.252
2. That this was the motive behind Descartes' espousal of the concept of innate ideas is clear from his challenge to Regius to show how any common notion, which is universal, could be derived from any particular sense-experience. As Noam Chomsky states the problem in his contemporary re-formulation of Descartes: "if we contemplate the classical problem of psychology, that of accounting for human knowledge, we cannot avoid being struck by the enormous disparity between knowledge and experience - in the case of language, between the generative grammar that expresses the linguistic competence of the native speaker and the meager and degenerate data on the basis of which he has constructed this grammar for himself." Noam Chomsky, Language and Mind, New York, 1972, p.78
3. Anthony Kenny, "Descartes on Ideas", in W. Doney, ed., Descartes, London, 1967, p.237
4. For the identification of the mind's idea of God with the *imago Dei*, see Meditation III.
5. Gordon Leff, Medieval Thought: St. Augustine to Ockham, Ringwood, Victoria, 1970, p.109
6. Ibid., pp 109-110
7. Philosophical Works of Descartes, E. S. Haldane and G.T.R. Ross, eds, Cambridge, 1931, Vol.I, p.3, 4, 5
8. "whether the British Government inclines more to Absolute Monarchy, or to a Republic", in Essays, Moral, Political and Literary, ed., Green and Grose, London, 1912, Vol.I, p.126. Though employed in the defense of monarchy against 'Roundheads', Hume's apothegm neatly summarizes his cynicism towards systems founded on abstractions.
9. R. G. Collingwood, The Idea of History, Oxford, 1970, p.82
10. An Essay Concerning Human Understanding, ed. A. S. Pringle-Pattison, Oxford, 1964, IV, x, 1
11. Tom Paine, The Age of Reason, London, 1795, facsimile edition, London, 1950, p.24
12. Ibid., p.24
13. Ibid., p.51

14. A Treatise of Human Nature, ed., E. C. Mossner, Harmondsworth, 1969, I, i, 6
15. The Idea of History, Op Cit, p.83
16. Critique of Pure Reason, trans. N. Kemp-Smith, London, 1929, B-355
17. Ibid., B-362
18. Ibid., B-664
19. N. Kemp-Smith, A Commentary to Kant's Critique of Pure Reason, London, second edition, 1923, p.522
20. c.f. F. C. Copleston, The History of Philosophy, New York, 1964, Vol.IV, p.50
21. F. Meinecke, Historism: The Rise of a New Historical Outlook, trans. J. E. Anderson, London, 1972, pp lv-lvi

### APPENDIX THREE

#### I

Plato, it cannot be denied, was an enthusiast of 'political participation'. But just what did this imply? In Plato's 'fully just polis', each individual plays his part, attends exclusively to his prescribed task and stays unobtrusively in place. Participation was *to ta hautou prattein*, "to do that which belongs to one's part".<sup>1</sup> Aristotle felt less the lure of Spartan bivouacs; his concern for freedom and individual uniqueness makes the *Politics* (in contradistinction to the *Republic*) an unlikely progenitor of totalitarian political theory. Nonetheless, Aristotle too is quite explicit about the idea that men can only realize themselves as *parts* of a political whole: "The polis is a compound, like any other whole made up of parts, and these are the citizens which compose it."<sup>2</sup>

Of course, this idea of *participation* was not an invention of philosophers. The colloquial word *politeia*, for example, meant citizenship, the citizen body, the constitution, political life and the general structure of the polis. As Victor Ehrenberg summarizes this point:

"The use of the same word for individual participation in the state and for its general structure shows that the participation was not in the main a purely legal act between individual and state; it reflected the vital adherence of the individual to the citizen body, as also to the other communities inside the state..., (he) therewith was bound to them, bound to religion and soil."<sup>3</sup>

In modern industrial society, in contrast, "vital adherence" to the polity seems irredeemably lost. The political arena, having dwindled to the status of a life-space among life-spaces, is primarily bureaucratic or administrative and thus hardly a whole - much less a moral whole - of which we are the constituent parts. As Vico says, "citizens have become aliens in their own nations."<sup>4</sup> In fact, modern liberal ideas about the kind of 'participation' which produces legitimacy usually boil down to suffrage; the act of voting, moreover, is the occasional approval or disapproval of an administrative team by a public whose life is chiefly and focally 'outside' politics, in other life-spaces like family, employment and so forth.



There is no longer any question of a morally and humanly fulfilling participation 'inside' the political system. The un-Greekness of this historically compelling reinterpretation of 'political participation' is inescapable: no man can 'realize' himself through mass ballot voting. As a consequence, the Hellenic ideal of a "full time voter"<sup>5</sup> sounds either silly or sinister to modern ears.

The Greek idea of 'representation' is also unlike its modern echo. Plato's guardians, the *maiores partes*, are said to 'represent' the whole polis since they alone have intuitive access to community - integrating *nous*. According to Aristotle, the worthiest and most authoritative members of a polis are 'representative' of the whole in the sense that they embody its essential qualities in the highest degree.<sup>6</sup> In both cases, the goals and interests of the "finest members" are said to coincide with the goals and interests of the collectivity (*to koiné sympheron*).<sup>7</sup> Implicit at least in Plato's commitment to a 'common interest' is the portentous suggestion that all inner cleavages and failures to reach total consensus are fundamentally unsocial. Every polity worthy of the name, so Plato suggests, has a 'common good', and the noetically informed and skillful leader will know how to steer the state according to its univocal directives. One is reminded of Robespierre's habit, while addressing the Assembly, of prefacing his statements with the remark that since there was only one morality and one conscience he was sure that everyone in the room would agree with what he was about to say.<sup>8</sup> In fact, the modern liberal idea of elective representation has both anti-Platonic and anti-Robespierrean connotations. It might be said to rest on the assumption that political unanimity, in highly differentiated societies, is a structural unlikelihood. To enforce this point, one might say that an absence of social cleavages and disagreement today seems eerily unsocial. It suggests conformism under threat of etatist coercion and violence. Sociality, in Vico's 'age of men', has more to do with conflicting positions, compromise and reciprocal readjustment than with any fictional *consensus omnium*. The Peace of Westphalia ushered in Europe's 'age of men' and bequeathed to modernity that coexistence without a common *nous* called 'religious toleration'. Indeed, there no longer seems to be a single and homogeneous goal of total society which a compact political elite could 'represent' or picture within its admirable self.

We can summarize these points in the following (provisory) simplifications. Both Plato and Aristotle affirmed a unity of ethics and politics which, renewed in modern contexts, can only lead to a totalitarian 'integration' of society. To explain what is apophradic about twentieth century politicians who want to 'make the citizens good', we must trace (following Vico) the historical displacement involved in the gradual de-moralization of political legitimacy which accompanied the shrinking status of politics to that of just another life-space among life-spaces. Both Plato and Aristotle (each in his own way) thought legitimacy to be based on *moral* arrangements which may misleadingly be called 'participation' and 'representation'. Both thought social institutions to be 'legitimate', for example, if role tasks were distributed not on the archaic basis of lineage status but rather in accord with either natural talent or achieved merit. Those born with cobblers' souls must end up as cobblers. Those who evince slavish traits (e.g., who fail to commit suicide upon being captured by the enemy) deserve to be slaves. The most attractive aspect of this idea was formulated by Pericles: "when it is a question of putting one person before another in positions of public responsibility, what counts is not membership of a particular class, but the actual ability which the man possesses."<sup>9</sup> Thus, the moral dimension of 'part-playing' or 'instrumental' participation has its subtlest and (to the modern mind) most attractive expression in the idea of citizenship among equals. As we read in the *Politics*, the good and valuable life is the life in which a citizen 'realizes' himself, in which he uniquely actualizes his human potential for happiness and nobility. This sort of self-realization, of course, is dependent on speech, action and (most importantly) on the general context of reciprocity which is designated by the word *politeia*. For Aristotle, the citizen is *inside* the polis, just as a part is *inside* its whole.

In Plato, furthermore, political authority is considered legitimate only if social cohesion or 'wholeness' is guaranteed by the centralization of resources which accompanies the institutionalized belief that a ruler's interests are coextensive with the interests of the 'body politic'. The moral dimension of such 'representation' (where the 'higher' parts constitute the *essence* of the whole) is again rooted in the idea of a single *common good* or shared *nous* which integrates the community. A similar idea underlies the old *topos* of the polity as an enlarged 'body', as an organism with feet, arms, heart, head and a *single* 'highest' goal. The way the

*Republic* echoes the tribal origins of the polis, in fact, has not been overlooked, nor have Plato's flirtations with Sparta. In archaic *Gemeinschaften* the totem may be said to perform something like a 'representative' function, unifying the clan and guaranteeing value-unanimity among members. And there is something irrepressibly totemic about Plato's priesthood of guardians.

Whatever 'legitimacy' can mean in the modern world, it can no longer mean what either Plato or Aristotle thought it meant. The idea that politics can 'make the citizens good', can make men virtuous and free, is simply obsolete. When, in the modern age, a thinker like Rousseau claims that politics should make men virtuous, he clearly calls down the Vichian charge of apophrades on his head. Plato's ideals of bureaucratically organized role ascription and governmental holism, far from legitimating present day regimes and social orders, are more likely to be signs of illegitimacy at its most oppressive. It may well be that, in modernity, only totalitarianism can make a show at 'integrating' ethics and politics. It does this by subjugating the diverse life-spaces of a highly differentiated *Gesellschaft* to political coordination. The process of *Gleichschaltung* is nourished and supported by the illusion that the totalitarian regime has revived the common *nous*. This illusion is called propaganda or the 'ideological integration' of society.

To understand what is apophradic about both identifying ethical action with political action and resurrecting the common *nous*, we need only consider the following four characteristics of the Hellenic polis which, for structural reasons, cannot be reproduced within modern states: (1) the identity of the political state and total society, (2) the working identity of the citizens with the state, (3) the embedding of all religious, artistic and scientific life in the political context, and, most important of all, (4) the small number of citizens, all mutually acquainted. Precisely because the first three are dependent on the fourth, it is not their reality which is reproduced in totalitarian societies but only their enticing semblance. Every *Gemeinschaft* exhibits some kind of value-unanimity; when the rulers of a modern mass *Gesellschaft* proclaim ethical homogeneity for their state, however, our Vichian good sense tells us that something has gone wrong.

Nothing above is meant to deny the fact that *readjusted* concepts of representation and participation remain indispensable. Obviously enough, they have content in the sense that they allow us to grasp real structures of modern political systems. Nonetheless, the generally unthematized discrepancy of what they *can* mean and what they vestigally suggest has tended to produce confusion in the theory of legitimacy. By exploring this discrepancy we can come to understand what is attractive and irrational about totalitarianism. We must therefore continue to trace the 'meaning shifts' within Vico's mental dictionary of humankind. It seems clear, first of all, that apophradic attempts to retrieve the moral substance of Greek political philosophy ('to make the citizens good') in modern contexts have always had unpleasant implications. By investigating the structural reason why modern liberal concepts of 'representation' and 'participation' are quite unlike their Greek antecedents it will be possible to correct some of the misunderstandings which tend to bolster totalitarian pseudo-legitimacy. Without turning immediately to an examination of the way these ideas have been and should be reinterpreted for them to make sense in modern society, we must first focus on their original status and function in the works of Plato and Aristotle.

## II

The Roman concept of *ius*, at least insofar as it implies the possession of private right, was more or less foreign to the Greeks. Certainly neither Plato nor Aristotle thought of *ius* as a central aspect of *dikaiosyne* or 'justice'. Until late antiquity at any rate, 'citizenship' in a polis probably never meant anything like a legal guarantee of each individual's freedom of choice or *liberum arbitrium*. In fact, Hellenic citizenship might be understood as a high-culture revival (and transformation) of archaic kinship and family membership - which is not to deny the social evolutionary breach between tribes and *poleis*; such an analogy is only meant to lay emphasis on 'being a member'. *Dikaiosyne*, at any rate, suggests less that men have rights to protection or non-impingement than that they have obligations to participate or play their parts. In the classical theory of natural law, rights were strictly subordinate to duties.<sup>10</sup> The 'truly just polis' would guarantee every man his merited eligibilities to office, generalship and so forth. Feeling 'free', one

might say, had more to do with fraternity and solidarity than with the absence of collective interference in the 'private affairs' of an individual.

The emphasis here falls on the shared or common quality of the *bios dikaios* as even the non-philosophizing Greeks seem to have conceived it. *Societas* and *communitas* are the traditional Latin translations of the Greek *koinōnia* or 'association'. The noun *koinōnia*, in turn, comes from the adjective *koinos*, meaning precisely 'shared' or 'common'. Thus a *kōinonia* was colloquially understood as an association based on something men shared in common - something quite reminiscent of *archaic kinship* and quite unlike a Hobbesian need for protection against one's fellows. The only good life was the political life, the collective and collaborative life of the polis. Such an idea, at any rate, lay behind the political theories of Plato and Aristotle.

In his *Memorabilia*, Xenophon relates a fascinating encounter between Socrates and the sophist Aristippus. Their conversation turns precisely on the Hellenic idea that the life worth living is always the *bios koinos*, the collective life of citizen-interaction within a polis. Aristippus rejects this viewpoint. The responsibilities of ruling, he argues, make it a form of slavery; the constraints of being ruled are even more unbearable. All political 'participation', he concludes, is vile servitude. Freedom, in contrast, is reserved for the metic, the alien, the rootless freeman with no citizenship and no assigned place. "I do not shut myself up in the four corners of a community (*politeia*)," pronounces Xenophon's Aristippus, "but am a stranger in every land."<sup>1</sup>

Socrates answers: yes, political life is difficult; but a life without friendship (*philia* in the special Greek sense of a 'public virtue'), without partners and allies and without laws is more wretched still. *Vae soli!* Woe to he who is alone!

Although Aristippus' position may seem plausible to modern readers (recalling Vico's "citizens have become aliens in their own nations"), it is blatantly perverse in the Socratic-Athenian context. Today there is nothing uncommon about being *déraciné*, being a kind of wayfaring alien or metic. And just as politics has become a kind of housekeeping, so has

friendship become focally private. What we share with others has perhaps less to do with institutionalized values (common norms) than with a very personal sense of being co-voyagers in a precarious, fragmented and traditionless world. Socrates' warning is likewise out of step with today's social reality. Freedom has now taken on all the ambiguous implications of 'freedom in the traffic'. In spite of important differences between Mill and Epictetus (which we will discuss in Part VI) there *is* a surface similarity between their respective ideas of 'negative freedom'.<sup>12</sup> Superficially speaking, at least, Aristippus was a modern man before his time.

Amidst all the political disillusionment of the fourth century, in fact, his kind of argument remained unconvincing to restoration-oriented Greeks like Plato and Aristotle. The *polis kai hē koinōnia hē politike*<sup>13</sup> had a tightly knit and all-encompassing quality which, for these two philosophers, at least, seems to have resisted even the havoc wrought by the Peloponnesian War. Nostalgists have no qualms about praising the 'integrated life' which lingered on in fourth century Athens; and this was not mere fancy on their part, though it may reflect a naive confidence in the representativeness of Plato and Aristotle.

Putting fourth century developments aside for a moment, Thucydides' version of Pericles' funeral oration probably *can* be taken as the most representative articulation of the influential ideal of political wholeness or value-unanimity among citizens. The crux of Pericles' praise of the politically integrated life is formulated by Thucydides as follows: "We do not say that a man who takes no interest in politics is a man who minds his own business. We say that he has no business here at all."<sup>14</sup> In connection with a testament such as this, one should recall that, in the Hellenic polis, all aspects of life were politicized. Art was civic art; religion was civic religion. This meant that writers like Tyrtaeus could comfortably treat the polis as if it were a divine principle, indeed, as if it were a god.<sup>15</sup> Since the *Gemeinschaft* was considered the condition for the possibility of human life in general, Aristippus' heresy may be said to lie in a kind of 'transcendental denial'.

With late antiquity, of course, counter-current tendencies and attitudes emerged. Aristippus' position probably looked less and less absurd as pre-Peloponnesian War legitimacy faded out of memory. Still, it does

not seem reductionist to say that there is nothing less typically Hellenic than the 'contractarian' attitude which Popper admires in Lycophron, that the polis may best be regarded as an instrument for protecting citizens from mutual damage.<sup>16</sup> Probably many Greeks beside Plato and Aristotle would have reacted to this idea with astonishment. Modern man might even catch a glimpse of this astonishment by considering the weirdness of Kant's assumption that marriage is essentially a relation of contract and exchange. Hegel, one recalls, was quite indignant at this suggestion. Institutions like the Hellenic polis and the modern family do not simply protect rights; they provide otherwise unattainable possibilities for self-realization. This explains how they (as institutions) can have 'moral' content; they are media for creative collaboration, not mechanisms for possessive solitude.<sup>17</sup>

With the emergence of modernity, as Vico makes clear, the (Hobbesian and Lockean) 'contractarian' 'de-moralization' of politics becomes compelling. Living the larger portion of their lives in the non-political contexts of family, economy, religion, education, art, science, law, and so forth, modern burghers tend to approach the polity from the 'outside'. The old argument against Locke, which Macpherson just repeats, is that individuals are first constituted by society and hence it is nonsense to speak of their agreeing to terms for 'joining' society. Weber persuasively argues that 'individualist self-interest' is itself the product of a particular *social* ethos.<sup>18</sup> Thinking and speaking subjects, of course, cannot agree to 'establish' society - because they would not be competent 'subjects' unless society already existed. Competence in reasoning and speaking presupposes a period of interaction with communicative partners. However, this argument is sound, but only so far as it goes. We can feel the compelling quality of Lockean 'contractarianism', in other words, even without putting Locke before Aristotle. It is not a question of 'argument' here, but of a far-reaching transformation in the structure of society. With the collapse of the Hellenic polis, it was no longer realistic to identify polity and total society. To be sure, men were still originally constituted as 'social' beings - say, as members of Augustine's *civitas Dei*. But as members of the pagan polity there was now a great deal of sense saying that they could only exist 'by contract'.

Confusion about the disappearance of antiquity and the (eventual) emergence of modernity can be detected not only among the 'organic society' critics of Lockean contractarianism; it also led the most acute advocates of protectionist individualism astray. In fact, nineteenth century individualists like Jakob Burckhardt and Numa-Denys Fustel de Coulange reacted to Periclean ideals with what may seem to more recent readers an exaggerated sense of outrage and repulsion. Horrified by the encroachments of the modern mass state upon private freedoms, both of these writers were driven to one-sided and reductive readings of antiquity. Consider Fustel de Coulange's descriptions of the polis:

"The state allowed no man to be indifferent to its interests; the philosopher or the studious man had no right to live apart. He was obliged to vote in the assembly, and be magistrate in his turn. At a time when discords were frequent, the Athenian law permitted no one to remain neutral; he must take sides with one or the other party. Against one who attempted to remain indifferent, and not side with either faction, and to appear calm, the law pronounced the punishment of exile with confiscation of property."<sup>19</sup>

Echoing Aristippus, Fustel de Coulange adds that the Greeks, rulers as well as ruled, were "enslaved to the state". The collectivist polis did not merely impinge on privacy; it made privacy anathema. Such is the spirit in which Fustel retells Plutarch's anecdote about the Spartan mothers, rejoicing when they hear their sons have died in war for Sparta, weeping at the news of their sons' survival. It really does seem like a 'reversal of natural sentiments'. However, like most appeals to the 'natural', this one involves an unsupportable commitment to anthropological constants which are thought to underlie human history. Just because one has a hard time taking patriotic rhetoric seriously, is no sign that one is more deeply 'natural' than Pericles or Brasidas. It might mean that one is more true to the social evolutionary peculiarities of modernity, especially to the inevitable 'demoralization' of the public sphere, than modern emulators of ancient ideals like Rousseau and Marx. It seems quite probable that an ancient Greek could have thought, and would have been justified in thinking, the 'common life' to be the focus of ethical action. If modern students have a hard time *thinking* this, it is partly because they do not *live* in a polis and do not participate in the *bios koinos* in the original sense. This demoralization of public space, in fact, is the main motive behind the modern reinterpretation of the concept of legitimacy.



It is important to have a clear idea of these historical underpinnings of both ancient and modern political theory before we turn directly to Plato and Aristotle. As the quotation from Fustel shows, sociological discrepancies between antiquity and modernity are often revealed in half-erroneous accusations which moderns make against the ancients. The *Republic*, for example, has often been accused of denying 'liberal' Athenian ideals such as equality under law and erecting in their place a rigid elitism or benign epistemological despotism. Plato's ideal ruler is a social therapist and without him the citizen-patients could never cure themselves. In fact, this description has a good deal of truth to it. Yet, what really offends the modern Lockean 'contractarian' reader of the *Republic* is probably less a peculiarity of Platonism than something pervasively Greek. In fact, it probably boils down to an anti-individualist affirmation of the moral primacy of the polis. Consider in this regard Burckhardt's caustic remarks on Plato's Laws:

"Plato presented the details of this state so minutely that he betrayed his desire to make the inward and outward life of the individual absolutely subservient to the polis. Man was not only to be barred from the sea, which brought so many vile and variegated customs, but also from his own imagination so that the whole community would have to *say and sing* the same thing for a whole lifetime."<sup>20</sup>

Regardless of what his fellow Greeks thought of Plato's flirtations with Sparta, very few of them questioned the civic sanctity of communal hymns. Burckhardt, on the other hand, had been disgusted by petty politicking and had transformed himself from a *civis* into something like a wandering monk who sang in the night. He felt himself camped in the interstices of mammoth and impersonal life-spaces like economics and politics, systems largely devoid of moral substance, and he exercised his *droit de vivre à part*. By the mid-nineteenth century, it does not seem unreasonable to say, the life of an observant outsider may have been as much of a 'good life' as was available to a complex human being.

Now, the startling transformation from an implausible Aristippus to a convincing Burckhardt is deeply rooted in Western history, specifically in the enormous increase in life-space differentiation. We have suggested how the shift to modernity compelled a radical rethinking of what politics could be; in the rest of this appendix we want to explain how two ideas

which are still influential in political philosophy (that the state can be 'subjectified' as a 'family' or colloquy, and that the individual can 'realize' himself through political participation) were developed in the conspicuously pre-modern context of the Hellenic city-state.

### III

One of the basic ideas of the *Republic* is that there is no way to conceive of a just man unless we think of him as inhabiting a just polis. The implication, of course, is that ethics and politics are one. When Cephalus (the metic) begins the dialogue by defining justice as "giving every man his due and speaking the truth", Socrates (the citizen) counters by adding "according to the context".<sup>21</sup> On the surface, to be sure, what Socrates means by 'context' is nothing more than the mental state of one's partner or interlocutor. The just man does not tell truths indiscriminately to madmen nor return weapons to them without precaution. Yet the broader and subtler implication of this opening interchange lies in the suggestion that a citizen can know something forever hidden to a metic: that there is no justice outside the *context* of a shared political life.

Indeed, the rest of Book I has just this thrust. Thrasymachus' selfish tyrant may 'believe' that his strategic egoism is conducive to the best possible life. But then again, he may err. From Plato's viewpoint, obviously enough, he does err.<sup>22</sup> The common life, the life of political partnership and *philia*, is objectively better and happier than a narrow life of pursuing one's own exclusive advantage.

As a consequence, the overarching analogy between soul and polis which dominates the *Republic* should be understood as follows: an individual can never achieve *homonoia* (being 'of one mind', 'in agreement with oneself') unless he cooperates in a harmonious polis. A polis achieves such *homonoia*, in turn, when all its members participate in a common *nous*. Hence, pursuing one's own advantage to the disadvantage of one's fellows is said to provoke *ataxia* - uprising, faction, or revolution. At the very outset, Plato insists that *ataxia* (within either the individual or the polis) impedes coherent action. Setting aside for the moment Plato's noetic appeal to timeless (and hence pre-political) Forms, his most persistent

argument against injustice is that it is 'dysfunctional'. It splinters the *homonoia*, both civic and personal, necessary for coherent action.<sup>23</sup>

Citizenship, it bears repeating, was normally conceived by the Greeks as more closely related to family membership than to our contractual possession of private rights. It allowed for 'positive freedom' (self-realization in the brotherhood of the state) rather than mere 'negative freedom' (absence of impingements by the administrators of the state). Thus, Plato very wittily associates Glaucon's hypothetical protectionist-contractarian theory of the polity with the hyper-individualist tale of the 'invisibilizing ring'.<sup>24</sup> Membership in a polis-family, Plato suggests, requires *visibility*. To exist as a partner or citizen meant to exist in 'public space', since there could be no *eudaimonia* without an open bearing of one's responsibilities toward others.

Modern man, of course, can be politically invisible and yet lead a fully moral and 'happy' life. As Burckhardt and Fustel suggest, we even live better out of range of megaphones and flashbulbs. Decisive for what we take to be the self-*mis*interpretation of modernity, however, is the apophradic acceptance of the Greek 'identification' of polity and society. The logical result of such an identification is a dualism between public and private - terms which are taken to be mutually exclusive and jointly exhaustive. The great advantage of reconceptualizing society as a loose nexus of life-spaces (of which politics is now just one life-space) is that it allows us to accept Aristotle's general thesis that freedom and self-realization require contexts of intersubjectivity and communicative collaboration without forcing us into an apophradic interpretation of these various contexts as all 'ultimately political'. Indeed, it is a question of finding a theoretical framework adequate to modern man's experience that non-political life, far from being necessarily private or mono-logical, can be intricately communicative and social. In fact, politics itself has become a life-space dominated by *instrumental* responses and routines, thereby discouraging or eliminating completely 'political' self-realization in Aristotle's sense.

For the Hellenic *Gemeinschaft*, on the other hand, a modern distinction between polity and society (not to speak of a more complex life-space analysis) would have been apophradic in the anticipatory sense. According

to the main argument of the *Republic*, for example, every denunciation of public cooperation was a glorification of private egoism. And such a crude choice seems inherent to the structure of the city-state itself. At least in his role as secular political philosopher, Plato viewed the (Glauconian) contractarian affirmation of 'invisible' self-seeking as perverse, and even treasonable. He makes it clear that pre-political individualism is a ludicrous human deformation and one which will eventually avenge itself on its misguided proponents.

There is a strong current of thought in Plato's dialogues which resists an affirmation either of the 'primacy' of the polis or of the complete coincidence of ethics and politics. This counter-current can be most easily discerned in Plato's preference for contemplation over action. The noetic intuition of Forms is simply not a communal act. And if 'justice' is identical with 'knowing the just' (rather than, as Aristotle would have it, 'acting justly'), then there can be no good reason for the philosopher-kings to redescend into the confusing world below. Emblematic of this difficulty is Alcibides' depiction of Socrates' trance at Potidaea. Although Socrates' military virtue testifies to his civic loyalty and enthusiasm, his solitary 'dialogues' with his daemon are conspicuously pre-political. In Arendt's terms, we see in Socrates an intersection of immortality and eternity, of this-worldly glory and other-worldly redemption. Here lies the crucial dissimilarity between two ways of 'denying' politics, between Socrates in a trance and Aristippus on the highway. Contemplation of eternal truth cannot be conflated with crude self-assertiveness, since the former is awe-struck by the same common *nous* which the latter ignores. Yet, the Socratic intersection of timelessness and temporality did seem to put great strain on the old primacy of the polis.

The enticements of timelessness and the contemplative life, in any case, never fully erased Plato's commitment to the unity of ethics and politics, though it certainly makes this commitment harder to understand, especially for a reader with Christianity in the back of his mind. After viewing eternity, why plunge back into this vale of tears? Trying to answer such a question, Plato clearly flounders.

Socrates noetic trance, in sum, even understood as distinct from Aristippus' reticence, is not the whole story of the *Republic*. The much

belaboured ideas of specialization, division of labour and mutual exchange of services, for example, can only be understood in relation to Plato's impassioned desire to guarantee political *homonoia* - citizen participation in the common *nous* or the communal suppression of faction. Education, organized in such a way so as to allow each individual to 'realize' his inborn nature, would serve chiefly to unify and coordinate the polis. To modern students like Burckhardt and Fustel, of course, *paideia* inevitably seems like indoctrination, like grim state manipulation. Yet it can hardly have suggested anything like that to Plato, perhaps not even to his most anti-Spartan contemporaries. Plato seems to have believed that there was nothing more wretched than a polis afflicted with cleavages - unless it was the affiliate factor of men who had not found their suitable slots in the *Gemeinschaft*. For the 'baser' member of the polity, in fact, Plato quite emphatically subordinated the contemplation of truth to unified action or political cohesion. In order to ensure unity and piety, he was willing to deceive the city's children on the matter of potentially unsettling cosmological truths. It may be the case that gods break rules, encroach upon each other's functions and even castrate their fathers. Yet children must not be taught to associate duplicity, faction and treachery with the divine.<sup>25</sup> Whatever threatens 'the integrated city', *holē hē polis*, must be expunged.<sup>26</sup> And this is explicitly said to include 'the truth'. Pedagogic prudence such as this strongly tempers any Platonic suggestion of the primacy of noetic contemplation.

Throughout the *Republic*, finally, Plato associates variety with disease.<sup>27</sup> This recalls Burckhardt's remark about the *Laws*. Any man who oversteps the strictures of specialization, who does more than one job, is ailing. Plato calls him, with an evident intent of withering irony, the *diplous pai pollaplous anēr*, the "twofold or manifold man".<sup>28</sup> Seamless unity, both political and personal, characterizes the good and healthy life. The totalitarian implications of this idea hardly need be emphasized; but an additional point can be made about these unending attacks on role-shifters and versatile busybodies. Plato uses the word *polypragmōn* ('meddlesome') to refer to the man who irresponsibly abandons his ascribed place. *Polypragmōn*, however, is the same word which Socrates uses in the *Apology* to characterize his own activity as a political gadfly.<sup>29</sup> Meddlesomeness, in this context, results from listening to one's pre-political daemon. This is just another way of suggesting that (at times) Plato was

willing to sacrifice much for his ideal of an integrated and harmonious life in an integrated and harmonious polis.

In spite of his otherworldliness, Plato clearly sent three political messages to posterity: (1) that there is no apolitical morality; (2) that the highest good is the cohesive soul in a cohesive polis; and (3) that every man must fulfill his pre-established function by playing his proper part in the life of the polis.

#### IV

Perhaps the most salient thread running through the *Politics* is Aristotle's polemic against Plato's conflation of the *oikos* and the *polis*, the household and the sphere of politics proper.<sup>30</sup> Yet, while rejecting Plato's means, Aristotle reaffirms Plato's goals. In fact, one of the basic thrusts of Aristotle's political writings lies in his attempt to re-establish the moral legitimacy of the polis in the face of the (in the fourth century) widespread sophistical distinction between *nomos* and *physis*, between 'convention' and 'nature'. The very appearance of 'teachers of virtue' like the sophists, of course, reflected a new uncertainty of the principle of tradition, an uncertainty which Plato hoped to correct through noetic 'tethering'. "Just and fine actions", we read in the *Nicomachean Ethics*, "which political science investigates, admit of much variety and fluctuation of opinion, so that they *may be thought* to exist only by convention and not by nature."<sup>31</sup> The distinction between *nomos* and *physis* first became threatening with the large-scale erosion of unquestioned *mores* and religious beliefs - an erosion usually accompanied, as Vico knew, by spreading literacy. In the case of Greece, the shift from an agrarian to a commercial economy undermined the old dynastic and monarchical values. Democracy probably became a significant force only after money began to outweigh noble lineage as the chief source of social prestige and power. The 'equality' of buyers and sellers introduced by the new economic developments influenced political structures as well.

According to Plato, the collapse of the principle of tradition requires a strenuous effort on the part of philosophy to "defend the being of the gods".<sup>32</sup> By granting noetic acquaintance with the Form of Justice to his

philosopher-kings, Plato hoped to put *physis* back into *nomos*. He hoped to certify post-conventional norms which would have the same sort of unquestionable certainty that tradition had before critical and emancipatory thought arose. Plato, of course, was not conservative; he did not defend the 'code of honour' of the declining landed aristocracy against the rising commercial class trained by sophists like Protagoras, Gorgias and Thrasymachus. The values he defended were 'eternal', not traditional. What he objected to in the sophists was their denial of a common *nous*, their refusal to admit a principle (any principle) which might guarantee the coordination and unity of the polis. However, Plato's noetic strategy landed him in the paradoxical position of having to affirm extra-political truth at the same time as he was subordinating all individual life to the holistic solidarity of the state. As we have seen, he was ultimately unable to resolve this tension.

Aristotle, in any case, avoids the problems which accrue to ontological restorations. Indeed, the nature of his anti-Platonism is revealed best in his important distinction between speculative philosophy and practical philosophy. Practical philosophy is prudent; it does not attempt to ground the post-traditional legitimacy of the polis on the purely speculative idea of a "good which is universally predicable of goods and is capable of separate and independent existence."<sup>33</sup> Instead, practical philosophy appeals to the prudential idea that the good, just or legitimate polity is a moral whole or *Gemeinschaft* through which individual parts (citizens) actualize their unique potentialities for humanity and freedom. Aristotle agrees with Plato on the idea that ethics and politics are one, but he views political life as dominated by language (*lexis*) and reciprocity rather than by organization, *paideia* and craftsmanlike manipulation. Keeping neo-Hellenic (i.e. apophradic) thinkers like Rousseau and Marx in mind, we may say that Aristotle thought that the state could be 'subjectified' as a dialogue, though not, like Plato, as a family. The *Politics*, in other words, presents a much subtler and more freedom-oriented concept of 'participation' than we found in the *Republic*. Breaking away from Plato's *to ta hautou prattein*, Aristotle locates liberty in the capacity 'to rule and be ruled in turn'. Aristotle, as it were, introduces a 'two-fold man', what Plato decried as a dissolute role-shifter, into the heart of political life. For Aristotle, this capacity to rule and be ruled in turn means an alternative to invariable and pedagogic hierarchy. It

permits the reciprocity or freedom among equals which might serve as a 'customary' background for uniquely individual acts of greatness and nobility. Aristotle distinguishes himself from Plato precisely because of his ultimate concern with the self-realization of the *unique* (and not just functionally replaceable) individual. Yet, because he too identifies polity with society, Aristotle claims that this unique individual realizes himself as a part within the political whole.

Indeed, the first principle of Aristotle's political writings is the idea that the individual can never actualize his potential for *eleutheria* and *eudaimonia*, for 'freedom' and 'felicity', outside political praxis. Along with Socrates he dismisses Aristippus. There is nothing more anti-Aristotelian, in fact, than Kant's distinction between *Moralität* and *Legalität*. For Kant, the locus of moral behaviour (and this is the typically modern notion even though it was foreshadowed by thinkers of late antiquity and explicitly promulgated by Augustine) is the *inwardness* of the free individual. Something of the sort, of course, is reflected in Fustel's *droit de vivre à part*. Such 'inward morality' is thought to remain untainted by the legality of 'merely' outward actions. One factor in the shifting of ethical significance away from active participation in a worldly community and into an *interior domus* of contemplation and privacy was the post-classical emergence of the idea of *infinity*. The apolitical or contemplative strand in Plato's works, as discussed, may be symbolized by Socrates' 'private' dialogues with his pre-political daemon. Once the daemon is replaced by 'infinity', in any case, religious experience must make a complete break with politics. For Augustine, since finitude and infinity were heterogeneous and uncombinable domains, the promise to 'realize' God's city on earth was heretical. Such an idea explains the obsolescence of civic religion. Kant's distinction between legality and morality is in this same tradition, although it reflects the even more radical emphasis which Protestantism put on privacy, the privacy of conscience. Locke believed the individual to be fully 'realized' prior to his entrance into the political sphere. Although we have argued that the pre-political constitution of the individual occurs in various quasi-autonomous life-spaces of an advanced *Gesellschaft*, it is clear that Locke himself believed the 'initial constitution' to take place in private communion with God. Since 'de-politicized religion' is a rather late achievement of social evolution, however, there does not seem to be any



deep incongruity between these two interpretations of contractarianism in modernity.

Aristotle's practical philosophy, in contrast to all such developments, leaves no room for the 'invisible Church' of moral inwardness. Only within the institutional and legal space of politics can man be a moral being at all. Indeed, Aristotle's concern for individual uniqueness did nothing to temper his contempt for 'individualism', a contempt explained by his simultaneous characterization of ethics as "the philosophy of all that appertains to man",<sup>34</sup> and as "political science" or *methodas politike*.<sup>35</sup> The study of humanity, freedom and felicity is, to be sure, a matter for ethics, but ethics, in turn, is always political. This 'identification of politics and ethics' follows from Aristotle's two claims that (1) 'ethical action' can only occur in a space of intersubjective and communicative relations, and (2) the sole locus of speech-oriented inter-subjectivity is political action.

It is crucial to understand how thoroughly Aristotle's argument here depends on the Hellenic refusal to differentiate between polity and society. Aristotle knew, of course, that women, slaves and metics were excluded from public or political space. He knew that the *oikos* was necessary for politics without being included *in* politics. The reason he nevertheless regarded the political sphere as identical with the whole polis was that political action 'represents' what is finest and most essential in man: it is the only dimension in which man can be free. Thus, it is the only dimension which a truly 'human science' will take seriously.

The inherent fuzziness of the modern idea of political freedom stems in part from this unexamined Greek heritage, a heritage dependent on a now apophradic identification of polity and society. Aristotle, of course, locates the substance and content of political praxis in *eleutheria*, usually translated as 'freedom'. A man is free, he says in the *Metaphysics*, who "exists for his own sake and not for the sake of another."<sup>36</sup> Formulations like this, unfortunately, sound deceptively Kantian; they even suggest some idea of inward autonomy and self-sufficiency. One must recall, however, Aristotle's explicit statements to the effect that the *apolis*<sup>37</sup> (the man who can live without a political community) is either a beast or a god - but at any rate he is not a man.<sup>38</sup> Gregory Vlastos overlooks such

statements, for example, and ends up attributing to Aristotle (though not to Plato) a position like Kant's.<sup>39</sup> Such misreadings are part of an apophradic attempt in modern political philosophy to 'reconstruct' private conscience *within* the domain of politics - an attempt to reconcile Kant and Aristotle. This projected reconstruction rests on a spurious conflation of antiquity and modernity. Perhaps most distressing of all is Vlastos' failure to see how Kant's *universalistic* and 'inward' ethics clashes with the 'patriotic' and public morality of Aristotle's *Gemeinschaft*.

To show that Aristotle's moral philosophy has no place for Kantian inwardness, at any rate is fairly simple. In the *Nicomachean Ethics*, when discussing the highest good (that which men choose for its own sake and not for the sake of something else), Aristotle introduces his principle of *eudaimonia*. However, he is quick to warn against individualist misinterpretations of the 'self-sufficiency' (*autarchia*) implicit in this concept of man's final good: "By self-sufficiency we do not mean that which is sufficient for a man by himself, for one who lives a solitary life; it embraces parents, children, wife and in general friends and fellow citizens, since man is born for citizenship."<sup>40</sup> Thus, there is no freedom, happiness or excellence within the narrow confines of the 'solitary life' (*bion monōtēn*). Only a citizen can be *eleutheros* or 'free'. In a provisory fashion, however, we may say that Aristotelian *eleutheria* refers to a non-reductive balance of individuality and community, of spontaneity and shared norms, of flexibility and tradition. It means realizing one's unique individuality by having it recognized in a public or political space sustained by rational *mores* and custom.

Thus, an indispensable key to the understanding of Aristotle's identification of ethics and politics lies in the Greek concept of *ethos*. In Homer and Herodotus, *ethos* means the 'habitual abode of animals'. Thus, Aristotle's *ethos* or 'custom' carries within it the vestigial connotation of 'a locus of habitual behaviour'. He says that the *ēthikos* ('the ethical') comes from *ethos* only by a "slight variation".<sup>41</sup> This toying with etymologies is only meant to underline the self-evidence with which Aristotle presumes ethics to be embedded in an institutionally and habitually organized social world. We will discuss below how Aristotle's idea of respectful yet flexible relation to the past is meant as an answer to the sophists' critique of tradition. Here it is only important to note that,

in spite of this relaxing of the rigid bonds of usage, Aristotle even believed that ethics could be uprooted from *ethos* and (for instance) be based instead on the pure principles of Platonic speculation. Thus, when Vico objected to the 'conceit' of philosophers who thought they could free men from tradition and prejudice and reconstruct human relations on the lucid basis of reason alone, he was being quite Aristotelian (as well as de Maistrean, Burkean and so on). Again and again Aristotle stresses the idea that custom, usage, habit and tradition make up the matrix out of which freedom and the good life can grow.<sup>42</sup> Again and again Aristotle complains about a young man trying to become good by listening to lectures on the good. Goodness, he insists, only emerges with habituation.<sup>43</sup>

"Legislators make citizens good by forming good habits in them"<sup>44</sup>; "We get the virtues by first exercising them"<sup>45</sup>; "We become good by doing just acts"<sup>46</sup>. The genesis of maintenance of virtue, as a consequence, depends at least as much on 'prejudice' as it does on reason. Thus, the 'ethical contexts' (habitual and pre-reflective matrices) of the household and the city are said to undergird the moral life. *Ethos*, in this elemental sense, embraces all civic institutions which bear the burden of patterned behaviour: the family, the cult of the gods, burial rites, festivals and such. While these 'infra-political' institutions only gain full ethical significance when put in relation to political praxis, praxis itself *depends on* these habitual contexts and ways of life.

To be sure, Aristotle does speak of a kind of 'political justice' which can be called 'natural'.<sup>47</sup> Yet this concept has little in common with the Stoic idea of 'natural law' and even less with the eighteenth century idea of 'the rights of man'. Rather than attempt to out-manoeuvre the sophists by appealing to the 'purely natural', Aristotle rejects any clear-cut opposition between *physis* and *nomos*. Language (*lexis*), for example, is said to bridge the gap: "Nature... makes nothing in vain, and man is the only animal whom she has endowed with the gift of speech."<sup>48</sup> The idea that language is 'natural' contains the key to the distinction between classical and modern doctrines of natural law. Aristotle's concept of political legitimacy, in any case, rests on the idea that the polis allows nature to come to her highest fulfillment in praxis and freedom. Modern theories of natural right, in contrast, presume a sharp recoil from the *naturwüchsig* context of usage, habit, tradition and custom, a context where the taken-for-grantedness of shared norms makes disagreement possible.

Habermas is a good example.<sup>49</sup> In his attempt to re-ground politics in 'the truth', he follows Grotius; he tries to tether a theory of political justice to 'post-conventional' insights of universal 'Reason'. Government, as Locke expressed this same project, should be regulated "not by old custom, but by true reason".<sup>50</sup> Habermas' attempt to construe the concept of legitimacy from a 'universal rational' perspective allows for no ultimate disagreements: Reason does not appeal to what 'is', but rather to what 'should be'. The stark contrast with Aristotle's cautious 'embedding' of freedom in tradition is revealing. Habermas, in fact, is eventually forced toward the conclusion that there has never been a legitimate regime in history. Theories such as his tempt one toward renewing the old retort against scepticism: if you have a concept of 'knowledge' such that no one can be said to know anything, there may be as much wrong with your concept as there is with mankind. As Vico suggests, if modern natural right theories generate a concept of legitimacy such that no regime or social order has ever been legitimate, there is just as likely to be something erroneous with the concept (the natural law of philosophers) as misguided about history (the natural law of the gentes).

Habermas, not unlike Grotius, wants to 'ground' moral and political action on a concept of good not immanent in existing institutions.<sup>51</sup> To this extent Habermas too is Platonic. Aristotle, in contrast, rejected Plato's 'rationalist' answer to the sophists, and opted instead for a concept of good substantially rooted in custom, usage and habit. He knew, of course, "that men in general desire the good and not merely what their fathers had".<sup>52</sup> Yet this insight did not destroy his commitment to the embedding of political ideals in the context of custom: "the law has no power to command obedience except that of habit which can only be given by time, so that a readiness to change from old to new laws enfeebles the power of the law."<sup>53</sup> Moreover, "customary laws have more weight and relate to more important matters than written laws."<sup>54</sup> According to Aristotle one can 'ground' ideals in a habitual and customary context without binding oneself to a dogmatic adherence to the past.

Perhaps this subtle 'embedding' of ethics in *ethos* is the greatest obstacle which a modern reader must confront when reading Aristotle's political writings. Because of our non-teleological concept of nature, we tend to associate 'habit' with automation and mindlessness - a modern

identification which makes Aristotle doubly obscure. In order to understand Aristotle's unification of ethics and politics in the concept of praxis, we must grasp the difficult idea of 'rational habit': a difficulty emblematic of the rift between ancients and moderns. 'Conscience', we believe, is beyond habit; it is a listening to our inner voice - a pre-social or post-conventional access to truth. The idea of a conscious and voluntary acceptance of 'rational' institutions by autonomous individuals is a post-Hellenic emergence: germinally Christian but for practical purposes modern. Indeed, as Hegel says, the Greeks were quite distressed on the initial appearance of 'subjectivity'. Plato was so frightened by the ataxia-provoking possibilities of 'conscience' that he wished to ban meddling gadflies who paid too much heed to their pre-political daemons. When we read the *Politics* we are struck at how the 'integration' of the individual and the state is dependent on a more basic integration of the good in the habitual. Aristotle never tires of relating this 'unmodern' point: "Men must be trained and habituated before they can do acts of goodness as members of the polis should do."<sup>55</sup> His unification of the ethical and institutional is based on a teleological concept of nature. As a source of legitimation, this concept served as something like a functional equivalent for conscience.

The Latin word *natura* has a root which means 'to be born'. For this reason, too, the phrase *lex naturae* suggests a binding of legality to what already exists. *Physis*, in contrast, contains no such surreptitious privileging of 'origins'. It refers instead to the whole process of self-movement and growth, and even has its focal emphasis in the *telos* or completion of such a process. "The nature of a thing is its end," Aristotle says, "and what each thing is when it is fully developed, we call its nature, whether we are speaking of a man or a horse or a family."<sup>56</sup> Both language and reason are in this sense 'natural'. And the polis is not legitimate simply because it conforms to old habits but because (in relation to habits) it is the culmination and fulfillment of nature in human reason and freedom; or, rather, it creates the conditions for the possibility of nature's potential being fully actualized in this way. Man is *by nature* an animal intended to achieve his *telos* in a polis. According to Aristotle, the natural condition of mankind, far from being pre-political, is the life of reciprocity and human fulfillment in civil society.

Indeed, Aristotle's idea of *physis* cannot be understood without reference to the categories of potentiality and actuality. Taken together, these two concepts allow Aristotle to find it natural for men to both honour tradition and want the good rather than merely what their fathers had. Rational politics is found in a balance between authority and liberty, tradition and flexibility, continuity and discontinuity with the past. Since nature is actuality, it cannot be discerned in the inchoate twitchings of origins or mere potentiality. The 'naturalness' of the polis lies in the fact that it allows citizens to 'realize' their unique natures as speaking and reasoning beings, in glorious words and deeds. Its justification lies in nature's innermost *telos*: freedom through praxis. Grounding ethics in *ethos*, therefore, does not mean restricting men to mechanical habit, but means, rather, opening to them a complex tradition which allows for both collaboration and individual uniqueness.

Plato, one recalls, thought that "the men of old were better than ourselves and dwelt nearer the gods."<sup>57</sup> Aristotle was, in spite of his belief that ethics was inseparable from *ethos*, much less pious: "The earliest known human beings, whether they were born out of the earth or were the survivors of some cataclysm, were in all probability similar to ordinary or even foolish people today.... It would therefore be an absurdity to rest contented with their notions."<sup>58</sup> Early philosophy, he says elsewhere, "is on all subjects like one who stammers, since it is young and in its beginning."<sup>59</sup> Early institutions are similar to early philosophy - they are rudimentary or undeveloped. They organize society as if it were an enlarged *oikos*. Thus, even though they secure survival by optimizing man's labour, primitive institutions do not embody the *telos* of nature. They provide for the actualization for some of man's potential - particularly for his biological potential to survive. But they provide no room for the actualization of man's nature as a reasoning and speaking animal, as both collaborative and unique. Thus, they do not allow man to be free. For this reason, Aristotle regards societies 'previous' to the polis (and he includes the great Eastern empires here) as essentially barbaric; they thwart the deepest promptings of nature.

In spite of his radical rejection of pre-political forms of life, Aristotle is very cautious about rewriting laws once the polis has come into existence. Once the institutionalized space for praxis emerges,

political philosophy must realize that its structural stability depends on the maintenance of a generalized commitment or loyalty to the supporting matrix of custom. Without the background of a common tradition, Aristotle realistically argues, meaningful disagreement (and hence political praxis in general) would be impossible to sustain.

Distinctive of Aristotle's political philosophy is the association of 'freedom' with *praxis*. But what is praxis? It is, first of all, Aristotle's way of steering a middle path between Plato and the sophists. The concept of praxis allows Aristotle to keep the moral content of politics without appealing to a noetic guarantee. He makes this (in purpose pro-Platonic) point, in his famous polemic against Plato's conflation of political rule with household mastery: "When it comes to politics, most men (erroneously) think that mastery or despotic government is statesmanship."<sup>60</sup> Here, as elsewhere, common opinion is misled. There is no room for freedom in the household; while freedom is the very essence of political (as opposed to prepolitical) life. The household is the locus of man's physical labour; he works there to sustain his biological life. Struggling for biological survival is not distinctive of man, for it is an activity which he shares with the lower beasts; it expresses animal subjugation to the necessities of nature and can be performed in solitude. Hence, the *oikos* is the focus of unfreedom or slavery. Not merely the subjects of despotism are to be considered unfree like slaves, since the despot himself is unfree - he is like a household master with no communicative sphere outside the instrumental and labouring activity of the household. "The life of the freeman is better than the life of the despot; for there is nothing grand and noble in having the use of a slave; or in issuing commands about necessary things."<sup>61</sup> Political life is distinguished from despotic rule on the grounds that a "true" polis is a "community of freemen".<sup>62</sup> *Partnership in freedom* (which allows for the 'appearance' in public space of a citizen's unique individuality) is the core of Aristotelian politics; and "authority over freemen differs as much from authority over slaves as the man who is naturally a freeman does from a natural slave."<sup>63</sup> In his genetic account, at the beginning of the *Politics*, of how the polis arose from pre-political village and family life, Aristotle means to trace the evolutionary emergence of freedom. While political freedom is an innovation, it is also the actualization of nature's previously untapped potential. In order to deepen our understanding of the breach between antiquity

and modernity, it is crucial to explore this idea a bit further.

*Eleutheria* minimally means freedom from everyday duties connected with biological survival. This is why, as Hannah Arendt has explained, entrance to the 'public space' of politics was restricted to household heads.<sup>64</sup> Freed from the burdens of natural necessity, they alone had time and energy to participate in politics. As long as the tasks of 'mere life' were borne by others, citizens could afford to devote themselves to the 'good life'. Aristotle calls the polis the *koinōnia teleios*, "the final and perfect association."<sup>65</sup> To say that man is a 'political animal' or a 'rational animal' is to imply that the *telos* of man is in politics or reason. Yet, an ineluctable condition for the possibility of achieving this *telos* lies in the 'animal' half of the formula. Survival may be worth little without freedom; but there is no freedom at all without survival. The polis, Aristotle says, "originates for the sake of mere life, but it exists for the sake of the good life."<sup>66</sup> The "supreme goal of everything", we read elsewhere in the *Politics*, "is the enjoyment of partnership in a good life and the felicity thereby attainable."<sup>67</sup> Enjoyment of the partnership in the good life, so the implication goes, requires slave labour. It presupposes that biological survival is secured by 'living tools'.

Thus the negative aspect of *eleutheria* and praxis is release (not "from the violence of others"<sup>68</sup> but) from the burden of natural necessity. The positive side is (not unencumbered private appropriation, but) partnership in the good life. The anti-Platonic force of the idea of 'partnership' is expressed in the famous phrase: *ho de bios praxis, ou poiēsis* - life is communicative action, not instrumental production.<sup>69</sup> As has been said, the *oikos* is the proper place for fabrication and for the securing of biological life. By conflating the polis and the household, according to Aristotle, Plato left life essentially unfree. This is most readily seen in the idea of guardianship as a kind of pedagogic *poiēsis* or *technē*. The distinctive quality of 'craft' is that it begins with fixed goals, and then sets out to manipulate concrete processes in order to realize these goals. Plato's guardians have no qualms about 'poetic manipulation; they catch a swift glimpse of 'goodness' and proceed to implement it on the malleable children.<sup>70</sup> The background metaphor, of course, is always that of the craftsman. The potter begins with an idea of 'circularity' in his head and then proceeds to shape the clay before him into a plate. The plate is an



approximation to an ideal - so are the children.

Behind Aristotle's insistence on the distinction between action and production lies his vigorous repudiation of Plato's *Republic*. We can recognize no "partnership in the good life" in the manipulative and pedagogic relation between guardian and polis dweller (no more than in that between potter and plate). Indeed, Aristotle distinguishes legitimate ("right": *orthai*) from illegitimate ("deformed": *parekbaseis*) cities on the ground that legitimate polities are constituted "according to the strict principles of justice".<sup>71</sup> Aristotle's idea of justice and legitimacy, in other words, depends upon an elemental dichotomy between partnership and manipulation, *praxis* and *poiēsis*, communicative action and strategic or instrumental action. Just poleis are governed "according to the common interest"<sup>72</sup>, which allows for individuality and disagreement, while despoties are governed according to the private (craftsmanlike) interest of a consensus-enforcing ruler or faction.<sup>73</sup> 'Common interest', in Aristotle, refers to a common interest of the citizens in individual self-realization and the freedom to disagree. It is not a common interest in survival, requiring spontaneous unanimity. If it were, then dogs and slaves could have a polis. As a consequence, Aristotle's idea of 'shared advantage' does not imply the coercive homogeneity of perspectives required by the *Republic*. Background *homonoia* is borne by custom and language - two media which permit disagreement and *concordia discors*.

A polis, for Aristotle, is an intersubjective 'agora' where all 'naturally' free men can realize their distinct individuality in *praxis* and *lexis*. This actualization of one's uniqueness in combative collaboration with fellow citizens is what Aristotle means by freedom and felicity. It is partnership in the good life. As we have seen, a basic principle here is that a citizen should be able both to rule and be ruled. A citizen "should know how to govern like a freeman and how to obey like a freeman".<sup>74</sup> It is this mutuality or reciprocity which distinguishes Aristotelian *praxis* from the *poiēsis* of Platonic guardianship. Reciprocity in politics, furthermore, has little to do with partnership in production; the joint and co-ordinated effort to ensure survival is not free reciprocity but collective slavery. To repeat Aristotle's words: "A polis exists for the sake of a good life, and not for the sake of mere life; if mere life were its object, slaves and brute animals might form a polis, but they cannot, for

they have no share in happiness or in a life of free choice."<sup>75</sup> As a consequence of this kind of reasoning, Aristotle dismisses the contractarian theory of Lycophron as absurd. Lycophron, one recalls, thought the polis to be a conventional association adhered to for the sake of mutual defense - "a guarantor of men's rights against one another."<sup>76</sup> For Aristotle, it would be ludicrous to regard the polis as essentially an organ of defensive survival. Rather, its fundamental *telos* resides in "making the citizens good and just."<sup>77</sup> There is nothing craftsmanlike in this 'making', since it never obstructs the citizens' access to *prohairesis* or "free and purposive choice". This is why the moral content of the political life must always be distinguished from the merely strategic relations of 'exchange' and 'alliance'.

"If two different sites could be united in one," writes Aristotle, "so that the polis of Megara and that of Corinth were embraced by a single wall, that would not make a single polis - even though marriage is one of the forms of social life which are characteristic of a polis. Nor would it make a polis if a number of persons - living at a distance from one another, but not at so great a distance that they could still associate - had a common system of laws to prevent their injuring one another in the course of exchange. We can imagine, for instance, one being a carpenter, another a farmer, a third a shoemaker, and others producing other goods; and we can imagine a total number as many as 10,000. But if these people were associated in nothing further than matters such as exchange and alliance, they would still have failed to reach the stage of a polis."<sup>78</sup>

The main point of Aristotle's argument is that, in merely instrumental or strategic relations, the 'character of interaction' is qualitatively the same before and after their union. Activity is primarily instrumental (and not communicative) in both phases: each party is primarily concerned with securing biological survival by defense against aggression and outside interference. Lycophron's argument, in fact, recalls Locke's claim that men "join and unite into a community" for the sake of "their comfortably safe and peaceable living among one another, in a secure enjoyment of their properties, and a greater security against any that are not of it."<sup>79</sup> For Aristotle, in stark contrast, such an ideal is the *telos* of slavery and unfreedom. Free political life, from his viewpoint, can never be a mere "association of place",<sup>80</sup> for the purpose of preventing mutual damage and the easing of exchange. Lockean goals are far from being the *purposes* of the polis, though Aristotle admits them as *conditiones sine quibus non*.

Regardless, "all of them together do not constitute a polis, which is a community of families in the good life, for the sake of a perfect and self-sufficing existence."<sup>81</sup> "By this," Aristotle adds, "we mean a happy and honourable life" (*to zēn eudaimonōs kai kalōs*).<sup>82</sup> *Kalōs* ('honourably', 'beautifully', 'nobly') refers precisely to that quality of communicative partnership which, for Aristotle, distinguishes it most dramatically from instrumental action or slavery. "It is for the sake of beautiful and noble actions," he says, "and not for the sake of merely surviving together that political associations exist."<sup>83</sup>

Perhaps it is easiest to explain in the logic of Aristotle's identification of 'freedom' with "memorable words and deeds", against the background of the distinction between immortality and eternity. Here again we follow Hannah Arendt. The concept of 'eternity', of course, is most familiar to us in the Christian idea of *nunc stans*: God is a 'standing now'. He inhabits a dimension utterly outside all temporal relations; He is *one*; He is otherworldly; His infinity makes Him incommensurable with finite thought and action. Since Hellenic polytheism lacked the idea of infinity, the Greeks could not conceive of gods as utterly unlike men. Homer's gods live in time; they just never die. They are 'immortal' rather than 'eternal', for immortality connotes permanence of duration *through* time rather than transcendence *beyond* time. Because it posits an insuperable breach between, firstly, worldly multiplicity and finitude, and, secondly, divine unity and infinity, Christianity can never be a civic religion. From the standpoint of eternity, moreover, all worldly action is levelled to a common triviality; 'Political excellence' becomes an unthinkable ideal. For the Greeks, in contrast, the possibility remained open for heroes to *achieve* godlike immortality. Furthermore, because of the polytheistic organization of the cosmos, political disagreement and incongruity was perfectly consonant with a shared *nous*.

Linked with this idea that an individual might *achieve* immortality, is the Hellenic conviction (which anticipates Pico) that man alone is threatened by morality and utter extinction. Like men, animals are a conjunction of form and matter. When an animal dies, however, its matter continues to exist as a decomposing corpse, while its form continues to exist in the species: animal death destroys nothing essential. Human death, on the other hand, involves the destruction of an *individual*, of a creature whose

very *form* lies in a unique and irreplaceable 'life story'. Within the history of his life a man *could* achieve, through noble words and deeds, a lasting place in human memory. Indeed, only because the automatism of species-immortality is irrelevant for unique individuals, can we speak meaningfully about morality. Since only the polis provides a medium for preserving the memory of great words and deeds, only the citizen of a polis is faced with the sort of death that may (by an effort towards excellence) lose its fatal sting.

Against the threat of traceless annihilation, in other words, the free citizen in a free polis turns toward a *speranza dell'altezza*, the hope of a fame for greatness which will last in human memory. This hope distinguishes human freedom in *praxis* and *lexis* from the grubby routine of production and survival. Glory, moreover, depends upon 'partnership in freedom', since heroic praxis could only leave a unique trace within an agonistic community of equals.

At one point above we described *eleutheria* as "combative collaboration". This is the sense in which Greek politics locates human freedom in a mediating, alternative inflexible tradition and traditionless flexibility. Perhaps we can shed more light on the idea of traditional flexibility (or flexible tradition) by suggesting how *eleutheria* may be said to depend on communicative intersubjectivity even without reference to 'being immortalized' (*athanatizesthai*) in human memory. Remaining close to himself (to his daemon perhaps), a man may thwart the routine and conventional expectations which press down upon him in everyday life. Thus, he may realize his individuality through public encounters in new and surprising ways. Opening himself to the equally new and surprising acts of others, moreover, an individual can outwit his own inherent tendencies to sink back into the repetitive and inert. In Greece, it seems, this sort of 'combative collaboration' made sense against the background of a polytheistic cosmos. *Ego* and *alter* could conceive of each other as separate centres of effort, sentience and thought, as inhabiting incongruous perspectives and yet as belonging to the same universe. *Lexis*, in fact, always preserves a citizen's capacity to say "no!". What is so remarkable about political dialogue in Thucydides, for example, is the way that two speeches which completely contradict one another will both seem reasonable and true. Perhaps, one might say that *eleutheria* was possible in Greek politics precise-

ly because two men could disagree and both be right; that is to say, both contributing to a truth-revealing dialectic.

## V

As we have seen, by distinguishing between *praxis* and *poēsis*, Aristotle avoids the manipulating coerciveness which characterizes Plato's *Republic*. Politics is not a 'ruling over', he clearly claims, but a 'ruling with'. Just this shift, of course, allowed Aristotle to defend the 'moral' underpinnings of political experience against the attack of sophists like Antiphon. By locating man's *telos* in a "partnership in the good life", Aristotle made it plain that the split between *nomos* and *physis* (which, in spite of his rejection of the sophists' position, Plato had accepted), was wrongly conceived. *Nomos*, according to Aristotle, is the institutionalized matrix of custom, tradition, habit and written law which makes possible man's actualization of his *natural* potential - the agonistic struggle of freemen to win glory in immortal words and deeds.

The moral content of politics, at any rate, remains a common theme in both Plato and Aristotle. The major breach between them does not destroy this underlying affinity. Likewise, it is not surprising to read a passage like this in the *Politics*: "We must not suppose that any one of the citizens belongs to himself, for they all belong to the polis, and the care of each part is inseparable from the care of the whole."<sup>84</sup> In spite of his accusation that Plato's ideal city is "too unified",<sup>85</sup> Aristotle never questions the basic analysis of the polis as a whole made out of parts. In a passage quoted at the beginning of this appendix, he says: "The polis is a compound, like any other whole made up of parts, and these are the citizens which compose it."<sup>86</sup> The first consequence of this conception is clear: the living parts cannot exist without the living whole. What ultimately distinguishes Aristotle from Plato is the former's subtle idea that *homonoia* may be achieved through *nomos* and *lexis* without suppressing incongruous perspectives and disagreement: *homonoia* as both the consistency and unity of dialectical exchange.

In modern times, it has been suggested, the only institutional wholes which can 'contain' individuals as if they were parts are prisons and

asylums for the insane, what Erving Goffman terms 'total institutions'.<sup>87</sup> Normally, we now understand social life-spaces as interaction contexts which an 'individual' may enter and leave. Modernity, we may say, has universalized the position and ideals of Aristippus. Aristotle's repudiation of Aristippus (and thus his distance from modernity) is implicit in his lamenting Lycophron's contractarian position. The moral primacy which he attributes to the polis, moreover, depends on his firm conviction that men belong to a city in the same way that parts 'belong' to a whole. Aristotle judges suicide to be wrong, as we have seen, "on the ground that the man who destroys himself is treating the polis unjustly."<sup>88</sup> Such arguments, it should now be clear, are absolutely central to his defense of the continuity of *physis* and *nomos*.

The original plausibility of analyzing the polity as a whole made out of parts, one should recall, was secured by the fact that a Hellenic polis might actually be *eusunoptos* or 'easily surveyable'. A polis might even be small enough for a town crier to be heard from every point. "If the citizens of a polis are to judge and to distribute offices according to merit", Aristotle reminds us, "then they must know each other's characters."<sup>89</sup>

The analysis of the polis as a whole made out of parts also underlies Aristotle's most notable discussion of the difference between legitimate and illegitimate regimes. Monarchies and aristocracies as 'polities' are legitimate, he argues, while tyrannies, oligarchies and democracies are not. This distinction rests on the notion that legitimate rulers represent the common interests of all 'members' of the city. Illegitimate rulers, in contrast, are said to represent only their own advantage, while disregarding the interest of the 'whole' collective.<sup>90</sup> This contrast will occupy us at the beginning of *Part Seven*. Aristotle justifies the authority of a master over his slaves in a similar manner, however, and this justification is important here. He says that the slave is actually a 'part' of his master, his living tool.<sup>91</sup> In this case, a whole/part schematization offers a 'theory of legitimacy' (a morally binding 'ground' for a relationship of authority) which conspicuously extends to the pre-conditions of 'partnership in freedom'.

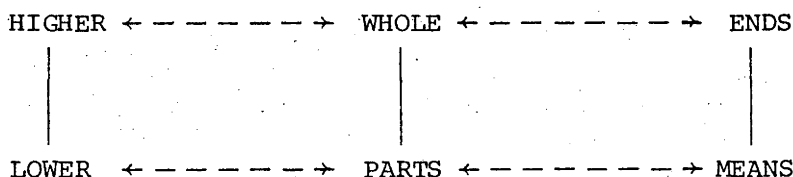
In his theory of *praxis* and *lexis*, as we have seen, Aristotle grounds the 'legitimacy' of the polis on the unity of *physis* and *nomos* visible in combative collaboration or partnership in the good life. The question

which modern readers are bound to ask is how can Aristotle justify slavery or domination over non-partners? In response to this kind of problem, of course, Aristotle refers us to doctrines like that of the 'natural slave'. The slave is 'naturally' part of his master, a 'lower part' of the *oikos*. The idea of 'higher' or 'lower', according to Aristotle, is a necessary aspect of all wholes made out of parts: "In all things which form a composite whole and which are made up of parts, whether continuous or discrete, a distinction between the ruling and the subject element comes to light."<sup>92</sup> This distinction, Aristotle goes on to say, "originates in the constitution of the universe."<sup>93</sup> What he seems to mean is that it originates in the inevitable organization of all things into wholes made out of parts.

In *Part Two* we gave the following diagrammatic rendering of the self-interpretation of *Gemeinschaft*:



Reconstructing this diagramme in accord with Aristotle's claim that "a polis or any other systematic whole is most properly identified with the most authoritative element in it",<sup>94</sup> we get the following scheme:



The legitimacy which Aristotle attributes to slavery and slave-holding is based on a belief that the ends of the whole society are realized in the *praxis* and *lexis* of citizens freed from the natural necessity of daily labour. That lower creatures serve as self-sacrificing means to this worthy end is perfectly 'natural' according to the whole/part schematization of society, a schematization which in turn depends on a generally-accepted identification of society and polity.

Because of our commitment to universalistic norms, of course, we now find slavery quite unjustifiable. But what was delegitimated by the Stoic-Christian idea of 'universal humanity' was not so much the privileging of some over others, but rather the more basic idea that man is a part belonging to a political whole. The increasing post-Hellenic differentiation between polity (one life-space) and society (the sum or loose nexus of all life-spaces) has rendered our schematization of *Gemeinschaft* quite obsolete. Nonetheless, the power of ancient notions is stronger than one might think. In *Part Seven* we will pursue the importance of such Hellenic appropriations in the development of modern political thought.



## APPENDIX THREE

Notes

1. Republic, in Plato, Opera, ed. J. Burnet, Oxford, 1902, 433b and passim.
2. Politica, ed. W. D. Ross, Oxford, 1957, 1274b 39-40
3. Victor Ehrenberg, The Greek State, New York, 1964, p.39
4. New Science, Op Cit, para.1008
5. c.f. Talcott Parsons, The System of Modern Societies, Englewood Cliffs, New Jersey, 1971, p.105
6. Nichomachean Ethics, ed. I. Bywater, Oxford, 1898, 1168b 31
7. Politics, Op Cit, 1279a 17
8. J. L. Talmon, The Origins of Totalitarian Democracy, New York, 1970, p.81
9. Thucydides, History of the Peloponnesian War, ed. Charles Smith, London, 1935, II, p.37
10. c.f. Leo Strauss, Natural Right and History, Chicago, 1974, p.182
11. Xenophon, Memorabilia and Oeconomicus, ed. E. C. Marchant, London, 1923, II, I, 13
12. c.f. Isaiah Berlin, "Two Concepts of Liberty", in Four Essays on Liberty, Oxford, 1969: "The answer to the question 'Who governs me?' is logically distinct from the question 'How far does the government interfere with me?'... The desire to be governed by myself, or at any rate to participate in the process by which my life is to be controlled, may be as deep a wish as that for a free area of action, and perhaps historically older. But it is not a desire for the same thing." pp 130-131
13. Politica, Op Cit, 1252a 6. In the middle ages, this phrase was commonly translated as *civitas sive societas civilis*.
14. Peloponnesian War, Op Cit, II, pp 39-40
15. c.f. Werner Jaeger, Paideia: the Ideals of Greek Culture, Oxford, 1945, Vol.I, pp 87-98
16. Karl Popper, The Open Society and Its Enemies, Op Cit, Vol.I, pp 114-116
17. Ferdinand Tönnies says "The *Gemeinschaft* of property between man and wife cannot be called a *Gesellschaft* of property", enforcing Hegel's point linguistically. Community and Association, trans. C. P. Loomis, London, 1974, p.38

18. Max Weber, The Protestant Ethic and the Spirit of Capitalism, Op Cit.
19. N-D Fustel de Coulange, The Ancient City, New York, 1969, p.221
20. J. Burckhardt, History of Greek Culture, New York, 1963, p.100
21. Republic, Op Cit, 331b-c
22. Ibid., 339c
23. Ibid., 351d-352a
24. Ibid., 359 ff
25. Ibid., 377-378
26. "Do we know of any greater evil for a polis than the thing that distracts it and makes it many instead of one, or a greater good than that which binds it together and makes it one?" Ibid., 462b
27. Ibid., 404e
28. Ibid., 397e
29. Apology, 31c
30. This conflation is most obvious in the Statesman, 258e - 259d
31. Op Cit, 1094b 15
32. Laws, 891b
33. Nichomachean Ethics, Op Cit, 1096b 32-33
34. Ibid., 1181b 15, *he peri ta anthrōpeia*
35. Ibid., 1094b 11
36. Metaphysica, ed. W. Jaeger, Oxford, 1957
37. Politics, Op Cit, 1253a 2
38. Ibid., 1253a 29
39. Gregory Vlastos, "The Individual as an Object of Love in Plato", in Platonic Studies, Princeton, 1973, pp 3-42
40. Op Cit, 1097 b 9-12
41. Nichomachean Ethics, Op Cit, 1103a 16
42. The interconnection between ethics and *ethos* is clearly expressed in words like *mores*, *moeurs* and *Sitte*.
43. Nichomachean Ethics, Op Cit, 1095a 2 and 1095b 5
44. Ibid., 1103b 4

45. Ibid., 1103a 32
46. Ibid., 1103b 1
47. Ibid., 1134b 17-18
48. Politics, Op Cit, 1253a 9-16
49. Jürgen Habermas, Theory and Practice, trans. J. Viertel, Boston, 1974; Legitimation Crisis, trans. T. McCarthy, London, 1976
50. Second Treatise Concerning Civil Government, Op Cit, para. 158
51. This is not quite accurate, since Habermas believes legitimacy to be immanent in the "meta-institution" of colloquial language. Yet, since language seems compatible with most institutional frameworks, there is clearly no question of an Aristotelian immanence of ethics in *ethos*.
52. Politics, Op Cit, 1269a 4
53. Ibid., 1269a 20-23
54. Ibid., 1287b 5
55. Ibid., 1337a 19-20. "To be habituated" here is *proethizesthai*.
56. Ibid., 1252b 32
57. Philebus, 16c
58. Politics, Op Cit, 1269a 5-9
59. Metaphysics, Op Cit, 993a 15. It is true that "our forefathers in the most remote ages have handed down to their posterity a tradition in the form of myth", and that "these opinions have been preserved until the present like relics of the ancient treasure". (1074b 14) Yet, he is quite certain that "into the subtleties of the mythologists it is not worth our while to inquire seriously." (1000a 18)
60. Politics, Op Cit, 1324b 32-33
61. Ibid., 1325a 25-27
62. Ibid., 1279a 21
63. Ibid., 1325a 28-30
64. Here, as elsewhere, we are indebted to Arendt's The Human Condition, Chicago, 1958
65. Politics, Op Cit, 1252b 28
66. Ibid., 1252b 30
67. Ibid., 1325a 7-8

68. Locke, Op Cit, para. 57
69. Politics, Op Cit, 1254a 7
70. Republic, Op Cit, 377b
71. Politics, Op Cit, 1279a 16-20
72. Ibid., 1279a 29
73. Ibid., 1279a 31
74. Ibid., 1274b 12
75. Ibid., 1280a 32-33
76. Ibid., 1280b 11
77. Ibid., 1280b 12
78. Ibid., 1280b 12-25
79. Locke, Op Cit, sec.90
80. Politics, Op Cit, 1280b 31
81. Ibid., 1280b 34-35
82. Ibid., 1281a 1
83. Ibid., 1281a 2-3
84. Ibid., 1337a 27
85. Ibid., Book I chs. 2-5
86. Ibid., 1274b 39-41
87. Erving Goffman, Asylums: Essays on The Social Situation of Mental Patients and Other Inmates, Ringwood, Victoria, 1973, especially pp 13-116.

"In civil society, by the time the individual is an adult he has incorporated socially acceptable standards for the performance of most of his activity, so that the issue of the correctness of his action arises only at certain points, as when his productivity is judged. Beyond this, he is allowed to go at his own pace. He need not constantly look over his shoulder to see if criticism or other sanctions are coming. In addition, many actions will be defined as matters of personal taste, with choice from a range of possibilities specifically allowed. For much activity the judgment and action of authority are held off and one is on one's own. Under such circumstances, one can with over-all profit schedule one's activities to fit into one another - a kind of 'personal economy of action', as when an individual postpones eating for a few minutes in order to finish a task, or lays aside a task a little early in order to join

a friend for dinner. In a total institution, however, minute segments of a person's line of activity may be subjected to regulations and judgments by staff; the inmate's life is penetrated by constant sanctioning interaction from above, especially during the initial period of stay before the inmate accepts the regulations unthinkingly. Each specification robs the individual of an opportunity to balance his needs and objectives in a personally efficient way and opens up his line of action to sanctions. The autonomy of the act itself is violated". pp 42-43

88. Nichomachean Ethics, Op Cit, 1138a 12-13
89. Politics, Op Cit, 1326b 15-16
90. Ibid., Bk III, chs. 6 and 7
91. Ibid., 1255b 11
92. Ibid., 1254a 29-31
93. Ibid., 1254a 32
94. Nichomachean Ethics, Op Cit, 1168b 31-32

## APPENDIX FOUR

### I

The fundamental notion underpinning Kant's moral theory is the concept of 'duty'. This concept, he says, "has real legislative authority for our actions"<sup>1</sup>; following a practical law which commands absolutely and without further motive *is* doing one's duty. The notion of a *concept* having real legislative authority for actions is a thoroughly Kantian one. From his analysis of the concept, Kant derives the formal characterization of rules of action which specify actions as *duties*; and he develops a theory to account for the 'motivational efficacy' of the *concept itself*, as contained in pure practical reason. Within the concept of duty is that of a law for actions, arising from pure reason, the recognition of which immediately provides an incentive for compliance with the law. This incentive is totally distinct from sensual incentives and is represented by the law as 'outweighing' the latter.<sup>2</sup> It may, however, be insufficient to guarantee compliance. The concept of duty also contains the possibility of conflict between the incentive provided by the law and other motives. Thus it includes the notion of *constraint* by the law (or by the agent's consciousness of the law as authoritative). The concept of duty, then, provides a constraint by and in accordance with a law to which all sensually-based incentives must be subordinated. Kant insists, however, that although we necessarily are constrained by this incentive, we may *choose* to make it a sufficient incentive, or alternatively, to take no account of it in our decisions to act in various ways. Thus: "...an incentive can determine the will to action only so far as the individual has incorporated it into his maxim."<sup>3</sup>

The concept of duty is applicable only to finite beings who possess *practical reason*. Such beings are conscious of a law which prescribes actions as rationally (morally) necessary, and they *thereby* have a (possibly sufficient) incentive to comply with the law. The law is conceived as overriding - or conditioning the validity of - the demands of inclination and personal interest. Owing to the influence of incentives founded in desire, however, practical motivation by the law constitutes a constraint. In the case of a *purely rational being* for whom the incentive provided by

the law is always sufficient, the concept of duty must be replaced by the concept of morality. For both a purely rational being and a man, "reason exhibits (the moral law) as a ground of determination completely independent of and not to be outweighed by any sensuous condition."<sup>4</sup> This 'exhibition' constitutes a sufficient incentive for a purely rational being, while for men the possibility of *opposition* from other incentives makes the moral incentive a constraint. Consequently, for Kant, the concept of duty is the concept of constraint *by and in accordance with* laws which represent actions as rationally necessary. This constraining incentive is "reverence for the law". In prescribing actions as rationally necessary, then, reason determines the will through the idea of duty and the 'reverence' which this idea immediately evokes.

The concept of obligation is contained in that of duty, according to Kant. We are given two explicit definitions of 'obligation', however, which are not obviously equivalent. Kant says first that "the dependence of a will not absolutely good on the principle of autonomy (moral necessitation) is obligation".<sup>5</sup> The principle of autonomy (as we shall see in section III below) both defines rational (moral) agency and provides the formal standard for judging the rightness of actions. The human will 'depends on' this principle in the sense that the will itself and the actions it chooses to perform are judged in accordance with the principle: if the will is determined by the rational incentive, it is 'good'; if actions accord with this principle, they are 'right'. But the principle of autonomy provides these criteria for judging agents and their actions because the will *depends on* the principle in a different sense: the principle is the supreme 'law of causality of pure reason'. As such, it necessarily imposes its demands on the will by providing a constraining incentive. Thus, on this first definition, the Kantian sense of 'obligation' refers to the 'dynamic', quasi-causal relation between the principle of autonomy and the human will.

Elsewhere, however, Kant says "obligation is the necessity of a free action under a categorical imperative of reason".<sup>6</sup> This definition is directly concerned with judgements that an action required by a particular moral rule is to be performed. That is, there is obligation - an agent is under an obligation - when some applicable rule requires that he perform a specific action. There is no implication of constraint by the rational

incentive, or of the "dependence of the will" on the principle of autonomy (although, of course, the necessity of the action is not due to the specific needs and interests of the agent).

The two definitions of obligation might be distinguished further in terms of the conditions under which obligations are discharged. Where obligation is "the dependence of the will on the principle of autonomy", one 'discharges' the obligation by being virtuous, i.e. by having incorporated the rational incentive into one's most general maxim; by being disposed to be *sufficiently* motivated by this incentive, to do what the law requires. Where obligation is "the necessity of a free action under a categorical imperative of reason", the obligation is discharged by performing the rationally necessary action, whatever the effective incentive.

This distinction, as we shall see, is the basis of Kant's distinction between broad and strict obligation - imperfect and perfect duty. A duty, or one's duty, is the content or 'matter' of (an) obligation; it is what is required by reason. Particular duties, however, are derived from the general notion of duty in two ways - one based on its provision of a criterion of rational agency, sufficient constraint by the rational incentive; the other on its provision of a criterion of right, permissible or rationally necessary action. In the first case, one's duty consists in the choice of particular actions. To each of these 'kinds' of duties there correspond two different senses in which a moral agent can be under an obligation. The grounds of obligation in each case will differ, but not simply with respect to what (actions, events, states of affairs) constitute such grounds; the notion of a 'ground of obligation' itself differs. The ground of what for Kant is broad or 'ethical' obligation - imperfect duties - is pure reason issuing constraining commands: a kind of metaphysical or *noumenal* ground. The ground(s) of strict (generally juridical or 'legal') obligation(s) - of perfect duties - are the *rights* of persons (generally the rights of others) which are determined by particular rules that define moral relationships among persons.

We must now consider the fuller theory of practical rationality Kant provides: the general notion of 'practical necessitation' of which *moral* necessitation, i.e. obligation, is a species; and then his derivation of the supreme principle of morality from the concept of moral necessitation.



## II

As the subject of obligation, the human will must be conceived as having desires and inclinations which provide incentives, i.e. which ground particular subjective ends that vector human actions. In addition, the will must be seen as having within its ambience, as it were, the comprehensive end of its own happiness, the conception of which is constituted by a systematic structuring of various personal ends.

Morality, according to Kant, does not require the rejection of all sensual incentives, but only their subordination to the rational incentive and the directives of pure practical reason. In fact, he tells us that reason has an essential concern with individual happiness:

"Man is a being of needs, so far as he belongs to the world of sense, and to this extent, his reason certainly has an inescapable responsibility from the side of his sensuous nature, to attend to its interests and to form practical maxims with a view to attaining the happiness of this, and where possible, of a future life."<sup>7</sup>

We can consider different 'parts' or 'degrees' of rational agency, Kant continues, as well as different kinds of considerations which might enter into the justification of actions. First, we can consider the rationality of performing a particular action, given that the agent has some specific purpose or intention. The agent is rational insofar as he acts owing to his recognition that the action is 'objectively necessary' for attaining his end. Second, we can consider the rationality of performing a particular action on the hypothesis that the agent has a particular conception of happiness. If he considers all the desire-based incentives which influence his decision, and acts on a maxim which is likely to lead to the greatest overall satisfaction, he is thus far rational. Finally, we can consider the rationality of acting in accordance with the moral law. If all sensually-based incentives, as well as an individual's comprehensive conception of happiness are examined, and maxims grounded in these are restricted owing to his recognition of and respect for the law, then an individual is fully rational.

With respect to each 'level' of rationality, the human will is constrained by and in accordance with practical rules or principles, i.e. it

is practically necessitated. In the first two cases this necessitation is conditional. On the hypothesis that an agent has a specific optional end, or a particular conception of happiness, the practical principles specify actions which are, in some sense, 'rationally necessary'. And an agent is rational (to some extent) if his recognition of the rule's applicability moves him to act accordingly. In the third case, however, the necessitation is unconditional. The practical principles specify actions that are necessary irrespective of the agent's personal ends and his conception of happiness.

Necessitation, generally, is a relation between (1) an objective practical rule which represents some (kind of) action as rationally necessary, and (2) a will which is provided with an incentive to act in accordance with the rule *by* its recognition of the rule as applicable, but which can choose to act solely on incentives grounded in desire and inclination (i.e. without proper evaluation of these incentives or of the nature and consequences of the proposed action). From the relation of necessitation we can abstract the notion of a principle which represents an action as rationally necessary and provides rational beings with an incentive to perform the action. That is, we can abstract this notion from the possibility of conflict with (purely) sensually-based incentives. Kant performs this abstraction by presenting his model of a purely rational or 'holy' will, and the principles in accordance with which such a will acts. The model he constructs, however, is not entirely perspicuous. It is not clear whether:

- (a) a purely rational will has *no* desires or inclinations;
- (b) only *particular* contingent desires and inclinations are excluded from the concept, each being a possible condition of any rational will;
- (c) the desires and inclinations of a purely rational will are *necessarily* consistent with all rational and/or moral requirements.

We are told that the purely rational will is "incapable of any maxims which conflict with the moral law"<sup>8</sup>; that such a will is "a power to choose *only that* which reason independently of inclination recognizes to be practically necessary, that is, to be good."<sup>9</sup> This is true of the purely rational will because "reason infallibly determines the will"<sup>10</sup>; because "in accordance with its subjective constitution, it can be determined only

by the concept of the good."<sup>11</sup> This does not yet entail, however, that a purely rational will has no desires or inclinations. For even in an imperfectly rational being, for example, man, the "will is affected but not determined by impulses... but it can nevertheless be determined to actions by pure Will".<sup>12</sup> The human will is "pathologically affected - though not pathologically-determined - and thus still free".<sup>13</sup>

Nonetheless, Kant often seems to be saying that susceptibility to the *influence* of desires and inclinations is sufficient to exclude men from the ranks of the holy: "... though we can suppose that men as rational beings have a pure will, since they are affected by wants and sensuous motives, we cannot suppose them to have a holy will, a will incapable of any maxims which conflict with the moral law"<sup>14</sup>; "... the concept of duty... includes that of a good will, exposed, however, to certain subjective limitations and obstacles".<sup>15</sup> These limitations and obstacles are the presence of needs and inclinations: "Man feels in himself a powerful counterweight to all the commands of duty... - the counterweight of his need and inclinations, whose total satisfaction he grasps under the name of 'happiness'".<sup>16</sup>

Before accepting (a), we must look at the evidence for (c). In the case of men, Kant says, "...reason solely by itself is not sufficient to determine the will"<sup>17</sup>; "...the will is exposed also to subjective conditions (certain impulsions) which do not always harmonize with the objective ones; ...in a word, the will is not *in itself* completely in accord with reason..."<sup>18</sup> And further, "The essential point in all determination of the will through the moral law is this: as a free will, and thus not only without co-operating with sensuous impulses, but even rejecting all of them and checking all inclinations *so far as they could be antagonistic to the law*, it is determined merely by the law."<sup>19</sup> It is possible, then, that in the case of a purely rational will, either: (1) as a matter of incredible coincidence (or 'metaphysical necessity') all desires and inclinations are entirely consistent with the law, none ever ground incentives to act contrary to the law, or (2) Reason can obliterate any desires which might ground such incentives before they have any influence on the will.

The first is implausible given Kant's accounts of desire, i.e. how desire arises and influences choice. The second is untenable for two reasons. First, it is unclear how reason could even come to be concerned

with such desires without their presence being somehow felt. Second, in speaking of the conflict of reason and desire in man, Kant explicitly says that "reason commands relentlessly, and therefore, so to speak, with disregard and neglect of these turbulent and seemingly equitable claims (which refuse to be suppressed by any command)." <sup>20</sup>

The weight of evidence, then, seems to support (a): that a purely rational being has no desires or inclinations which provide incentives. It is not simply that a purely rational being can always appraise incentives arising from its sensual side, accepting and acting from them or not, in accordance with rational principles, but that there are no such incentives. Nonetheless, Kant includes the principle of promoting one's own happiness in his model of a purely rational will. Moreover, maxims constructed in accordance with this principle, as well as with objective rules of skill - i.e. maxims of rationally seeking various 'optional' ends - are *possible maxims* of a purely rational will. We must, then, regard various ends as possible purposes for a purely rational will, without considering their source in sensibility. That is, we must consider all possible ends as objects which a purely rational will *might* regard as 'objectively good', and then determine what follows with respect to its maxims, i.e. what actions would then be derivatively good. (This is not to say that in postulating a particular object of will we may conclude that the action is itself 'rationally necessary'; only when the object of will<sup>21</sup> is itself categorically necessary can we make such an inference.)

The absence of desire or inclination in Kant's model of a purely rational will precludes sensual incentives influencing (and *a fortiori*, determining) the will, but it need not preclude the will's having various purposes in acting, or our hypothetically positing such purposes, in order to articulate Kant's conception of rational agency. We must remember that the purely rational will is intended to serve as a *model* of rational agency - an ideal against which human rationality is to be compared and evaluated. Since reason is concerned, in the latter case, with various ends (suggested by, and also in conflict with, desire and inclination) the model of the purely rational will must provide criteria for rational action given the presence of particular ('optional') interests, and given the (naturally) unavoidable interest men have in their own happiness.

A purely rational will, then, is characterized by its maxims. A maxim, according to Kant, "is a subjective principle of action" containing "a practical rule determined by reason in accordance with the conditions of the subject (often his ignorance or, again, his inclinations): it is thus a principle on which a subject acts."<sup>22</sup> Different kinds or orders of maxims can be distinguished. An agent 'appeals' to higher order maxims in constructing more specific lower order maxims. In most cases, when Kant speaks of maxims, they have the form: "When I am in circumstance C, I will do A in order to bring about E." Maxims having this form are 'first-order' maxims. An agent's having such a maxim can completely *explain* his performance of a particular action. (First order maxims may take a slightly more general form, as when they express personal policies, e.g. "whenever I can do something to promote E (*ceteris paribus*) I will do it." The citing of such a maxim, however, must be accompanied by additional information - e.g. the agent's beliefs about his situation - in order to constitute an explanation of some action.

Citing maxims serves an explanatory function. The maxims of a purely rational being, however, are such that his acting on these maxims is *always rational*, and his actions always justified. The explanation of this is found in the higher order maxims which guide his construction of first-order maxims. First, a purely rational being who acts purposively has the 'second order maxim': "when I intend to bring about some state of affairs, I will act so as to (most) effectively bring about this state of affairs, given the circumstances in which I act." More concisely formulated: "if I will an end, I will the (most effective) means to that end." This second order maxim is a 'principle of the will' of a purely rational being, in accordance with which first order maxims are structured (that is to say, given particular purposes). It is partly definitive of rational agency in that at the very least a rational agent will choose to act so as to effectively realize the purpose he has in acting. He will reflect on the nature of his aim and how he can best reach it, and he will act in accordance with the results of this reflection. An interest in performing *particular* actions is provided by and in accordance with this principle, however, only when the will has specific purposes *and* first order maxims are structured in terms of the principle. Regarding all possible ends as possible purposes of a purely rational being, each of the constructed first order maxims would constitute a *hypothetical objective principle*: a principle on which

every purely rational being would act, on the hypothesis that he wills a particular end (conceived as in some way 'good').

Second, a purely rational will is conceived as having the comprehensive, composite end of personal happiness. This end obviously admits of great variety depending on the more limited and objective ends a rational being seeks, and their relative importance to him. Although no particular conception of happiness is contained in the concept of a purely rational will, we can posit the second-order maxim: "I will so act as to (most fully) promote my own happiness." This principle guides the construction and ordering - as well as the internal structuring - of first order maxims.

On the hypothesis that a purely rational being has some particular conception of happiness, some *system* of ends, his first order maxims will reflect this conception. For example, in his maxim "in C, I will do A in order to attain E", C may include the condition that doing A does not preclude his attaining some more important objectives; or action on *any* maxim aimed at realizing some end may be precluded owing to the second-order principle of the will, as being incompatible with the agent's particular conception of happiness.

Kant claims that reason "has a responsibility" to guide the construction of maxims so that a person can most fully realize personal happiness. One's happiness is thus an objectively worthwhile end, and an agent who acts in order to realize this end acts for good (though not necessarily sufficient) reasons. Nonetheless *he* is not rational in so acting *unless* he acts because he recognizes this end as objectively worthwhile, and not simply because he is influenced by sensual incentives to seek its various constituent objectives and satisfactions. There are good reasons for acting on maxims constructed and ordered in accordance with the second order assertoric principle. An agent is rational in so acting, however, only if he constructs and acts on these maxims as a consequence of his recognition of the validity (and applicability) of the principle. Once again, this second order principle provides an incentive for acting, and makes particular actions 'rationally necessary' only through specific first order maxims. These first order maxims (hypothetical objective principles) are maxims on which any rational being necessarily acts, on the hypothesis that his happiness is constituted in a particular way. Therefore, 'reason'

determines the purely rational will through hypothetical objective principles in two ways. First, the recognition that maxims must be constructed so that action will effectively accomplish one's purpose in acting, providing an incentive for structuring first order maxims and so for acting in various ways, i.e. reason generates *problematic* hypothetical principles. Second, the recognition that ends must be systematically organized provides an incentive for constructing (or rejecting) first order maxims - and so for acting - in various ways (*assertoric* hypothetical principles). Given the particular ends which a rational being has, reason prescribes an organization of these ends and directs the construction of maxims so that they can be most fully realized. A purely rational being determined exclusively by reason is motivated by his recognition of the rules and counsels of reason to act only on those material maxims<sup>23</sup> which have been conceived and constructed in accordance with these rules and counsels.

We may recall that the *necessity* with which the will of a purely rational being accords with particular (hypothetical) principles is not any kind of causal necessity. A purely rational being *chooses* to construct first order maxims (and so chooses to act) in accordance with these principles, i.e. he chooses to act only on those material maxims which are in accord with problematic principles. The capacity of a rational being to do this, that is, to 'wait on rational confirmation' of a material maxim before adopting and acting on it, suggests (although it does not yet entail) the capacity to be sufficiently motivated to adopt maxims and to act from a purely rational incentive alone.

If a purely rational being has this capacity, and if there is a second order maxim of the will which provides such an incentive, the restrictions placed on first order maxims constructed in accordance with it would be *categorical*, i.e. they would presuppose no contingent end, but would be unconditionally valid for the will of every rational being. In excluding all consideration of contingent ends, and yet placing restrictions on the construction of first order maxims, the second order categorical principle would make certain actions (or forbearances) *categorically necessary*. This principle would condition the constitution of an agent's conception of happiness - that is, the *rationaly permissible* structure and content of this comprehensive end - by restricting the actions through which he may seek happiness. Thus, *if* there is such a categorical princip-

le, it provides an incentive for subordinating all particular personal ends and the comprehensive end of personal happiness to its dictates.

A categorical second-order maxim would be the supreme principle of a purely rational will, making particular actions categorically necessary (or impossible) for every rational being, irrespective of possible contingent differences among them, and thus restricting the constitution and pursuit of personal happiness.<sup>24</sup> Although we can consider the possibility of a second-order categorical principle, we cannot yet determine what (kinds of) actions such a principle makes categorically necessary, i.e. precisely how this principle restricts the construction of first-order maxims. But we can derive the principle's general form from the notion of a rational being acting from 'reverence for the law' which involves the provision, by pure practical reason, of a sufficient incentive to restrict material maxims in accordance with a categorically (and thus universally) valid principle: in accordance with *law*.

The supreme principle of a purely rational will would be entirely *formal*: all first-order maxims must be possible maxims for any rational being. The recognition that some personal end - even the comprehensive end of personal happiness - could be furthered by some action must never by itself be sufficient incentive for performing it. Every maxim grounded in particular ends (and structured in accordance with problematic principles) must be such that any rational being could act on the maxim. In thus 'testing' all maxims of seeking particular ends before adopting and acting on them, one manifests the ability to act from a purely rational incentive: one is a fully rational agent. Therefore, if there is a second-order categorical principle it will have the form: "all my first-order maxims will be such that I can will them to be universal law."<sup>25</sup>

It should be emphasized, however, that material maxims which are in accord with this second-order principle are not for this reason alone themselves categorically necessary. Neither the ends nor the actions 'contained' in these maxims need be categorically necessary. This is not, as it might appear, inconsistent with our initial characterization of the categorical principle as making certain actions categorically necessary. There will be certain first-order categorical principles which specify particular actions as categorically necessary. These, however, are derived from the



supreme principle of a purely rational will, conceived as the supreme principle of rational agency. This principle consists in the evaluation of all maxims as laws binding on all rational beings, and only indirectly as having specific content. A purely rational will has a (sufficient) rational incentive to perform categorically necessary actions if and only if these are specified by applicable first-order categorical principles.<sup>26</sup>

In summary, a purely rational will is characterized in terms of the three second-order maxims or principles and the (possible or necessary) first-order maxims constructed on the basis of these. In addition to being *subjective principles* (i.e. maxims) of a purely rational will, however, they are *objective practical principles* in that *any* rational being (conditional upon his personal ends) is provided with an incentive to accord with them immediately upon recognizing their rational validity and applicability.

The human will differs from a purely rational will in that the incentives of practical reason (both empirical and pure practical reason) are not necessarily sufficient in guiding action, that is, the human will does not necessarily accord with objective practical principles in constructing its first-order maxims. In recognizing the validity of these principles, however, the will nonetheless 'experiences' rational incentives in the form of *constraint*. The will is forced to construct, structure and restrict its first-order maxims (and so to act) in accordance with these principles which are now to be viewed as commands or *imperatives* and expressed in terms of 'ought': "By this they mark the relation of an objective law of reason to a will which is not necessarily determined by this law in virtue of its subjective constitution...."<sup>27</sup>

"The practical rule is always a product of reason.... This rule ... is an imperative for a being whose reason is not the sole determinant of the will. It is a rule characterized by an 'ought' which expresses the objective necessitation of the act and indicates that, if reason completely determined the will, the action would without exception take place according to the rule."<sup>28</sup>

However, this depiction of imperatives is misleading for several reasons. First, with respect to every *imperative* - categorical as well as hypothetical - it must be presupposed that incentives are provided by the agent's 'sensual nature'. Second, in the case of both kinds of hypotheti-

cal imperative, no rule is applicable to an agent *unless* he has some particular purpose or comprehensive system of ends. Moreover, the applicability of a rule does not of itself establish that the action specified is (all things considered) *necessary*. For some particular purpose might have to be abandoned in light of prudential considerations, and some important aspect of one's happiness might have to be sacrificed if the moral imperative so commands.

This problem does not arise for a purely rational being, since the categorical imperative conditions its conception and pursuit of happiness, which in turn conditions the particular purposes such a being has in acting. In the case of a man, however, not only can he choose to ignore the demands of morality in order to serve his interest, but he can choose not to do what he knows to be necessary to achieve some particular end, allowing himself to be moved by, say, an immediate aversion to the requisite action; or he can choose to pursue an objective of (acknowledged) lesser importance to which desire directs him, and thus to violate some precept of prudence.

It is not the case, however, that some technical imperative is applicable and 'necessitates' the will *only if* the purpose grounding the imperative's applicability is *morally permissible* and compatible with the agent's happiness; or that pragmatic imperatives necessitate only if action in accordance with them is morally permissible. A man's actions are not justified, he does not act fully rationally, unless these conditions are placed on his pursuit of particular ends and happiness. But we may nonetheless speak of *necessitation* and of the applicability of various hypothetical imperatives without considering these further conditions.

Kant holds that *all* imperatives "say that something would be good to do or to leave undone... to a will which does not always do a thing because it has been informed that this is a good thing to do",<sup>29</sup> but that "(W)illing in accordance with these three kinds of principle is... distinguished by a *dissimilarity* in the necessitation of the will."<sup>30</sup> Thus, maintaining some common, generic notion of necessitation, we must account for the fact that although all imperatives specify some action as *good to do*, the necessitation to performance differs among the three kinds of imperative. Kant says in the *Lectures* that "to each of the three types of

imperatives, there is a corresponding type of good..."; problematic imperatives say "that a thing is good *as a means* to some *optional end*"; pragmatic imperatives concern goodness as a means to a determinate (and universally embraced) end: personal happiness; moral good is "the goodness of an action in and for itself."<sup>31</sup> In the *Groundwork*, however, he distinguishes the three kinds of imperative in a different way: "Every practical law represents a possible action as good and therefore as necessary for a subject whose actions are determined by reason. Hence all imperatives are formulae for determining an action which is necessary in accordance with the principle of a will in some sense good."<sup>32</sup>

In the light of these passages, it is possible to suggest, first, that the different ways in which *an action* may be good are derived from the different senses in which *a will* may be good; and, second, that the dissimilarity in necessitation can also be understood in this way.

The goodness of a will is a function of its being effectively determined by reason in constructing and acting on maxims. A will which structures its maxims in accordance with the second-order problematic principle (and thus acts on first-order problematic principles) is determined by reason insofar as sensual incentives, grounded in need or desire, are not sufficient for acting.<sup>33</sup> In acting in accord with problematic principles the rational and sensual incentives are *conjoined* in the maxim of acting. The rule is applicable, and so its recognition constrains incompletely rational beings, only if there is some particular desire-based incentive (establishing a subjective end of 'relative' worth). If this constraint is effective, the will manifests that goodness constituted by one aspect of rational agency: the internal structuring of maxims for the realization of one's purpose in acting.

Similarly, if a will organizes and acts on maxims in accordance with the second-order pragmatic principle (and thus acts on first-order pragmatic principles), desire-based incentives are themselves evaluated and ordered - and possibly rejected as grounds for acting. The will is more extensively determined by reason in that the action specified by pragmatic principles, which incompletely rational beings are constrained to perform, is conditioned by the *system of ends* which constitute individual happiness. Necessitation is, again, partly derived through sensual incentives. But

the constraint to appraise these incentives relative to one another further restricts the role of desire and inclination in determining action. Finally, when a will accords with the second-order categorical principle it is completely good: it is determined to act by reason irrespective of and possibly in conflict with all sensual incentives. When it acts on first-order categorical principles it is *completely* determined by reason; the rational incentive is by itself *sufficient*. The constraint in each case differs in that the will is determined by reason to varying degrees.<sup>34</sup> The necessity of the three kinds of principles, however, differs in that each concerns different aspects of rationality: (a) rationality in selecting means to various (optional) ends; (b) rationality in acting so as to maximize one's satisfaction; (c) rationality in subordinating one's own satisfaction to objectively valid ends in accordance with universally valid, categorically binding *laws*.

It follows, then, that actions in accordance with problematic imperatives are necessary (i.e. good) *as means to (optional) ends*; actions in accord with assetoric imperatives are necessary (good) *as means to the natural (and permissible) end of personal happiness*. Actions in accordance with these principles, however, are not rationally necessary in themselves; they are not categorically required by reason. And men are not constrained solely by reason to perform just these actions, since the necessity of acting in accordance with them presupposes various sensual incentives. Only in the case of categorical imperatives does reason represent certain actions as *good-in-themselves* and constrains the will (with no admixture of sensual incentives). Only in the case of necessitation by and in accordance with categorical imperatives, then, is there *obligation*. However, this necessitation cannot be derived solely from the theory of rational agency outlined here. To explain Kant's position we must consider his general analyses of duty and obligation: duty takes no account of the subjective differences among men in issuing prescriptions; and the constraining incentive of the concept of duty admits (and so requires) no admixture of sensual incentives for its effectiveness. Thus, only practical necessitation by and in accordance with categorical imperatives constitutes obligation.

## III

The second-order categorical imperative "in general only expresses what obligation is...: Act according to a maxim which can at the same time be valid as a universal law!"<sup>35</sup> The formula of the supreme categorical imperative is arrived at by an analysis of the 'ordinary' concept of duty, which contains the notion of constraint in accordance with law. The law commands that certain actions be performed without regard to whether or not inclination or interest would be served by obedience. In so doing, it accompanies its command with a constraining incentive.<sup>36</sup>

When a man believes he is under an obligation, argues Kant, he recognizes a 'law' which commands him to perform a particular action irrespective of his inclinations and needs. In acknowledging this command one is aware of one's ability to comply with the law from no other motive than that it is the law. Consequently, obligation entails the efficacy of the mere recognition of law as a sufficient incentive to act. Moreover, the recognition of the *command* (and its provision of an incentive) is not conditional upon any supporting subjective incentives which might contingently provide motivation for acting as the law directs. It follows that the law must be viewed as commanding all beings who may be conscious of the law (as command), i.e. the law must be viewed as commanding *universally* (and necessarily).

The *experience* of obligation, then, is constituted by being constrained to act in a particular way by one's recognition of a universally and necessarily binding law; by acknowledging the applicability of a law as providing a sufficient and 'overriding' reason to act; by acknowledging the law as supremely *authoritative*.

A person is obliged to perform a particular action when some such supremely authoritative law is applicable, that is, when the law immediately provides an incentive which can and should be sufficient. One is a possible subject of obligation generally, however, insofar as one recognizes *the law* as supremely authoritative and regards *obedience* to law as his duty. If we abstract from all particular authoritative laws and consider the supreme formal imperative addressed to a will which is such a possible subject of obligation, we arrive at the second-order categorical

imperative: "act only on that maxim through which you can at the same time will that it should be a universal law."<sup>37</sup> This principle, as the supreme principle of duty, contains only the formal notion of being obliged in accordance with supremely authoritative laws, and thus of having sufficient reason and possibly sufficient motivation to obey simply upon recognizing the applicability of such a law. A will which is completely in accord with duty will fulfil all its duties from the motive of respect for the law, a "feeling (which is) ... self-produced by a rational concept...."<sup>38</sup>

Having an obligation, then, entails the necessity of acting from a purely rational incentive which is not grounded in any contingent end which might or might not be embraced by any man. Yet, Kant says that the will can be provided with an incentive to act only through the representation of some *end*. The possibility of a categorical imperative, the reality of obligation, requires that the rational incentive contain an end in order that men be able to obey the law without recourse to sensual incentives: "If... there is to be a supreme practical principle and - so far as the human will is concerned - a categorical imperative, it must be such that from the idea of something which is necessarily an end for everyone, because it is an *end-in-itself*, it forms an *objective* principle of the will and can consequently serve as a practical law."<sup>39</sup> Only such an "end-in-itself" "could be a *ground of determinate* laws... in it alone would there be the *ground* of a possible categorical imperative."<sup>40</sup>

The end-in-itself which Kant settles upon, and which generates his second (major) formulation of 'the' categorical imperative, is *rational nature*: "*Rational nature exists as an end-in-itself*."<sup>41</sup> This is, he says,

"an *objective* principle, from which, as a supreme practical ground, it must be possible to derive all laws for the will. The practical imperative will therefore be as follows: *Act in such a way that you always treat humanity, whether in your own person, or in the person of any other, never simply as a means, but always at the same time as an end*."<sup>42</sup>

Kant's argument for this formulation of the categorical imperative seems to be this: choice is possible only if the representation of some end supplies a subjective ground of volition. If men can act from a purely rational incentive, then there must be an objectively valid end, which is

an end *for* every rational being, independently of all subjective, contingent features that distinguish one rational being from another. Such an end would ground the possibility of a categorical imperative by giving content to the purely rational incentive. Moreover, it would ground *particular* laws in much the same way as personal (contingent) ends ground maxims of realizing these ends for a purely rational being.

This cannot be quite right, however. For Kant repeatedly insists that the moral law is not grounded in the value of some state of affairs realized or promoted through actions. The end at issue is what Kant calls an "end-in-itself". Like the usual kind of end, the representation of an end-in-itself can be a subjective ground determining the will. Like such ends, *it has value*. But unlike ends generally, its representation does *not* serve as an incentive to act in order to promote or realize it: for it is a *self-existent end*; and unlike ends generally, its value is not dependent on the subjective constitution (the personal ends) of this or that rational being. It has absolute unconditioned value and is an object of *reverence*.

Kant's explicit arguments for why the end-in-itself is not to be promoted but is a self-existent end are not entirely persuasive. Beginning (at times) with the premise that an end-in-itself must have absolute unconditional value, he claims that "the value of all objects that can be *produced* by our actions is always conditioned."<sup>43</sup> The reason he gives is that "All the objects of inclination have only a conditioned value; for if there were not these inclinations and the needs grounded on them, their object would be valueless....";<sup>44</sup> and "ends that a rational being adopts arbitrarily as *effects* of his actions (material ends) are in every case only relative; for it is solely their relation to special characteristics in the subject's power of appetite which gives them their value."<sup>45</sup>

This is obviously inadequate. The value of some end might not be grounded in inclination or need, i.e. its value might not *derive from* its being conducive to satisfaction. Even so, it might, as a matter of fact, by an object of *someone's* inclination, and it could be something which might be realized or promoted by men's acting in various ways. Kant could argue, however, that an end-in-itself must be a self-existent end because its representation is to provide a purely rational incentive to act; because action from this incentive constitutes the moral worth of agents:

the unconditioned value of a good will. For he says:

"Rational nature separates itself out from all other things by the fact that it sets itself an end. An end would thus be the matter of every good will. But in the Idea of a will which is absolutely good - good without any qualifying condition (namely, that it should attain this or that end) - there must be complete abstraction from every end that has to be *produced* (as something which would make every will only relatively good). Hence the end must be here conceived, not as an end to be produced, but *as a self-existent end*."<sup>46</sup>

"...all these results (agreeable states and even the promotion of happiness in others) could have been brought about by other causes as well, and consequently their production did not require the will of a rational being, in which, however, the highest and unconditioned good can alone be found."<sup>47</sup>

If the end whose representation subjectively determines a good will were some state of affairs to be realized by acting in various ways, then the will which acted for this purpose would have only instrumental value - depending on its success in realizing the state of affairs. A good will is good, however, by virtue of its capacity to act *from duty* or from *reverence for the law*. Thus, it would seem the subjective ground determining a good will must be the *idea of law*. In some places Kant explicitly says as much:

"Only something which is conjoined with my will solely as a ground and never as an effect - something which does not serve my inclination, but outweighs it or at least leaves it entirely out of account in my choice - and therefore only bare law for its own sake, can be an object of reverence and there-with a command."<sup>48</sup>

"...the object of reverence is the *idea of the law* in itself, *which admittedly is present only in a rational being* - so far as it, and not an expected result, is the ground determining the will.... This idea alone can constitute that preeminent good which we call moral, a good which is already present in the person acting on this idea and has not to be awaited merely from the result."<sup>49</sup>

This formal characterization of the rational incentive might be reconciled with Kant's notion of an end-in-itself as follows: the object whose representation determines a good will is not simply the idea of law but the



idea of *the necessity of willing in accordance with the law*, or the idea of *a being* who is determined by and in accordance with law - i.e. of a rational being 'legislating' through its maxims and subject to no law which it does not itself 'make'.<sup>50</sup> This distillation of Rousseau's conception of the 'citizen' (see section III of *Part IV*) presumes that reverence for rational nature is the subjective ground determining a good will; rational personality is the end-in-itself which both Rousseau and Kant seek. It is as members of the sovereign, as 'citizens' (for both Rousseau and Kant), that the discrete personalities, though subjects of a supreme authority, "obey only themselves and remain as free as before." In the form of sovereignty, neither liberty nor one's rational ends can be alienated. The individual cannot surrender his essential humanity - the right to fashion his own destiny, to obey only himself.

Noting the similarity between the expressions "end-in-itself" and "thing-in-itself", the former might be construed as the *noumenal ground* of all ends (or, as Kant says, "the subject of all ends"). These ends are the various objectives consciously adopted by a rational being. The ground of all ends - of the free (i.e. "spontaneous") construction of maxims - is the noumenal self: pure practical reason which somehow ("incomprehensively") constrains men through its representation in human consciousness. Rational personality is thus an *end* in the sense that the idea of rational personality can determine the will. It is as an end-in-itself, however, in that it is the noumenal ground of all ends.

This end-in-itself has unconditioned and absolute value because it is necessarily represented as an object of reverence. "Reverence", writes Kant, "is properly awareness of a value which demolishes my self-love".<sup>51</sup> Although individuals might value certain things as a consequence of their conception of happiness, they are constrained to recognize the limitation imposed on the ends they seek (and their actions in pursuit of these ends) by the *idea of personality*. They thus regard rational personality as of *unconditional worth*, as conditioning all personal and merely contingent valuations. In establishing the unconditioned value of rational nature - in ascribing a unique *dignity* to persons - some content is given to the categorical imperative. Assuming the existence of (other) rational beings who we may affect by our actions, the moral law places restrictions on how we may treat them: "Rational beings... are called *persons* because their

nature already marks them out as ends-in-themselves - that is, as something which ought not to be used merely as means - and consequently imposes to that extent a limit on all arbitrary treatment of them...."<sup>52</sup> Obviously, the notions of an end-in-itself and of rational nature as the *ground* of a categorical imperative have undergone a change. Rational nature now is not simply the noumenal ground of all ends; the idea of rational nature is not simply the subjective ground determining a good will. As a *ground of determinate laws*, rational nature "must be...conceived only negatively - that is, as an end against which we should never act, and consequently as one which in all our willings, we must never rate *merely* as a means, but always at the same time as an end."<sup>53</sup>

Thus, the fact that there are (other) rational beings who are (also) ends-in-themselves provides reasons for particular restrictions on maxims. What needs to be emphasised here is the multiple role of the notion of an end-in-itself: rational nature is an end-in-itself in that it is the noumenal ground of all ends. Consequently, it is the source of the constraint to restrict maxims in accordance with the law and thus the subjective ground determining a good will. As something of unconditioned value, however, it is akin to the more usual notion of an end: the *content* of moral requirements is comprised by actions or omissions which are objectively necessary in order that persons be treated as ends-in-themselves - although rules grounded in the unconditioned worth of rational nature do not require actions as a means of producing this 'end'.

From the notion of rational nature as the ground of the possibility of a categorical imperative, i.e. as pure practical (legislative) reason, Kant derives his third (major) formulation of the categorical imperative. The categorical imperative, he says, requires that a rational being always choose "his maxims from the point of view of himself and also of every other rational being - as a maker of law...."<sup>54</sup> The three formulations of the categorical imperative are concerned with different components of the concept of duty: (a) the universality of moral requirements; (b) a general characterisation of the content of moral requirements - relating to our dealings with (other) rational beings; (c) the condition under which beings are subject to moral requirements, which is also the condition of their having moral worth. They appear to be equivalent as a consequence of the ambiguity in the notions of *end* and *ground* which we have been examining.

In explicitly relating the three, Kant says:

"The principle 'So act in relation to every rational being (both to yourself and to others) that he may at the same time count in your maxim as an end-in-himself' is thus at bottom the same as the principle 'Act on a maxim which at the same time contains in itself its own universal validity for every rational being'. For to say that in using means to every end I ought to restrict my maxim by the condition that it should also be universally valid as a law for every subject is just the same as to say this: that a subject of ends, namely, a rational being himself, must be made the ground for all maxims of action, never *merely* as a means, but as a supreme condition restricting the use of every means - that is, always also as an end.... Now from this it unquestionably follows that every rational being, as an end-in-himself, must be able to regard himself as also the maker of universal law in respect of any law whatever to which he may be subjected; for it is precisely the fitness of his maxims to make universal law that marks him out as an end-in-himself."<sup>55</sup>

Rational beings are ends-in-themselves because they possess practical reason and so have the capacity to legislate through their maxims. Thus rational nature *grounds* the possibility of a categorical imperative in that obligation is possible only if there are beings who possess practical reason. Rational nature is the end of moral action, however, in two senses: (a) its representation provides the subjective ground of adherence to the law - i.e. the pure practical reason of each man constrains him to comply with the law; (b) the status of all persons as ends-in-themselves objectively grounds the content of law: we must, in all our actions, accord all rational beings such treatment as is consistent with their status as ends-in-themselves - as of unconditioned and absolute worth, as *subject to no law to which they cannot "rationally assent"*.

Although we do not yet know what is involved in treating others (or ourselves) as ends-in-themselves, we may distinguish three senses in which rational nature is the 'ground' of the categorical imperative: (1) the existence of pure practical reason within every man is the ground of the *possibility* of a categorical imperative; (2) pure practical reason is the *noumenal source* of the law and of the constraint which men experience. Thus it is the ground<sub>1</sub> of obligation - of individuals experiencing constraint to do what they regard as their duty; (3) rational nature objectively grounds<sub>2</sub> particular categorical imperatives which require or prohibit specific kinds of actions. (The ground<sub>2</sub> of an obligation to keep a

contract, for example, is the fact that failure to do so would constitute treating another as a mere means to one's personal satisfaction.) As a consequence of this ambiguity the three formulations are not equivalent - although they are all derived from Kant's analysis of the concept of duty, and are related to one another in much the way Kant says they are. Kant's fourth (major) formulation of the categorical imperative is as follows: "every rational being must so act as if he were through his maxims always a law-making member in (a) universal kingdom of ends."<sup>56</sup> From the requirement to treat all men as ends-in-themselves, in accordance with objective laws grounded in the will of each, "there arises (the notion of) a systematic union of rational beings under common objective laws - that is, a kingdom. Since these laws are directed precisely to the relation of such beings to one another as ends and means, this kingdom is called a kingdom of ends (which is admittedly only an ideal)."<sup>57</sup> Thus, Kant says, "morality consists in the relation of all action to the making of laws whereby alone a kingdom of ends is possible."<sup>58</sup> A kingdom of ends would actually exist if the maxims "which the categorical imperative prescribes as a rule for all rational beings... *were universally followed*".<sup>59</sup> There would then be a "whole of all ends in systematic conjunction (a whole both of rational beings as ends-in-themselves and also of the personal ends which each may set before himself)...."<sup>60</sup>

In a kingdom of ends men would freely pursue their own (material) ends, in accordance with maxims restricted by and constructed in accordance with, laws grounded in rational personality. So far as men restrict their actions in light of the respect due others, the personal ends of each would themselves have objective value<sup>61</sup> and each would pursue his own ends (as well as assisting others in need) *as* objectively valuable ends.

#### IV

Kant's distinction between two 'kinds' of obligation (juridical and ethical) is best understood in light of his conception of a kingdom of ends. Conceived as *legislators* in such a kingdom, men are constrained by their own pure practical reason to construct and restrict their maxims in accordance with the second-order categorical imperative. Their obligation is grounded<sub>1</sub> in pure practical reason. The *end* contained in the rational incentive is the 'immanent end' of manifesting pure rational (moral) agency, i.e. being strong in one's resolve to act from respect for the law.

The doctrine of virtue elaborates on this conception of obligation, which consists in being constrained by one's consciousness of duty.

Conceived primarily as *subjects* in a possible kingdom of ends, men's exercise of external freedom - what they may permissibly do - is restricted by laws grounded<sub>2</sub> in the reciprocal claims of men on one another. That is, these laws are grounded<sub>2</sub> in the wills of others as *restrictive* ends-in-themselves which must never be treated as mere means. Laws of external freedom delimit permissible action by specifying what sorts of actions are necessary and what sorts forbidden in light of this restriction; i.e. in light of the rights of others, as ends-in-themselves, to exercise external freedom within the limits imposed by the laws. The right to exercise (lawful) external freedom, however, is an authorization to oppose interference with this exercise. It is an "authorization to compel" those who would unlawfully interfere with its exercise. Thus, to say that someone has a right to another's performance (or omission) of a particular kind of action "means only that the use of coercion to make anyone do this is entirely compatible with everyone's freedom, including the freedom of the person coerced... in accordance with universal laws."<sup>62</sup>

Men are obliged "through the wills of others" (in accordance with laws binding all) in the sense that others may justifiably compel compliance with these laws. The right which stems from the rational personality of others, grounding<sub>2</sub> particular laws, is also immediately an authorization to compel. These laws are conceived as carrying an incentive with them, namely, compulsion. Moreover, the obligation to comply with them is itself grounded in the *legitimacy* of compulsion to compliance. Thus:

"Ethics discusses all obligations - those of charity and generosity as well as those of indebtedness - and considers them all together but from the standpoint of the inner grounds of impulsion, it reflects on their origins in duty and in the nature of things themselves, not in compulsion. Jurisprudence, however, is not concerned with the discharge of obligation from duty, but from compulsion; it considers them in their relation to compulsion, and stresses the sanctions of compulsion."<sup>63</sup>

The concepts of justice and juridical obligation are abstractions from the full concept of duty. As members of a community of (incompletely)

rational beings, men have obligations in accordance with the "laws of reciprocal coercion". The formal principle of these laws, "the universal law of Justice", is contained in the notion of freedom of action under common laws binding all members of such a community: "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."<sup>64</sup> Since this law formulates a categorical restriction on action as a consequence of the universal right to external freedom, "strict justice can also be represented as the possibility of a general reciprocal use of coercion that is consistent with the freedom of everyone in accordance with universal laws."<sup>65</sup> The doctrine of justice, then, concerns the first principle (and derivative laws) of *justified coercion* within a community of (incompletely) rational beings. Particular categorical imperatives grounded<sub>2</sub> in the rights of others are confirmed by reason and specify strict or *perfect* duties. The justness of coercion and obligation are mutually entailed.

Juridical duty and juridical obligation can be considered in abstraction from the rational incentive which accompanies every categorical imperative of reason. Although the supreme principle of justice is contained in reason and laws of reciprocal coercion are confirmed by reason as categorical imperatives, men are obliged to perform particular actions (their juridical duties) *by the will of others*, i.e. other's authorization to compel. Consequently, men can completely discharge their obligations - 'do their duty' - simply by performing the required actions, whatever *their* reasons for doing so.

Having considered only the formal principle of juridical obligation, we have yet to determine how *particular laws of reciprocal coercion* are derived. Since these laws are aimed at restricting the exercise of external freedom so that conflict is avoided and 'equal' freedom enjoyed by all, Kant applies the supreme principle to the (empirically) necessary conditions under which men make use of their external freedom, and from which the possibility of conflict arises.

In order to exercise external freedom (i.e. act on maxims aimed at achieving various ends) a man must *make use of objects*. Although a person has a natural right to pursue his own ends, free from physical coercion and constraint (so long as this pursuit leaves others similarly free), he can

reasonably hope to attain these ends only if he can rely on the availability of "objects of choice" which he may not always *physically* possess. That is, he must be able to have *property*: *de jure* possession, consisting in a *right* to dispose of the object possessed as he chooses. This right excludes all others from using the object; it is an 'authorization to compel' others not to interfere with one's own (lawful) use of it.

Thus, there must be some way for men to *acquire rights* to the exclusive use of objects. Kant formulates this condition in what he calls "the juridical postulate of practical reason": "it is possible to have any and every external object of my will as my property."<sup>66</sup> This is, he says, "a permissive law of practical reason" which "confers on us an authorization ... to impose an obligation on all others - an obligation that they otherwise would not have had - to refrain from using certain objects of our will because we were the first to take possession of them."<sup>67</sup>

These obligations, however, are not imposed by a 'unilateral act of will' in which a person simply announces his exclusive possession of and right to some object. *The possibility of acquiring rights and imposing obligations must be grounded in a categorical imperative reciprocally binding all men.* That is, if any person's claim to the exclusive use of an object is valid, and imposes obligations on others (to refrain from interfering with his use of the object) this claim must be made in accordance with a rule enabling all men to acquire rights and impose obligations:

"When I declare (by word or deed), 'I will that an external object shall be mine', I thereby declare it obligatory for everyone else to refrain from (using) the object of my will.. .. Included in this claim, however, is an acknowledgement of being reciprocally bound to everyone else to (exercise) a similar and equal constraint with respect to what is theirs."<sup>68</sup>

Moreover, men may impose obligations on one another only if the 'procedural rule'<sup>69</sup> by which they do so satisfies certain conditions. Although their use of the procedure will be primarily a function of their individual needs and interests, the procedure itself must (minimally) be such that everyone *could* 'rationally assent to it'.<sup>70</sup> In addition, the rule must be publicly known so that it can be effectively used by everyone, and there must be some public (centralized) executive agency assuring that property

rights, legitimately acquired, will be respected. Those (procedural) rules which satisfy these conditions enable individuals to establish moral ('juridical') relationships amongst themselves. They specify ways that men can be obliged *by the will of another*, and thus *to another*. In other words, they specify civil obligations.

Kant's notion of an 'object of choice' is quite broad. In addition to physical objects, it includes "the will of another with respect to a particular act" and "the status of another in relation to me".<sup>71</sup> In the first place, my possession of an object of choice is constituted by the performance of a particular action by a particular person. I have a right to this performance and may legitimately compel anyone who would unjustly deprive me of it, not to do so.<sup>72</sup> Since it is (primarily) the person whose performance I own who could deprive me of this possession - by not performing the action - we might say that my right is *against* the person whose choice I own: he is under an obligation to me to perform the action.

More directly: if I have made use of a 'just procedure' for attaining rights and imposing obligations on (particular) others, then the rule constitutes a law for all men, and the person whose choice I come to "own" is obliged to perform a particular action. His obligation is through or 'by' my will in that he is under an obligation to me by virtue of my *right* (i.e. my authorization to compel or to demand coercive measures) to his performance of the action. A clear case of a rule in accordance with which we can come to "own the choice of another", and which fits the basic schema for the acquisition of property rights, would be that requiring some return for gifts. With respect to other persons, e.g., rules defining sanctioned practices of promising or contracting, the schema of claiming some object as one's own by making use of a just procedure, and thereby placing *others* under an obligation, is not entirely appropriate. For it is generally some voluntary action on the part of the person under the obligation that results in the obligation and the corresponding right (cf. *Part I*). Promising involves placing oneself under an obligation to someone, to perform or refrain from some action. Contracting involves placing oneself under an obligation to someone to do something in order that (or, provided that) the latter places himself under a reciprocal obligation. Nonetheless, (just) rules defining practices of promising or contracting, enabling persons to voluntarily undertake obligations, are obvious candidates for public,



reciprocally-binding rules in accordance with which rights and obligations are created. (Such rules serve to "expand the freedom" of every person by enhancing his ability to rationally plan and organize his life.)

The objects of choice constituted by the "status of another in relation to me" might include the possession of another person insofar as I may command them or generally guide their lives - as in the case of wives, children and servants. This would (probably) involve more or less structured, more or less official public rules according to which those who depend on others for their well-being are obliged to those who care for or protect them. The claim to possession might consist in actually providing others with the necessities of life.

In discussing the necessity of acknowledging that one is reciprocally bound by others' acquisition of the objects of their choice, Kant says, "I am not bound to leave what is another's (property) untouched if everyone else does not in turn guarantee with regard to what is mine that he will act in accordance with exactly the same principle."<sup>73</sup> This guarantee does not derive simply from the principle being a product of legislation by the will of all, i.e. by what Kant calls, in a manner reminiscent of Rousseau, a "collective (common) universal will". It is not sufficient that the rule be in accord with the supreme principle of justice, enable the 'expansion' of external freedom and therefore be, in a sense, a (derivative) product of the pure practical reason of every man. In addition, the Will which legislates must be backed by coercive power. The condition under which men are subject to "general external (that is, public) legislation that is backed by power is a civil society", a society under a civil constitution. "A civil constitution... provides the juridical condition under which each person's property is secured and guaranteed to him."<sup>74</sup>

A civil constitution and the positive laws made in accordance with it provide publicly sanctioned rules, enabling the members of the society to acquire rights and impose obligations with respect to one another. They provide for settling conflicts about rights and ensure that the decisions of the public judiciary are carried out. Thus, only if there is public legislation, representative of or expressing the collective will of all members of the society; authorized agencies for interpreting the laws and deciding particular cases which fall under them; and some executive power

to enforce these decisions, is there the requisite guarantee of reciprocity. Only then do rules - *either* officially sanctioned positive laws or 'socially' sanctioned moral rules - establish particular moral relations among men. Only under these conditions can individuals (come to) be under obligations to one another to perform particular actions in accordance with these rules.<sup>75</sup> Thus, particular categorical imperatives are derived from the supreme principle of right and particular actions (or omissions) entailed by these imperatives are obligatory.

These categorical imperatives can be viewed as positive laws in a kingdom of ends. They give content to the requirement that each respect the innate right of others to exercise their freedom (so far as this does not violate the rights of others), by constituting (sanctioned) rules facilitating entry into particular moral relationships through which individuals acquire 'contingent' rights and obligations.

The categorical imperative requires that our actions be compatible with (i.e. accord with) rules which would regulate human interaction in a possible kingdom of ends. We can conceive of a kingdom of ends as a union of rational beings under laws which - at least in their underlying principle - issue from the "collective Will", and which define and regulate relations between persons as ends and means, e.g. how people may enter moral relationships in order to serve individual and shared interests. The categorical imperative commands that our actions accord with these laws so that, for example, we keep our agreements, respect the property rights of others, and so forth. Within an actual civil society, then - a juridical condition - we will be placed under obligations *by* one another in accordance with those particular positive laws (and socially sanctioned moral rules) which correspond to the sanctioned laws of a possible kingdom of ends.

For our purposes, then, the critical features of juridical obligations and juridical duties are as follows:

- (1) Juridical obligation is obligation in accordance with laws of *universal reciprocal coercion*, and particular juridical laws are justified *as such*.

- (2) Juridical obligations are grounded<sub>2</sub> in the wills of others, i.e. their rights, their *authorization to compel*. Consequently, juridical obligation is always obligation to another, insofar as one is bound to perform a particular action in virtue of another's (or others') authorization to compel (or, more accurately: his authorization to initiate public coercive measures to compel performance).
- (3) Juridical obligation is fully discharged by the performance of a particular (kind of) action, which is one's juridical duty, whatever one's reasons for performing the action. Of course, juridical obligation carries an incentive - compulsion - which could be sufficient. Moreover, the content of juridical obligation is not determined by the needs and interests of the subject, except, perhaps, in some but not all instances of self-imposed obligation. Even in these cases, however, one's obligation is not conditional upon any possible benefit to be derived from discharging it. Thus, juridical obligations can also be discharged from the motive of respect for the law.
- (4) Juridical obligation is strict in that the law leaves no latitude for choice in determining what is one's juridical duty; juridical duty is *perfect* in that its content consists in the performance of fully determinate actions.

## V

The subject of obligation(s) - the obligee - is in all cases some being who is incompletely rational, i.e. one who possesses 'pure practical reason' but is strongly influenced by desire and inclination. Such a being might construct maxims with a view only to personal satisfaction without considering the *objective value* of this satisfaction, or he might rationally appraise his personal objectives in light of his participation in a community of rational beings who are the *source*, as well as the subjects, of laws binding on all.

Although the subject of obligation must always be regarded as a member of such a community, as the subject of juridical obligations, he is princi-

pally viewed by Kant as bound in accordance with *laws of reciprocal coercion*: laws which derive from the "common collective will of all", and with which men may compel one another to comply. As a subject of ethical or moral obligation, a person is conceived primarily as *legislating through his maxims*: seeking ends and acting as he does because he recognizes the end to be objectively valuable and the action either rationally permissible or categorically necessary.

The subject of moral obligation is a being who regards himself as bound by laws which he recognizes as applicable to himself as a member of a community of rational beings; a being who, as it were, takes "the moral point of view" in deliberating and choosing to act. He is (morally) obliged to perform particular actions when, from this point of view, he concludes that he is bound to perform some action - either because he believes the action is required by some law of reciprocal coercion (i.e. because he respects the rights of others<sup>76</sup>) or because he believes he must now so act in order to promote the ends which are his duties. The subject of juridical obligation, however, is a person to whom some valid law of reciprocal coercion is applicable, whatever his beliefs or motivation. Such a law may be applicable as a consequence of (a) a juridical act by the subject or by another, whereby another comes to have a right against the subject, or (b) the subject's standing in some juridical relation to others, which grounds rights against him (e.g. rights to corporal freedom within the laws of a civil society).

The ground<sub>1</sub> of an obligation is its *noumenal* ground: pure practical reason as the source of the constraining categorical imperative. Since obligation entails the existence of such a 'legislative faculty', it grounds the possibility of a categorical imperative. Moreover, (in conjunction with specific judgements of duty) it is the ground<sub>1</sub> or moral obligation: it is the ground of a person's being obliged (i.e. constrained) here and now to perform a particular action. The grounds<sub>2</sub> of obligations are, generally, the rights of others, as a consequence of which particular categorical imperatives prescribing determinate kinds of actions are justified.

Generally, the ground of particular juridical obligations is that state of affairs, action or event in terms of which some particular rule

(law) of reciprocal coercion is applicable to an agent. The applicability of such a rule to an agent entails the existence of a *right* against him - an authorization to compel. Thus the ground of a juridical obligation is also the ground of some right (of another, or others generally) against the subject. Although Kant insists that "justice... cannot be conceived of as composed of two parts, namely, the obligation implied by a law and the authorization that someone has, by virtue of obligating another through his will, to use coercion to make the other fulfil (his obligation)..."<sup>77</sup>, there is reason to regard a state of affairs as grounding an obligation *qua* grounding a right against the subject. For juridical rules are not merely necessary restrictions uniting actions with the supreme principle of right (a second-order categorical imperative definitive of 'external freedom under law'). Rather, they are justified *as* particular (derivative) rules of reciprocal coercion, i.e. others must in fact be authorized to compel compliance with these rules in order that the rules are binding. This is the hallmark of juridical obligation.

The state of affairs which grounds particular obligations (*qua* grounding particular rights) might be the performance of some action by the subject or 'partner' - the obligor - which establishes particular moral relationships in accordance with a valid juridical rule (e.g. making a promise, acquiring property). It might be the existence of a natural, social, institutional or political relationship which, in accordance with a valid juridical rule, constitutes a moral relationship defined in terms of various rights and duties. In some of these cases, notably the last, the relationship may exist among all members of a society. The 'partner' may be broadly construed as *the state*, representing the common collective will which is authorized to compel compliance with various rules.

Particular states of affairs (actions, events) ground juridical obligations only if there are public rules which are recognized and generally 'enforced' within a civil society (to which both subject and partner belong); specifying these states of affairs as establishing obligations (having a specific content and owed to some particular person or to the state as representative of the common collective will). In validating certain states of affairs as grounds of obligation, then, our concern is with the validation of particular rules which specify these states of affairs as grounds of obligation. These rules are binding on individuals to whom they apply only within civil society, under public law. As dis-

cussed in *Part I* as the 'problem of order', this condition provides the necessary *guarantee of reciprocity*, i.e. the assurance that juridical rules - comprised by positive law and (purely) moral rules - will generally be observed.

Kant's analysis of the concept of duty figures significantly in the justification of both juridical and moral obligation. Interestingly, it illuminates the Rousseauan influence permeating Kant's ethical thought, for, from this analysis is derived, firstly, the notion of a community of rational beings under common laws, regulating and restricting action, and, secondly, a conception of 'personality' which must be presupposed if men are to be subject to moral requirements.

If there are any moral requirements to act in certain ways, they must be grounded in laws binding all rational beings irrespective of subjective, contingent differences between them. These laws are derived - in conjunction with empirical premises about the subjects of obligation and the circumstances in which they interact - from an analysis of "external freedom under law", i.e. the formal principle of justice: "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".<sup>78</sup> The laws specify restrictions which ensure that men's "exercise of external freedom" will not lead to conflict.

For Kant, the critical problem underpinning what we have termed civil obligation is as follows: in order that the rules of civil conduct specify how men *ought*, unconditionally, to act - in order that men be held responsible for complying or not with these rules - it must be supposed that they have the capacity to act from the motive of respect for the law: that men can be sufficiently motivated by their recognition of some action as obligatory. For moral rules are not justified by reference to the needs or interests of any or all persons; if men ought *unconditionally* to comply with them, men must be capable of obedience when no personal need or interest prompts them to obey: even when all desire and interest run counter to moral directives. The capacity to act from respect for the law - to act (solely) for the reason that some action is one's duty - is the core of Kant's conception of personality<sup>79</sup> and, by implication, citizenship. That is to say, Kant considers the true citizen to be synonymous

with rational man, and insofar as men are irrational so it follows that their civility is 'spoilt'.

Particular rules of juridical obligation are justified in terms of the formal principle of justice if they place reciprocal restrictions on permissible action so as to prevent conflict in men's exercise of external freedom. The obligation to act in accordance with such rules, however, is grounded<sub>2</sub> in the innate right of each and all to freedom of action within the limits of these rules; i.e. in the *legitimacy* of their actively opposing anyone who would limit their freedom in violation of these rules. Particular rules of juridical obligation, then, are essentially rules with which individuals may justifiably be compelled to comply. If the sanction of coercion is insufficient to guarantee general conformity to a particular rule, then the rule does not bind any individual and therefore any coercion to adherence is not permissible. If the rule is not one to which everyone could "rationally assent" then, again, no coercion to compliance is justified.

Men have obligations in accordance with juridical rules, then, only if:

- (a) there is some reasonable assurance that most will usually comply with them. This assurance, the *guarantee of reciprocity*, is provided by the general juridical condition: civil society under public law - the condition of *order*.
- (b) the rules are such that all *citizens* could rationally assent to them - the condition of *civility*.

Both these conditions, for Kant as for Rousseau, are contained in the justificatory requirement that the source of coercion be a common, collective, powerful Will. The rules enforced by such a will are rules which place reciprocal limitations on civil intercourse. However, the condition of the *content* of juridical rules - that they be rules to which all could *rationally assent* - is not adequately explained by Kant. Presumably, juridical rules which meet this condition will provide the substantive content of the formal prescription to treat men always as ends-in-themselves, i.e. they will specify in what such 'treatment' consists. But this does not take us very far.

The content of juridical rules is made somewhat more determinate by Kant's derivation of the juridical postulate of practical reason. "It is possible to have any and every external object of my will as my property."<sup>80</sup> The rational exercise of external freedom entails the possibility of *de jure* possession of objects, that is, *property*. Since no one is bound to leave another's possessions untouched if he is not assured that others will do the same with respect to what is his, property is, strictly, impossible outside the context of civil society. Civil society provides the necessary assurance of actual reciprocity in respecting individuals' claims to possession. Juridical rules, binding within civil society under public law are, then, rules according to which individuals have or acquire property. As rational beings capable of purposeful action - which involves the use of, and the possibility of owning, objects - and as human beings who may conflict with one another in their claims to possession, men can rationally assent to there being (procedures and) rules (enabling and) protecting the acquisition of property.<sup>81</sup>

Nonetheless, the justification of particular juridical rules is still incomplete. For rules which enable men to acquire property might yet be unjust owing to the procedures or qualifications for acquiring property. These rules would not satisfy the *material* justificatory condition, i.e. that all could rationally assent to them. For they would be rules in accordance with which some will be treated primarily as means to the satisfaction of others.

In justifying the grounds of moral obligation a particular conception of moral worth is justified. Two things are involved in this: first, 'the reality' of moral obligation, i.e. the possibility of *pure reason being practical* must be established, and it must be shown that determination of the will by pure reason involves having dispositions to seek the several ends which are duties. Second, it must be argued that having these dispositions - as a consequence of sufficient rational constraint - constitutes virtue or moral goodness.

Moral obligation, regarded formally as self-constraint by the recognition (belief) that some (kind of) action is one's duty, is 'justified' by showing that its possibility is presupposed by the validity of any moral rules categorically requiring or prohibiting particular actions. Thus,



Kant argues that if men are subject to moral requirements pure reason must be practical. The possession of pure practical reason, moreover, makes men the authors (as well as the subjects) of all value and of all moral requirements. Their capacity to be morally obliged - to "legislate through their maxims" - is, then, the source of their dignity. In discharging moral obligations, in manifesting this capacity to act from duty, they have moral worth.

If we then take into account (a) that men have a capacity for virtue, (b) that they have the capacity, generally, to propose and pursue various personal objectives, and (c) that they have the necessary and natural end of their own happiness, then *being sufficiently constrained by respect for the law* involves adopting maxims of (a) seeking their own moral perfection, (b) developing their natural talents, and (c) seeking the happiness of others. Thus the ground of moral obligation - constraint by pure practical reason to adopt maxims of seeking the ends which are duties - is the *ground* of an individual's having moral worth. It is the *noumenal* ground which, in conjunction with particular judgements of duty made by an agent, establishes particular moral obligations: the felt constraint to perform particular actions believed to be one's duty.

## VI

"...Kant achieved the same methodological transformation in the concept of the social contract as he had carried out in the interpretation of Rousseau's "state of nature", writes Ernst Cassirer, "He transformed both from an 'experience' into an 'idea'. He believed that he had thereby taken nothing from their value, but had in a strict sense grounded and secured this value."<sup>82</sup>

Patrick Riley neatly summarizes Kant's "quasi-contractarian politics" when he points out "that Kant's whole system... 'works' if his moral philosophy works, since politics only creates a context for morality or ensures that moral laws will be obeyed for nonmoral reasons."

"There is thus in Kant no problem of 'political obligation' through consent, contract, promise, and so on, as there is in Hobbes and Rousseau: *objective* moral law is ultimate, and politics not only creates a context for it, but even enforces

part of it, at least insofar as external conduct is concerned. One is thus obliquely obliged to the political order without explicit voluntary acts. This is true despite the fact that... Kant is the one member of the contractarian school who arrives at a conception of will adequate to account for the possibility of consent, promise, and obligation as intelligible ideas, and who *could have* developed a theory of political obligation based on consent and promise. Nonetheless, one has political obligations in Kant not in virtue of consent and promise, but in virtue of obeying dictates of duty commanded by the categorical imperative.... When Kant says that state laws must be conceived as the product of a (hypothetical) general will of the whole people as sovereign, this must be understood within a natural law context; indeed, he defines natural laws as 'those to which an obligation can be recognized *a priori* by reason without external legislation', whereas 'positive' laws are those which 'would neither obligate nor be laws without actual external legislation'. Now the public legal order will certainly make and enforce positive laws; it will also enforce (though it will not make) some natural laws, though it cannot require that men abstain from violating politically enforced natural laws for moral reasons (i.e., because of duty itself). But if consent, or rather the Idea of it, is also to be important in Kant, one would have to say that for him those laws are legitimate which could have been consented to by a mature rational people *and* which are congruent with natural law."<sup>83</sup>

For Kant, then, the Idea of the social contract does not address the question "why is one under an obligation to obey the law?"; rather, it is a heuristic device that helps us to ascertain whether or not a civil law is just. "It is in fact merely an *idea* of reason, which nonetheless has undoubted practical reality; for it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of a whole nation, and to regard each subject, in so far as he can claim citizenship, as if he had consented within the general will. This is the test of the rightfulness of every public law."<sup>84</sup> As an idea of reason, then, the social contract is a *model* of rational choice, codifying as it were the conditions of civility and order. Kant's conception therefore is not so much contractarian - since the contract metaphor is a mere gloss to his moral theory - as it is a refinement of Rousseau's hypothetical contractarian method.

Kant's principal concern lay with the autonomy of rational beings. Yet, like Rousseau, Kant was confronted with the problem of reconciling autonomy and authority: of justifying the state in the face of man's 'right to freedom'. It is only because each person, as an end-in-himself

is the source - the noumenal ground - of universal principles of duty that each is bound by and in accordance with them. It is only because there are *other persons* who are also ends-in-themselves, and who we can affect by our actions in the world, that these principles place certain reciprocal restrictions on permissible action. The justifiability of state coercion must therefore be consistent with individual moral autonomy. And this consistency is achieved, according to Kant, following Rousseau, by grounding statist coercion in the 'general will' of each citizen. In the end, the state is a projection of the rational will as embodied in the categorical imperative. The fundamental problem of political philosophy was not Kant's concern for, properly, his employment of the contract metaphor was merely illustrative of his ethical doctrine. The metaphor, as it were, illuminated the "kingdom of ends" into which the *de jure* state had dissolved.

APPENDIX FOURNotes

1. Groundwork of the Metaphysic of Morals, trans. H. J. Paton, New York, 1964, p.92; hereafter cited as Groundwork.
2. "It is... the moral law, of which we become immediately conscious as soon as we construct maxims for the will, which first presents itself to us; ... reason exhibits it as a ground of determination which is completely independent of and not to be outweighed by any sensuous condition..."  
Critique of Practical Reason, trans. L. W. Beck, New York, 1956, p.29
3. Religion Within the Limits of Reason Alone, trans. T. H. Greene and H. H. Hudson, New York, 1960, p.19
4. Critique of Practical Reason, Op Cit, p.29
5. Groundwork, Op Cit, p.107
6. The Metaphysical Principles of Virtue, trans. J. Ellington, New York, 1964, p.21
7. Critique of Practical Reason, Op Cit, p.63
8. Ibid., p.32
9. Groundwork, Op Cit, p.80
10. Ibid., p.80
11. Ibid., p.81
12. Metaphysical Elements of Justice, trans. John Ladd, New York, 1964, p.13
13. Critique of Practical Reason, Op Cit, p.32
14. Ibid., p.32
15. Groundwork, Op Cit, p.65
16. Ibid., p.73
17. Note the 'contrast' with what Kant says in the Metaphysical Elements of Justice, p.13
18. Groundwork, Op Cit, pp 412-413
19. Critique of Practical Reason, Op Cit, p.75. Emphasis added

20. Groundwork, Op Cit, p.73
21. The notion of an 'object of will' must remain ambiguous at this point; see section III.
22. Groundwork, Op Cit, p.88n. This definition applies to both purely rational and human beings.
23. None of the maxims of a purely rational will are strictly *material* maxims. The term applies primarily to maxims of a human will: a material maxim is adopted and acted upon as a consequence of sensual incentives, or as Kant sometimes puts it, "from the motive of self-love". All first-order maxims specify a particular kind of action, a purpose in acting and a characterization of the circumstances in which the agent performs the action for this purpose. But if an agent has (and acts on) a maxim because he believes that accomplishing the purpose is instrumental to or constitutive of personal satisfaction, then the maxim is a material maxim.

If, on the other hand, the incentive is "reverence for the law", the maxim is a *formal* maxim which legislative reason requires that the agent adopt and act upon. Formal maxims can also contain a material element - some purpose in acting - but then the purpose is itself 'rationally valid', and it is the agent's purpose in acting *because* he recognizes its rational validity.

There are difficulties with this distinction, however. For example, (anticipating the discussion to follow) Kant often refers to the *second-order* categorical principle of the will as a 'formal maxim'. Some material maxims - which have been confirmed by reason - will contain "ends which are duties", i.e. ends which men are rationally necessitated to seek. Others, however, will be aimed at individual happiness, specifying actions which are in accord with the formal maxim. Personal happiness might be an agent's end, partly because he recognizes it to be one among several rationally valid ends. Nonetheless, the particular constitution of his happiness is determined by particular sensually-based incentives; he might act to promote his happiness - i.e. on maxims aimed at this end - only if the end and the action are confirmed by reason, but specific sensual incentives are also necessary. It is unclear, then, whether particular maxims of seeking one's happiness (when they are first confirmed by reason) are material or formal maxims.

24. Owing to the hierarchical ordering of the three second-order objective principles, all the first order maxims of a purely rational will are such that: (a) all actions are justified and (b) his choosing to act (on these maxims) is fully rational. For a purely rational being acts in accordance with an applicable problematic principle only if his end and the prescribed action are consistent with the second-order assertoric principle. The maxims constructed in accordance with the latter are subject to conditions placed on actions by the second-order categorical principle, the supreme principle of the will.
25. Kant's characterization of the second-order categorical principle as involving the 'universalisation' of all one's maxims might initially seem arbitrary. For although a categorical principle cannot pre-

scribe a particular material end on the grounds of individual (or even universal) "susceptibility to pleasure in (the idea of) the realization of the end", all that is contained in the concept of a categorical principle is that it provides an incentive for the will, independent of and 'outweighing' all incentives grounded in desire and inclination. Such a principle *might* prescribe a particular end, for example, human happiness generally, or 'the greatest happiness of the greatest number'. As the supreme principle of a purely rational will, all maxims would be constructed with this restrictive (and ampliative) principle in view, and a purely rational will would thus choose to act from a purely rational incentive.

The concept of a supreme categorical principle does not preclude its having this particular content, but neither does it entail it. Even if it could be established that pure reason *does* 'confirm' such an end as rationally necessary (Kant tries to establish this in his Doctrine of Virtue), construction of maxims and action in pursuit of this end manifest the ability to act from a purely rational incentive only if the incentive is recognition of the law (as requiring the pursuit of this end). The concept of a second-order categorical principle entails only the subordination of all contingent ends to law, i.e. to some law or system of laws to which a rational agent is subject in common with other rational beings. In saying that the supreme principle of a purely rational will is that all maxims can be willed to be universal law, Kant is saying that the construction of all maxims is conditioned by their compatibility with such a system of laws (and with a rational being's capacity to be categorically determined by the *idea of law*.)

26. There seems to be a lack of symmetry between first-order hypothetical and first-order categorical principles, in that the latter are of the form, "in C I will do A", rather than "in C I will do A, *in order to attain E*". This is due to Kant's derivation of the supreme principle from an analysis of the notion of 'being obliged to perform a specific action'. He does not, of course, leave the matter here. As we shall see in our discussion of his formulation(s) of the 'categorical imperative', and his Doctrine of Virtue, the provision of an end (or system of ends) by reason is necessary in order that the rational incentive be sufficient.
27. Groundwork, Op Cit, p.81. Kant is not entirely consistent in his use of the term 'law'. Sometimes, as in this passage, all objective practical principles are called 'laws'. Generally, however, he explicitly distinguishes *rules* of skill, *counsels* (or precepts) of prudence, and *laws* of morality.
28. Critique of Practical Reason, Op Cit, p.18
29. Groundwork, Op Cit, p.81
30. Ibid., p.84
31. Lectures on Ethics, trans. Louis Infield, New York, 1963, p.15
32. Groundwork, Op Cit, p.82

33. Any action on sensual incentives requires some conceptualization of the kind of action one would perform, and how this would satisfy the desire grounding the incentive. Thus reason has a role in the construction of *all* material maxims. Nonetheless, conflicting desires and impulses might influence the will to act inappropriately to the purpose.
34. In speaking of the *goodness* of a will we assume that the will accords with reason; in speaking of constraint we consider only the rational incentive which may not in fact sufficiently determine the structuring, ordering or adoption of maxims.
35. The Metaphysical Principles of Virtue, Op Cit, p.25
36. "Man feels in himself a powerful counterweight to all the commands of duty presented to him by reason and so worthy of esteem - the counterweight of his needs and inclinations, whose total satisfaction he grasps under the name of 'happiness'. But reason, without promising anything to inclination, enjoins its commands relentlessly, and therefore, so to speak, with disregard and neglect of these turbulent and seemingly equitable claims (which refuse to be suppressed by any command.)" Groundwork, Op Cit, p.73
37. Ibid., p.88; "Here bare conformity to universal law as such (without having as its base any law prescribing particular actions) is what serves the will as its principle...", Ibid, p.70
38. Ibid., p.69n
39. Ibid., p.96
40. Ibid., p.95. Emphasis added.
41. Ibid., p.96
42. Ibid.
43. Ibid.
44. Ibid., p.95
45. Ibid.
46. Ibid., p.105
47. Ibid., p.69
48. Ibid., p.68
49. Ibid., p.69
50. A *person* is subject to no natural laws in the sense that his actions are not 'pathologically' determined. He is subject to no rule which he has not 'made' in that he will not act in accordance with a rule (prescribing actions as means to some end) unless he has made the end his own.

51. Groundwork, Op Cit, p.69n
52. Ibid., p.96
53. Ibid., p.105
54. Ibid., p.106
55. Ibid., p.105
56. Ibid., p.106
57. Ibid., p.107
58. Ibid., p.101
59. Ibid., p.106
60. Ibid., p.101
61. The personal ends of individuals, conceived and pursued consistently with the moral law, have 'objective value' in the sense that the possibility of promoting or realizing these ends provides good reasons for acting - for both the individual and others. This is not to say that the individual or others *ought* (categorically) to do whatever they can to promote these ends. Promoting one's own ends is rationally permissible, promoting the ends of others, desirable (when personal sacrifice is required it is perhaps 'praiseworthy').
62. Metaphysical Elements of Justice, Op Cit, p.37
63. Lectures on Ethics, Op Cit, p.33
64. Metaphysical Elements of Justice, Op Cit, p.35
65. Ibid., p.36
66. Ibid., p.52
67. Ibid., p.53
68. Ibid., p.64
69. Valid procedural rules enabling persons to acquire rights and impose obligations (i.e. to create moral relationships) are obviously not the same as particular categorical imperatives requiring or prohibiting certain kinds of actions. c.f. *Part I* and H.L.A. Hart, The Concept of Law, Op Cit, chs. 3 & 5. Since our concern is the justification of ascriptions of obligations we will, for the sake of simplicity, regard the obligations arising from the *use* of the former as specified by categorical imperatives of hypothetical form. c.f. Lewis White Beck, "Apodictic Imperatives", in Kant: Foundations of the Metaphysic of Morals, Text and Critical Essays, ed. R. P. Wolff, New York, 1969, pp 134-162



70. It is not altogether clear what this condition comes to. Some insight might be gained by considering the rationale behind the supreme principle of justice: we must, in all our actions, never treat persons as mere means but always (at the same time) as ends-in-themselves. Action in accordance with rules establishing rights and imposing obligations (including the discharge of these obligations and the coercion justified by these rights) must not involve treating persons as mere means. A rule which was essentially or consistently prejudicial to the interests of those under an obligation - i.e. which imposed obligations on and thus limited the freedom of some group of persons, and by which some privileged group acquired rights (from which they may be supposed to benefit) - would be one in accordance with which the latter consistently treated the former (primarily) as means to their own ends. Such rules might be 'reciprocal' in a formal sense, in principle enabling anyone to acquire rights and impose obligations and binding all to whom they are applicable. Nonetheless, a rule might as a matter of fact regularly impose 'obligations' on some group and accord 'rights' to another owing to what might be called (not too happily) "morally irrelevant characteristics" (see *Part V, Rawls*). For example, there might be a rule for the acquisition of property which was prejudicial against those who lacked social 'position', aristocratic ancestry, or money. Although the 'rights' and 'obligations' established in accordance with the rule might be 'reciprocal' in a formal sense (i.e. the rich and positioned are required not to interfere with others' use of their meagre holdings), the rule, in effect, allows some to treat others primarily as means to their own ends.

Kant's own interpretation of the condition, at least with respect to the *justness* of positive laws, is looser (and even less illuminating): "if the law is such that a whole people could not *possibly* agree to it (for example, if it stated that a certain class of *subjects* must be privileged as a hereditary *ruling class*), it is unjust; but if it is at least *possible* that a people could agree to it, it is our duty to consider the law as just, even if the people is at present in such a position or attitude of mind that it would probably refuse its consent if it were consulted." Worse still: "... so long as it is not self-contradictory to say that an entire people could agree to such a law, however painful it might seem, then the law is in harmony with right." Kant's Political Writings, ed. Hans Reiss, Cambridge, 1977, pp 79, 80-81

71. Metaphysical Elements of Justice, Op Cit, p.54

72. Or, perhaps, I may demand that he be compelled by those who have authority to apply sanctions: "... no one can coerce anyone else other than through the public law and its executor...." Kant's Political Writings, Op Cit, p.75. It is not altogether clear, however, *what* I am authorized to do in virtue of my having a purely moral right, which is not grounded in positive law.

73. Metaphysical Elements of Justice, Op Cit, p.64

74. Ibid., p.65

75. Kant distinguishes 'Public Law' from 'Private Law'. Private Law concerns moral (and legal) relations among individuals; Public Law concerns the authoritative interpretation and enforcement of some aspects of private law and the maintenance of the *juridical condition* of civil society. A juridical condition (i.e. a civil society under public law) is necessary for the validity of all rules which specify obligations, or which empower individuals to assume rights and impose obligations. These rules include not only all forms of *positive* private law, but private law which is not *officially* sanctioned (i.e. purely moral rules), as well as that part of public law which imposes obligations on all members of society and which is necessary for maintaining the juridical condition (e.g. laws relating to taxation, military service, etc.).

A juridical condition of civil society is necessary in order to justify coercion in accordance with legislatively-determined rules. For these rules are the products of, and coercion is exercised by, a "collective, universal (common) and powerful Will." Moreover, *actual* general adherence to laws of reciprocal coercion assured by generally effective sanctions is necessary in order that individuals be bound by these laws. This is implied in Kant's characterization of the (only) innate right of all men, viz., "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... (which contains within it) innate equality, that is, independence from being bound by others to do more than one can also reciprocally bind them to do...." (Metaphysical Elements of Justice, Op Cit, pp 43-44)

In the absence of actual, assured general conformity to rules which are formally just, an individual who discharges his 'obligation' restricts his own freedom and benefits others who do not restrict their freedom in accordance with rules. Thus, a person who obeys a rule under such conditions is being used by others as a mere means to their own ends. He cannot be under an obligation to do this.

76. In this context, a *right* must not be regarded so much as an authorization to compel, but as the ground of this authorization: the dignity of persons and "the capacity to obligate others to a duty, that is, the concept of a right....". Metaphysical Elements of Justice, Op Cit, p.45
77. Ibid., p.36
78. Ibid., p.35
79. From this Kant derives his conceptions of virtue and moral obligation. Both the formal criteria of right action and moral worth are derived from the notion of duty, or of being subject to moral requirements. More accurately, the first derives from an analysis of these concepts in terms of the universality and necessity of moral requirements and their 'overriding' all considerations of self-interest. The second issues from a *deduction* of the metaphysical presuppositions of the validity of concepts. It might seem, then, that, as with Rousseau, in justifying Kant's conception of right or obligatory action we must also justify the conception of personality which it presupposes. It is not altogether clear, however, that the two are as inseparably

connected as Kant believes. We can, in any case, distinguish the formal principle of right - derived from the concept of *obligatory action* and serving as the ultimate justificatory principle of his theory of juridical obligation - from his conception of virtue and moral obligation.

80. Metaphysical Elements of Justice, Op Cit, p.52
81. Not all juridical rules are concerned with the acquisition and protection of property. Some will be aimed at maintaining the civil state, the juridical condition which is necessary for any institution of property, e.g. defense, taxation and so forth.
82. Ernst Cassirer, Rousseau, Kant, Goethe: Two Essays, Princeton, 1970, p.35
83. Patrick Riley, "On Kant as the Most Adequate of the Social Contract Theorists", Political Theory, Vol.1, no.4, November, 1973, pp 454-455
84. "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice'", in Kant's Political Writings, Op Cit, p.79

## APPENDIX FIVE

The first two questions of the test for legitimacy evoke the *contractarian method*, and lead us to consider whether or not we are members of an effective moral order. However, these two material considerations are transparently hollow if explored independently of the third, since the proper application of the method, as we shall see in section III of the text, requires an analysis of citizenship or *participation* within a political order: for, although founded in law, the capacity of the individual to participate in public affairs is made effective (or rendered ineffectual) by the physical *and* psychological resources at his disposal. The problem confronting Rousseau becomes further complicated if we add to it the problem of autonomy. Authentic participation in a moral order must be autonomous (self-actuated and controlled) according to Rousseau, otherwise it is impossible to fully reconcile liberty and authority. Autonomy, however, as we understand the term, necessarily implies freedom of conscience in paedetic and economic matters i.e. an order of autonomous persons is characterized by a free market of goods and ideas. Rousseau certainly had nothing like this in mind - the autonomy he outlines does not focus on private wills, but, rather, on the general will resident in each citizen. Yet, if it is true to say that Rousseau concerned himself with the *moi commun* - that aspect of the self which not only gains sustenance from but completely identifies with its social milieu - it is equally true to say that he did so because of its conspicuous absence in his milieu. One cannot talk to slaves as if they were free men, Rousseau seems to be saying, therefore, if one wishes to enlighten the slave about freedom one must appeal to the seeds of liberty within the slave's self-awareness.

The seeds of liberty within the mind of modern man, contends Rousseau, are those general notions of civic virtue which we all recognize and applaud in others but subject to egocentrism, the *moi humain*, in ourselves. Although they are not completely congruent with autonomy - that is to say, autonomy consists in more than these alone - the civic virtues are all we can palpably analyse and promote as the groundwork for some future autonomy. Consequently, we detect in all Rousseau's political works the over-protective zealotry of a guardian of innocent souls, forever mindful of corrupting forces and sermonizing on the dangers of self-indulgence. We

are, in short, most delicate creatures. "As for men like me", laments Rousseau,

"whose passions have destroyed their original simplicity, who can no longer subsist on plants or acorns, or live without laws and magistrates, ...those who discover, in the design of giving human actions at the start a morality which they must otherwise have been so long in acquiring, the reason for a precept in itself indifferent and inexplicable on every other system; those, in short, who are persuaded that the Divine Being has called all mankind to be partakers in the happiness and perfection of celestial intelligences, all these will endeavour to merit the eternal prize they are to expect from the practice of those virtues, which they make themselves follow in learning to know them. They will respect the sacred bonds of their respective communities; they will love their fellow-citizens, and serve them with all their might: they will scrupulously obey the laws, and all those who make or administer them; they will particularly honour those wise and good princes, who find means of preventing, curing, or even palliating all these evils and abuses, by which we are constantly threatened; they will animate the zeal of their deserving rulers, by showing them... the importance of their office and the severity of their duty. But they will not therefore have less contempt for a constitution that cannot support itself without the aid of so many splendid characters, much oftener wished for than found; and from which, notwithstanding all their pains and solicitude, there always arise more real calamities than even apparent advantages."<sup>1</sup>

The above quotation presents us with the three central aspects of Rousseau's political philosophy addressed to the possibilities of human development. First, the starting point: man as he is; second, the goal: man as he ought to be; third, the hiatus dividing what is and what ought to be: the transitional phase during which the contractarian method will be rigorously applied, by ukass if necessary, in order to better promote its future voluntary application. Naturally, it is assumed that the movement towards a moral order will entail the planned restructuring of extant institutions so that, with the passage of time, people will develop the capacity to be autonomous. Assuming the transitional order is itself moral in outlook, despite its necessarily authoritarian practices, the realization of an autonomous citizenry will make all laws redundant. This is not to say that there will be no laws, but that all the institutions of government will reflect the virtues of the citizenry. The reign of the general will in spirit, as well as in practice, will ensure the sovereignty of good; the law will flow from each as from all.

It is possible that Rousseau did not actually believe that the achievement of a moral order is possible. However, he certainly did believe that we should act as though it is possible, in much the same way that an honest man pursues the ideal of an utterly veracious society in full cognizance of its unattainability. The honest man furthers his ideal by telling the truth, because, firstly, it is the right thing to do and, secondly, in so doing he brings reality that much closer to the (moral) ideal. In other words, in an important sense the pursuit becomes its own objective, providing that the end thoroughly suffuses the means. The end is realizable in part for each person insofar as his life is faithful to its tenets. If compromises need be made in order to materially advance the end in some way, they must be considered with the utmost gravity. That is to say, should any compromise be made it must be seen to genuinely promote the ideal. The risks, of course, are considerable. In many ways the analogy illuminates Rousseau's equivocations over the attainability of a truly just society. If the city on the hill is more than a dream Rousseau can confidently advocate a draconian transitional period. But, if it is forever to remain a dream the transitional period itself becomes an incubus. The less palpable the vision the less distasteful ought to be the compromises made on its behalf. If, then, full autonomy is a heady fantasy never to be experienced outside elegant salons, it seems to follow that one should be especially wary about any sacrifices undertaken towards its realization. Moreover, it follows that one should go about one's business as the honest man does, by being as free, rational and reasonable as one can be in the given circumstances, seeking to alter one's environment only in a positive way by incrementally enhancing the autonomy of each citizen as a member of an increasingly, though not entirely, moral order. "Do you want me to tell you a pretty paradox?" asks a sympathetic but cynical Diderot,

"I am convinced that there can be no real happiness for mankind except in a social state in which there would be no king, nor magistrate, nor priest, nor laws, nor thine, nor mine, nor personal property, nor real property, nor vices, nor virtues. And that social state is devilishly ideal."<sup>2</sup>

It would all be so much easier if each nation could start anew. But political beginnings entail political endings, and it is on this question of revolution that Rousseau is most ambivalent. Can one be certain that

revolution means change, or is it merely a degenerate society's coming full circle, surrendering what little it has in the hope of gaining everything? Rousseau did not know; and in his bewilderment he grew ambivalent about all philosophical certitude. The ultimate disappointment of the *Considerations on the Government of Poland* is not its seemingly conservative qualification of all that is said in the *Social Contract*, but its utter resignation to the brute facts of political reality. Whereas in *Emile* and the *Social Contract* we are presented with an inspired, if problematical, vision of man's perfectibility, in *Poland* and *The Confessions* we receive an insular perspective, guarded and frustrated, painfully aware that perfection is utopian and utopia perfect precisely because they are nowhere to be found. So men must cling to the Spartan ways of their cantons and shun all but the most utilitarian trappings of urban culture, argues Rousseau, lest they lose what little harmony and happiness is available to them. In retrospect, the *Social Contract*, like *Emile* and the *Second Discourse*, reduces to a seminal mythopoeic, perhaps the most challenging, if not the most original epic in the literary tradition of social engineering: fertile and imaginative, but creative only when regarded as a heuristic device, chilling when considered a manifesto.

The paradox ushered in by the tests of legitimacy thus threatens to become a vicious circle. If engaged in wholeheartedly, the practical pursuit of a tangible moral order leads, if not to a cancellation of the first two tests at least to a drastic revision in favour of the third, i.e. radical egalitarianism. If abandoned entirely, we are left with a chimerical notion of justice devoid of substance. The answer, however, does not lie in a reductive moderation that endeavours to manoeuvre both extremes towards the centre. Such a compromise is ultimately trivial and misleading. The point of the tests of legitimacy is to ascertain whether or not civil societies and their various institutions are genuinely committed to what has been broadly characterized as an 'equality of right', roughly, a convention of common political, juridical and institutional privileges and expectations. The questions asked may be interpreted as tests of adequacy, the critical assumption being that inalienable liberty generates a moral agency of equal worth in all persons deserving of common and unbiased regard. The crucial issue here is not so much the blending of various criteria employed to achieve a harmony of interests, but, rather, what constitutes moral agency in the first place. In other words, Rousseau asks us

to consider *what it is to be a moral agent in civil society*. Insofar as he regards the end of morality rather than morality *per se* as the principal issue in political philosophy, Rousseau qualifies, better, defines 'autonomy' in terms of certain central prescriptions which, in turn, arise from his generative axiom. Consequently, in order to discuss man *qua* citizen we must consider man *qua* moral agent. But, we are cautioned, in moving from one set of deliberations to the other we must not automatically assume that we are necessarily dealing with the same persons in different roles, or that the pursuit of one orientation does not influence the nature of the other.

Chronologically, man is 'political' before he is 'moral', contends Rousseau. That is to say, moral agency arises in a civil context. However, once developed, moral awareness influences and critically reflects upon political life. Yet, one's awareness is largely determined by one's lifestyle: the experiences and opportunities afforded by the civil order. Therefore, any friction between man *qua* citizen and man *qua* moral agent must reflect a contradiction within the civil order. The existential priority of the civil order over moral agency means that, providing the civil order consistently and coherently encourages the growth of reason in action (moral behaviour), it will serve as a creative crucible of human potentialities and nurture a complementary, 'rounded' moral agency. The opposite would arise, of course, should the civil order degenerate into a repressive despotism. No longer would society by its very nature promote reason in action; rather, it would foster a system of bondage that chains men to a stunted, internally-incoherent quasi-humanity. The upshot of this perspective is that a repressive order would necessarily fashion a shadowy moral agency incapable of reconciling liberty and authority. Either men would surrender their passion for liberty or repression would become the signal feature of society: power, more than authority, would determine the course of events.

But why, one may ask, would people become aware of their impoverished condition if this was all they knew? Rousseau here assumes, as does Kant, that there is a species-determined, psychological substratum on which all reason is founded: what we might call our essential humanity. This is particularly manifest in what is presumed to be an implicit sense of civic virtue underpinning both the general will and Kant's general principle of



perfecting humanity in others. There is, Kant and Rousseau clearly seem to be saying, a common reliance upon what might be termed *beneficent verstehen* as the root notion of 'humanity'. That is to say, above the common species characteristics that passively determine our 'humanity' there exists in each of us a benevolent empathetic understanding that, when allowed to express itself naturally, regards other persons as ends in themselves, such that one takes their ends as one's own. To be fully human, then, is to actively further the happiness of others, insofar as humanity as an end in itself involves the end all share in common, namely, happiness. The idea 'humanity' has an imperative embedded within it, Rousseau and Kant argue, that lends all actions a deeper purposiveness than immediate personal concerns. Rationality, as the self-consciously intentional aspect of thought and behaviour, demands we take into account the happiness of others when constructing, reforming or administering human associations. We necessarily consider others when formulating proposals for our well-being, so the argument goes, since our well-being is bound up with our humanity. "The maxim of common interest", writes Kant, " - of beneficence towards the needy - is a universal duty of men, and indeed for this reason: that men are to be considered fellow-men - that is, rational beings with needs, united by nature in one dwelling-place for the purpose of helping one another."<sup>3</sup>

Autonomy is thus bounded by the parameters of moral agency which are, in turn, determined by our essential humanity and civil condition. Autonomy, therefore, cannot properly be regarded as the mere absence of restraint in matters of volition; rather, it must be viewed as a certain freedom in the realm of normative discourse qualified in daily life by considerable civic responsibilities. In practical matters, man *qua* citizen overshadows man *qua* moral agent, not by comparison but through the former's absorption of the latter. The citizen is a moral agent, and vice versa; yet moral agency is enmeshed in a network of communal considerations so pervasive and utterly central to the proper conduct of human affairs that to talk of a moral agent stripped of civil obligations is to discuss an abstract notion divorced from practical reality. The meaning or end of moral agency in civil society, then, is citizenship: authentic participation in the affairs of the civil order. The truly autonomous person, by implication, is a citizen of a moral order or 'just society'. Moreover, it is clear that if autonomy is uniquely attainable in a moral order, as the only

possible matrix for a rounded moral agency, the pursuit of autonomy must initially reside in the enhancement of citizenship. The nexus here intimated between the ideal and the tangible provides a very important clue to the enigma of the *Social Contract* i.e. the attempt to realize autonomy through the imposition of rules of conduct upon persons otherwise predisposed towards conservative, self-interested insularity.

The metaphysical, or at least, metaethical category of moral order is premised upon the empirical condition of citizenship. In other words, the concrete realities of life in the State, their texture, modes of expression, rootedness and complexity, ultimately determine the nature and potential of the ideal. Such considerations go beyond even the vital questions of paedetic and economic circumstances, embracing matters of communal involvement in institutional decisional procedures, dominant public virtues and, most importantly, the encoded rules of conduct by which the State is governed and administered. Through manipulating the public manifestations of civil life, it is held, the ideal is made at least theoretically possible. The formulae on which such manipulations ought to be based, according to Rousseau's reckoning, bear a remarkable similarity to the utilitarian calculi of Bentham, if not Mill, and render Rousseau perhaps the most engaging and stimulating (quasi-)utilitarian in French political philosophy.

On the surface nothing could seem further from the truth. Rousseau nowhere formulates hedonistic or felicitous calculi and bitterly denounces 'vacuous' pleasures bought at the cost of liberty and virtue. Yet, it may be seen that Rousseau fashioned, at the very least, a quasi-utilitarian doctrine founded not on hedonistic criteria but, rather, oriented towards civic virtues and citizenship. In other words, Rousseau presents us with an outline of what might be termed a 'civic utilitarianism' according to which 'the greatest good for the greatest number' is identified with 'the greatest citizenship for the greatest number of citizens'. The distribution of utilities, then, by this scheme, does not primarily focus upon the dispersion of the good things of life in order to maximize the 'happiness' of the citizenry. On the contrary, the entire emphasis falls upon the dispersion of civic responsibilities and privileges in order to ensure the maximum feasible participation of each citizen in the life of the polity. True happiness, it is argued, flows from the realization of authentic

citizenship: the thrust of political endeavour ought not to fall upon the simplistic distribution of resources in order to grant immediate pleasure and contentment, but, rather, must fashion civil life so that each person in participating in that life may achieve his own happiness.

Happiness, for civil man, is the fruit of moral agency, argues Rousseau. It can be neither legislated nor solicited, but must spring from the heart and reason of free men. All that governments can do, or ought to do, according to Rousseau, is mould civil life in accordance with the principles of citizenship. Yet, because it is the case that moral notions arise only in a civil context - that man *qua* citizen precedes or is at least contemporaneous with man *qua* moral agent - the civil order is itself the font of justice. Justice, by this view, is a consequence of civil society and its sanctioned rules of conduct: law. Therefore, since civil society is necessarily prior to morality, natural law cannot possibly serve as the foundation of society. Society 'denatured' man, as it were, transforming an otherwise blithe, dull and unfettered spirit into a troubled, self-aware and, most importantly, self-monitoring calculator of interests, personal and communal. Man evolved into a reflective being who retrospectively composed a rationale for his transformation. Insofar as 'natural right' may be said to predate society, argues Rousseau in *Emile*, it is a label we apply to what men did, must have done by our reckoning, as a biological and environmentally-determined response to the world: not, as the natural lawyers would have it, by rational, conscienceful reflection. The 'right' to life, for example, derives from the universal desire for survival, not from an appreciation of 'God's will' or deep understanding of ethics. Likewise, the notion of 'property' emerged not from some conception of God's gift to man to, as Locke puts it, "make use of it to the best advantages of life", but, rather from man's response to the relative scarcity of land, or some such similar circumstance, by which individuals enclosed and defended territory considered necessary for their survival. As human associations formed and grew around this novelty - sovereignty over something founded in force - the innovation became a commonplace and then, over time, accepted practice or tradition. The stabilization of the 'tradition' - its sanctification, as it were - promoted the creation of "law", the pantheon of 'rights' as determined by convention and coercion. "The love of men derived from the love of oneself", writes Rousseau "is the principle of all human justice."<sup>4</sup> Society, as the most inclusive set of

of conventions arising from self-preservation, is itself the pragmatic rationale for justice. That is to say, the delicate balance required to maintain civil associations demands not only the calculation of private interests conducive to immediate survival but equally necessitates the formulation of general principles in terms of which the security and advancement of all will enhance the well-being of each.

Though human sentiments remain much the same throughout the course of evolution, man's nature becomes more complex and invests the "true affections of the soul" with reason. Mankind's "primitive affections" thereby experience an "ordered development" which does not so much transform them into something other than they were originally as it refines and nurtures latent capacities. Natural rights, by this reading of Rousseau, are not lost, or at least cannot be lost, so long as man remains essentially human; for such rights are themselves derivative generalizations of what is regarded as the core of human nature. However, as human nature changes so does its attendant set of 'rights', or natural capacities and motivations. What was once purely instinctual gradually adapts to a world no longer amenable to spontaneous and uninhibited behaviour: reasoned natural right supercedes primitive natural right as social man irreversibly evolves out of primitive man.

In a perfectly Aristotelian fashion, Rousseau conceives of 'natural right' as an expression of 'purposiveness' *in* being, not as it might readily be misunderstood, as the purpose *of* being. That is to say, it is meaningless or at best misleading to talk of the 'purpose of Nature' and then define the elements of Nature as parties to a superior teleology embracing all physical being. Rather, the teleologically-identified whole in terms of which all being can be functionally described is 'Nature' 'itself'. The question to be asked, then, is not 'why Nature?', for Nature is the prime given needing of no further explanation than simple recognition and description, but 'how naturally?'. Consequently, talk of Nature as *doing* something is necessarily mistaken insofar as it proceeds from the assumption that 'Nature', as an entity in itself, 'does' anything. What can properly be said is that particular entities undergo or partake in certain processes, or 'do' things, in accordance with their 'natures'. The idea of 'Nature' is thus both a systemic and composite notion: it is composite in that it represents the most inclusive universal set of individual actuali-

ties, potentialities, powers and circumstances; and it is systemic in that it is the most inclusive universal set of conditions in which actualities pertain and possibilities may be realized. Nature as a discrete entity does not exist, according to this view, therefore there cannot be a single, universal *telos* informing all existence, but, at a lower level, many *tele* derived from the essential nature of each individual. "He who considers things in their first growth and origin", wrote Aristotle, "whether a state or anything else, will obtain the clearest view of them."<sup>5</sup>

Beginnings are replete with possibilities which unfold in contexts that inhibit and/or promote the growth of 'genetic' material. The history of such growth is the story of emerging 'needs' as determined by the urge to survive inherent in all living things. That which is natural to man, then, as an organism surviving and growing in certain contexts, is what best caters for his needs, in context. For Rousseau, 'natural right' is in this sense an *a posteriori* entitlement stemming from species-determined and contextually-derived needs. It is an organic conception not only because it relates to the survival of the organism but, most importantly, because it places humanity in its 'natural' conceptual environments: as an element of a broader system of being, on the one hand, and as a gregarious, tool- and language-using species on the other. If the 'purpose' of man is to do what men do well - be human in the full sense of the word - then 'natural right', according to this interpretation of Rousseau, is a formalization of the fundamental requirements for being truly human. The *Second Discourse* is therefore not so much an attempt to find 'natural man' as it is a statement of what Rousseau considers to be 'natural' to man. *Emile*, as in many respects a highly imaginative and sophisticated supplement to the *Second Discourse*, focuses upon the individual as a species-bound creature and endeavours to outline the possibilities of personal 'self-realization' within a necessarily limited anthropological framework, i.e. men coming to understand and act upon what is natural to them - their essential humanity. Consequently, *Emile* is presented as a paedeutical work: its entire thrust is in the direction of individuals developing and acquiring faculties and formulating judgements most suited to man's environmental/psychological/biological dispositions and conditions. "This education comes to us from nature, men or things", states Rousseau,

"The internal development of our faculties and organs is the education of nature; the use that we are taught to make of this development is the education of men; and the acquisition of our own experience on the objects affecting us is the education of things."<sup>6</sup>

Man is thus not given perfection, but acquires it or at least pursues perfectibility in actualizing his potential. As a moral agent, then, man does no more than self-consciously act 'humanly'; and a moral order is no more than a social environment conducive to such activity. Physical nature is, at the most basic level, the crucible within which human nature is conceived and unfolds: only when the two are in harmony may the latter achieve fulfilment.

"It seems that things should be considered relatively in the physical order and absolutely in the moral order", Rousseau confided to Voltaire, "the greatest idea I can make of Providence is that each material being is disposed in the best way possible in relation to the whole, and that each intelligent and sensate being (is disposed) in the best way possible in relation to himself; so that, for anyone who feels his existence, it is better to exist than not to exist...."<sup>7</sup>

Returning to Rousseau's 'civic utilitarianism', it may now be seen that the existential and aetiological priority of civil society over morality and justice equally applies to 'natural law'; that is to say, 'natural law' is on the whole a conceptual distillation of the critical elements of human nature and human needs. The centrality of individual self-preservation remains inviolate, yet in the course of human evolution it undergoes a number of transformations the most significant of which is manifest as 'self-interest'. The difference between mere self-preservation and self-interest lies in the latter's inclusion of 'social' as well as purely immediate considerations in calculations of personal well-being. Of course, this is not to say that self-interest precludes selfishness or blatant abuse of the well-being of others; all that is meant, and this in itself is central, is that where self-preservation intimates a furtive, insular 'adrenal' response to threatening persons or things, self-interest necessarily takes into account the activities and circumstances of others not only as they directly impinge upon one's survival but also as they affect one's general, and, on occasion, particular well-being. Self-interest, then, is a function of personal calculi of social relations, as

a sophisticated desire for self-preservation. The body of conventions constantly flowing from and fueling these calculi inform the moral practices in which the citizenry participate, from which arise, in turn, different conceptions of human good and harm.

However, this is not to characterize Rousseau as a thoroughgoing ethical relativist. Certainly, he is Protagorean: man, for Rousseau, is the measure not because each individual's beliefs and opinions in some way accurately reflect truth and goodness; rather, the argument goes, conceptions of truth and goodness arise from *conventions* generated by the interaction of personal opinions and beliefs. Yet, qualifying all this is the vital factor of 'human nature': what man is as an organism, as a species being, as a social being. 'Natural law', though a reflection of aspects of 'human nature' is presented as a body of imperatives precisely because the urge to survive is the most universal imperative known to man. It is the bedrock upon which all associative enterprises rest. Society, as both a convention and an efficient apparatus by which to formulate, implement and enforce conventions is therefore limited, in a very important sense, by human nature. Moreover, since human nature is characterized by Rousseau in terms of 'beneficent *verstehen*' as well as self-preservation, the logic of human conventions will ensure that personal interests are always firmly grounded in their communal matrix. If pure self-interest will not suffice to engender social harmony, then self-interest coupled with 'beneficent *verstehen*' will. "(It) is no more permissible to infringe natural laws by the social contract", writes Rousseau, "than it is permissible to infringe positive laws by the contracts of individuals."<sup>8</sup> The social contract, then, considered as either a historical construct, or a statement of current obligations, or a prospective technique by which to determine obligations, must, according to Rousseau, cater for the central needs of each citizen in a manner agreeable to all citizens.

"Private ethics teaches how each man may dispose himself to pursue the course most conducive to his own happiness, by means of such motives as offer of themselves," wrote Bentham, "the art of legislation... teaches how a multitude of men, composing a community, may be disposed to pursue that course which upon the whole is the most conducive to the happiness of the whole community, by means of motives to be applied by the legislator."<sup>9</sup>

That is to say, where the individual seeks to enhance his interests through application of the principle of utility to his activities and relationships, the legislator seeks to enhance the interests of all the members of the polity through a more general application of the same principle. The twist with Rousseau lies in his conception of sovereignty as more than 'legitimate' oligarchy (whether elected or not): the sovereign, for Rousseau, is the will of all which is the order, the supreme rule in society. Consequently, sovereignty by this view at once entails citizenship (not mere membership) and the most important mutual interests of the citizenry. In being a citizen, then, one naturally adopts the stance of the legislator and, in matters of public concern, deliberates in accordance with the interests of all. Rousseau's moral order is thus similar to Bentham's utilitarian order in that the interests of the citizenry are paramount. However, one must avoid the trap of conflating similarities and deriving an equivalence for clearly the dissimilarities and divergences, if not outright contradictions, force us to distinguish between the two approaches to the nature and purpose of civil society.



APPENDIX FIVENotes

1. A Discourse on the Origin of Inequality: Appendix, in The Social Contract and Discourses, trans. and ed., G.D.H. Cole, London, 1973, pp 112-113
2. "Le Temple du bonheur", in Oeuvres Completes, ed. Assezat-Tourneux, Paris, 1875-77, Vol. VI, p.439; this quotation was translated by A. Baskind
3. The Metaphysics of Morals, quoted by H.J.Paton, The Categorical Imperative, London, 1947, p.152
4. Emile, ed. F. and P. Richard, Paris, 1961, Book IV, p.329. In the Geneva Manuscript of the Social Contract (in The Social Contract and Discourses, Cole ed., Op. Cit., pp 397-398) Rousseau writes: "It is in this way that the first clear notions of just and unjust are formed within us. For the Law is anterior to justice and not the other way round. And if the Law cannot be unjust, it is not because justice is its basis (which is not necessarily always the case) but because it is against nature for one to wish to harm oneself. To this there are no exceptions"
5. Politics, Op. Cit., 1252a 24
6. Emile, Op. Cit., Book I, p.7
7. "Letter to Voltaire, 18 August 1756", in Correspondance Generale de J-J Rousseau, ed. T. Dufour and P.P. Plan, Paris, 1924-34, II, p.306
8. "Lettres de la montagne", quoted by R. Grimsley, ed., Du Contrat Social, Oxford, 1972, p.67
9. A Fragment on Government and An Introduction to the Principles of Morals and Legislation, ed. W. Harrison, Oxford, 1948, p.423

## APPENDIX SIX

### I

Rawls identifies two distinct sources of civil obligation, one specifying the origin of obligations themselves and the other detailing the basis of our "natural duties". The difference between these two binding forces is crucial to the theory of justice as fairness. Civil obligations, Rawls explains, are derived from voluntary acts and associations:

"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 here is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and this restricts their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefitted from their submission.<sup>1</sup>

To this rather extensive definition of the foundation of civil obligation, Rawls adds the following clarifications: (1) obligation is a voluntary affair; (2) consent may be either expressed (as in a contract) or tacit (as in accepting benefits); (3) usually an institution or practice define the set of expectations entailed by an obligation; and (4) obligations are usually owed to individuals. There are several things that are striking about Rawls' position. First, its grounds appear to be thoroughly utilitarian in nature. Having participated in the shared benefits of a cooperative enterprise, one is under an obligation to abide by the set of practices defining the behaviour necessary for the continuation of the scheme. Second, while the practices defining the relationship must be fair, the ultimate measure of that fact rests in equating the "goodness" or value of the project with the benefits themselves; in short, a sort of meta-utility seems to be established. It is not at all unusual to see the principle of utility at the foundation of a theory of obligation. In fact, Hume employs much the same argument to support the cooperative set of social and political institutions outlined in his works. It is, however, quite surprising to discover that Rawls' theory of obligation rests on a

principle (of utility) that he sought to replace with his theory of justice as fairness.

The problem with this utilitarian underpinning of justice as fairness is not only that it contradicts Rawls' intention to improve on the utilitarian formula for "justice"; the more serious problem rests in the implications of using the "benefits received" argument as the basis of fidelity to the law. So far as those individuals who benefit from the arrangements defined by justice as fairness equally receive those benefits, Rawls' theory of obligation remains relatively stable. However, the difference principle of the second principle of justice allows for "inequality so long as any inequality benefits the least advantaged member of the society".<sup>2</sup> Were Rawls to end his argument at this point he would have articulated nothing less than a theory of differential obligation, whereby those who benefit the most from the *status quo* would have the greatest obligation to maintain and uphold the arrangements from which they derived their benefits. Conversely, a minority, either a 'natural minority' or an 'oppressed minority' would not be under an obligation to accept arrangements that provided for minimal increases in their level of expectations or no substantial increase in their quality of life. A state founded on such a theory of obligation, however, would stand or fall on the very delicate balance between obedience and disobedience; and the sway of that balance would be dictated by the distribution of the social, economic and political rewards of the society. While the logical outcome of a theory of benefits received is a system of differential obligations, the other consequence of such a theory of obligation is an unstable, fragmented civil society. Thus, Rawls must introduce another category of forces, or "natural duties", from which to derive the obligation to obey the law.

As discussed in *Part One* and *Part Five*, most persons do not see themselves as bound to obey the law in anything other than a prudential sense. The Rawlsian individual, however, has a "natural duty" to support just or "nearly just" institutions. In fact, the list of "natural duties" is quite extensive: the duty to help another in need; the duty of civility (in the sense of social etiquette); the duty not to do harm to another; the duty not to inflict unnecessary suffering; the duty of mutual aid; the duty to support and comply with just institutions and laws; the duty to further just arrangements not yet established; and, finally, the duty not to invoke

the faults of social arrangements as too ready an excuse for not complying with them, nor to exploit inevitable loopholes in the rules to advance our interests.<sup>3</sup> This rather impressive list of natural duties, argues Rawls, offers the firm grounds for civil obligation sought by his theory. For while one is under an obligation to perform certain particular tasks, e.g., an official role or function, based on our voluntary acceptance of some position, one is generally bound, according to Rawls, to uphold political, social and legal arrangements as a consequence of our *natural* duty to obey just laws. Rawls sketches this two-edged sword of civil obligation in this way:

"It suffices to show that parties in this original position would agree to principles defining the natural duties which as formulated hold unconditionally. We should note that, since the principle of fairness may establish a bond to existing just arrangements, the obligation covered by it can support a tie already present that derives from the natural duty of justice. Thus a person may have both a natural duty and an obligation to comply with an institution to do his part. The thing to observe here is that there are several ways in which one may be bound to political institutions. *For the most part the natural duty of justice is the more fundamental, since it binds citizens generally and requires no voluntary acts in order to apply.*"<sup>4</sup>

Given the centrality of these duties to the citizen's obligation to obey the laws of the state, one might properly inquire as to the sense in which they are at all 'natural'. Rawls suggests the following replies. On the one hand, Rawls argues that what he identifies as *natural* duties are merely those duties "that would be acknowledged (by persons) in the original position".<sup>5</sup> In this sense, one's duties to others and institutions serving society are notionally founded in expressions of moral sentiment flowing from the original position. Since persons in the original position are interested in maximizing their rational life plans, the moral sentiments they affirm are presumed to be those which would be accepted as mutual restrictions on the pursuit of self-interest. Much like Hart's 'deduction' of natural rights from, among other things, the "mutuality of restriction", Rawlsian individuals are called upon to arrive at a list of rights and duties needed to ensure stable social relations.

If this is the correct explanation of the origin of 'natural' duties, it poses some serious problems for Rawls. For one thing, it appears to

place the function, or existence, of particular moral sentiments (e.g., the duty of mutual aid) at the (notional) discretion of the participants in the original position. Given that persons recognize their desire to pursue rational life plans, what is called a "moral" duty assumes a particularly instrumental inflexion: it is not the moral quality of a duty that makes it valuable, but, rather, its utility in advancing some interest. Given Rawls' contention that he has improved upon utilitarian or consequentialist moral theory this is a rather strange use of the term "natural". It is a concept more at home in the lexicon of the utilitarian who equates 'natural' with 'individual benefit' or 'advantage', and then derives moral sentiments calculated to pursue particular interests.

Additionally, assuming that acknowledgement of one or another set of duties is left open to the individuals in the original position, it is unclear as to why some questions of human sentiment are open to such scrutiny and others are not. If Rawls is serious about permitting those in the original position to determine which "natural" duties will shape their lives, then it is entirely unclear as to why the Rawlsian presumptions about economic, acquisitive, and prudential man are to be taken as given. In short, why is it that Rawls does not submit the entire question of the make-up of man's moral and social personality to the draftsmen of the original position? If individuals in the original position can acknowledge both positive (X should do Y) and negative (X should not do Y) "natural" duties, and Rawls says that they may<sup>6</sup>, why not ask them similarly to decide whether persons should be self-interested and/or acquisitive? These are not radically different questions to asking one to acknowledge the duty of mutual aid or the duty to be just. If one sort of alteration or adjustment can be made in the moral character of the Rawlsian individual by some kind of plebiscite in the original position, then other equally significant modifications in the human spirit ought to be considered as well.

Rawls might object that he did not have Hart's mutuality of restrictions in mind when he enumerated the 'natural' duties of individuals in the well-ordered society. Instead, Rawls could insist, these duties are 'natural' in the sense that they pertain to men *qua* men; that is, they are 'natural' in the genetic sense of the term. It may simply be that acknowledgement of these duties in the original position is a definitional clarification of what one means by the term 'person'. In an article entitled

"Justice as Reciprocity", published before *A Theory of Justice*, but nevertheless dealing with the same theme, Rawls seems to equate "natural duties" with "personhood":

"To recognize another as a person one must respond to him in certain ways; and these ways are intimately connected with the various prima facie duties. Acknowledging these duties in some degree, and so having the elements of morality, is not a matter of choice or of intuiting moral qualities or a matter of the expression of feeling or attitudes ....; it is simply the pursuance of one of the forms of conduct in which the recognition of others as persons is manifested."<sup>7</sup>

While this interpretation of the 'natural' origin of our duties is more in keeping with the ordinary use of the term 'natural', it is not without its problems or confusion.

Foremost of the problems associated with this construction of the "natural duty" to be just, for example, is that it appears to conflict with other descriptions of the Rawlsian individual. Rawls characterizes individuals in the original position as being overwhelmed, as it were, not by their natural duty to be just to one another, but rather, as Hobbes argued, by the potential threat each poses to the other.

"These individuals are roughly similar in physical and mental powers; or at any rate, their capacities are comparable in that no one among them can dominate the rest. They are vulnerable to attack, and all are subject to having their plans blocked by the united force of others."<sup>8</sup>

Couple this description with relative scarcity and the fear of other men that drives the Rawlsian individual to advocate the minimal risk strategy, and one has a somewhat different view of the Rawlsian creature. In any event, this does not sound like the same person who acknowledges the long list of natural duties to support and uphold justice and to aid others. One cannot be "naturally" selfish and "naturally" other-regarding at the same time. It is not at all clear then that individuals 'enter into' the well-ordered society for any reason other than the minimal protection of their lives and property, or to preserve the conditions necessary to the advancement of their interests. Cooperation and mutual aid are not the attributes Rawls chose to highlight in his deduction of justice as fairness

from the conditions of the original position. He writes:

"I shall emphasize this aspect of the circumstances of justice by assuming that the parties take no interest in one another's interests. I also suppose that men suffer various shortcomings of knowledge, thought and judgement. Their knowledge is necessarily incomplete, their powers of reasoning, memory, and attention are always limited, and their judgement is likely to be distorted by anxiety, bias, and preoccupation with their own affairs. *Some of these defects spring from moral faults, from selfishness, and negligence; but to a large degree, they are simply part of men's natural situation.*"<sup>9</sup>

It appears from Rawls' description that man's 'natural' situation is somewhat at odds with his 'natural' duties. What is more apparent is that while the economic view of man is necessary to the deduction of the principles of justice, the socially responsible view of man is equally necessary to Rawls' formulation of his theory of obligation. If one has a natural duty to be just, then the principles of justice and the economic argument that serves to mildly coerce general acceptance are unnecessary. If, on the other hand, men legitimately find themselves in need of the principles of justice due to the natural conditions of adversity facing them in the world, then the utility of the principles of justice - not our natural duty to be just - will undergird our civil obligation. To try to have it both ways is to invite contradiction and confusion as to the grounds of our obligation to obey the law.

One final point emerges with regard to the natural or genetic status of our duty to comply with or promote just arrangements. Since these duties would be acknowledged by all men in the original position, it may be presumed that they all have a clear notion of how these 'duties' operate in practical situations. Yet, while it seems perfectly reasonable to assume that this information is commonly held by those in the original position, it is extremely difficult to understand how it is that one could go about choosing between these conflicting duties or giving one priority over another of them. It is true that Rawls argues for a lexical priority of the two principles of justice, insisting that liberty, the first principle, takes absolute priority over considerations of welfare found in the second principle. While this ordering may have the intuitive appeal that Rawls suggests it has, resolving conflicts between other natural duties may not

be quite as simple - or universally accepted.<sup>10</sup> For example, when our duty to comply with a just arrangement and our duty to oppose an unjust law conflict, the classic case of civil disobedience, Rawls confesses that "(t)here are no obvious rules for settling these questions".<sup>11</sup> Rawls goes on to admit that "I do not know how this problem can be settled, or even whether a systematic solution formulating useful and practicable rules is possible."<sup>12</sup> Perhaps Rawls is merely begrudgingly accepting Joel Feinberg's charge that Rawls has lapsed into some sort of intuitionism in his theory of obligation. Feinberg puts it this way:

"To most persons who have struggled with moral dilemmas, I submit, the suggestion that Reason can provide a set of priority rules is astonishing."<sup>13</sup>

With an incomplete theory of 'natural' duties, Rawls attempts to demonstrate and justify the priority of our duty to comply with "nearly just" arrangements over our duty to oppose an unjust law. In trying to grapple with the question of civil disobedience, Rawls further underscores the unsatisfactory and problematical nature of his theory of natural duties. Not unlike his attempt to have moral development theories explain the choice of justice as fairness over time, Rawls' resort to our commonly-held natural duties to validate his theory of civil obligation falls short of its intended goal.

Rawls begins his efforts to resolve the problems of civil disobedience, or partial compliance theory, with the following definition:

"I shall begin by defining civil disobedience as a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about change in the law or policies of the government."<sup>14</sup>

On the basis of these few words Rawls constructs a rather narrow conception of civil disobedience; it is, however, a view that is consonant with the goal of stabilizing the well-ordered society. Although this form of civil disobedience is alleged to have been derived from the principles of justice, it can be seen that it is surely not the only view that is consistent with justice as fairness or the original position. In addition, Rawls' theory of natural duties and his description of the original position suggest that a rather different approach to these issues would be more accept-



able to the Rawlsian individual.

In arriving at this theory of civil disobedience Rawls sets forth certain pre-conditions which ostensibly led him to his position: first, that "it is taken for granted... that people in the original position know general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology."<sup>15</sup> Second, the political principle of "majority rule" is accepted and understood as a decision-making practice; it is accepted, Rawls argues, because there is no way of establishing which minority should rule over all others.<sup>16</sup> What Rawls is able to derive from this body of information is that minorities - and anyone in the original position might achieve minority status once the veil of ignorance is lifted - would insist on the means to communicate their dissent to the majority. In short, civil disobedience is necessary given the nature of the well-ordered or "nearly just" society.

Rawls' view is consistent with his belief in the rational nature of the choice of governing rules; the success of this conception of civil disobedience rests on the assumption that the mere presentation of dissenting views will yield public attention and policy reevaluation. However, it is quite plausible that on the basis of the information supplied to them in the original position, i.e. data about the nature of the society and its citizens, persons would seek to legitimate more pervasive means of civil disobedience than Rawls has found acceptable. Rawls' thesis, crudely restated, would counter that the duty to comply with "nearly just" institutions, and to uphold the principles of justice behind these practices, takes precedence over our duty to oppose an unjust law. It is this balancing of interests and duties in the name of social stability that is so suspect in Rawls' theory of obligation.

## II

Rawls recognizes that the "nearly just" society will suffer from many imperfections. While it is well-ordered in some senses, "serious violations do occur".<sup>17</sup> The admission of the inevitability of serious violation in the non-ideal society governed by justice as fairness suggests an ambi-

valence in the nature of Rawlsian man. Rawls argues that man can be characterized by his desire to advance just arrangements and just laws. It is, of course, no accident that the common "sense of justice" coincides with the "natural duties" to uphold just institutions. For the moment, we will assume that this coincidence has a genetic origin rather than a contingent relationship with the principles of justice. The ambivalence or even the contradiction that we wish to illuminate is that from these crystal clear senses of justice and the duty to perform justly one finds not a perfectly just society but one that is riddled by "serious injustices". Throughout his work Rawls has operated on the hypothesis that men who possess the requisite sense of justice - and this includes all Rawlsian citizens according to his moral development theory - will choose principles of justice that reflect that sentiment. So far there is no problem. But once having established institutions and procedures that conform to those principles, the well-ordered society should be a perfectly just one, not a "nearly just" one. The source of this breakdown in the justice chain is quite revealing.

Rawls provides two explanations of this phenomenon. On the one hand, institutions are imperfect because they are administered by men. This seems not to solve the problem but merely to restate it. If men, not only in the original position but out of it, can be expected to abide by their sense of justice and their duty to obey just laws, then how is it that they cannot be counted on to create, maintain, and administer institutions that follow these instincts? Contrary to what would be an easy way out of this problem, Rawls does not deny that institutions are bound by the same sorts of duties or principles that constrain individuals.<sup>18</sup> What Rawls therefore needs to explain, and it is not certain that his theory can help him here, is why it is that man and his institutions cannot be counted on to recognize and to act on those sentiments that play a dominant role in the validation and stabilization of the theory of justice itself.

Several of the possible explanations for this divergence between men and institutions are open to examination. One key to this apparent inconsistency is suggested in an article by Rawls on the question of "Legal Obligation and the Duty of Fair Play".<sup>19</sup> In this piece, Rawls argues that disagreements over the course of justice may result from an uneven distribution of information, knowledge, or abilities. In spite of a similar

sense of justice, Rawls explains,

"There will be disagreements because they (persons beyond the original position) will not approach issues with the same stock of information, they will regard different moral features of situations as carrying different weights, and so on."<sup>20</sup>

It is doubtful that the source of imperfect justice can be found in an uneven distribution of information or knowledge. As Rawls would hasten to tell us, the principles of justice - as is evident from the necessity of the veil of ignorance - do not require any specific knowledge at all. When one comes upon a question requiring a moral "balancing" Rawls admonishes us to lapse into "reflective equilibrium" - that is to suspend our particular knowledge and interest in the situation - and to consult our sense of justice.<sup>21</sup> The whole notion of reflective equilibrium is to make available, theoretically to all individuals, a sort of moral neutrality in the face of possible temptation.

The entire purpose of Rawls' elaboration of a moral development theory was to demonstrate the universal presence of our sense of justice. Under such conditions, however, a differential in the information that one possesses should not cause an inconsistent or unjust application of justice as fairness.

A more plausible explanation of the existence of unjust arrangements comes from a close examination of the Rawlsian individual. In spite of Rawls' insistence at some points in *A Theory of Justice* that men are dominated by their sense of justice and their natural duties to be just, the overwhelming premise of his principles of justice is that man is quite otherwise. That Rawls believes this to be the case is underscored by his description of the "Circumstances of Justice" in the following terms: "persons feel entitled to press their rights on each other"; that rational life plans are "aims of the self"; or that "his dominant interests are in himself, not merely, as they must always be, interests of a self".<sup>22</sup> Rawlsian men are portrayed at various times as being self-interested, acquisitive, negligent, and morally weak.<sup>23</sup> They cannot be at the same time 'naturally' just, possessing an overwhelming and common sense of justice, a duty of mutual aid, of civility and the like. In fact, were they

properly characterized as the latter, they would constitute the "society of saints" for whom Rawls acknowledges, no principles of justice are necessary.

The rather lengthy analysis offered above about the nature of the Rawlsian man is a necessary background against which to judge the theory of obligation that accompanies justice as fairness. The problem that justice as fairness sought to resolve, and that has crept up again unresolved in the discussion of civil disobedience, is the eternal dilemma of man's self interested nature. It is man's imperfection, or his imperfectability to call back to Augustine's insights, that makes Rawlsian society well-ordered but only "nearly just". Perhaps Hannah Arendt has captured what Rawls knows only too well but cannot readily admit for fear of sounding too much like Hobbes:

"Self-interest, when asked to yield to 'true' interest; that is, the interest of the world as distinguished from that of the self - will always reply, Near is my shirt, but nearer is my skin. That may not be particularly reasonable, but it is quite realistic; it is the not very noble but adequate response to the time discrepancy between men's private lives and the altogether different life expectancy of the public world."<sup>24</sup>

It is this "imperfection" that is exhibited in the "serious violations" of the principles of justice that disrupts the tranquil picture of the Rawlsian society. The best that Rawls can offer us, given his view of man, is justice in the form of fair decision-making practices for reconciling our competing interests. In a description of obligation reminiscent of a thoroughly utilitarian argument for justice as fairness, Rawls writes:

".... one can say that if the constitution is just, and if one has accepted the benefits of its working and intends to continue to do so, and if the rules enacted are within certain limits, then one has an obligation, based on the principle of fair play, to obey when it comes one's turn."<sup>25</sup>

Or, more specifically on the question of civil disobedience and the foundation of our natural duties to comply with an unjust law, Rawls writes in an earlier version of his "Civil Disobedience" chapter:

"Assuming that the constitution is just and that we have accepted and plan to continue to accept its benefits, we have both an obligation and a natural duty (and in any case the duty) to comply with what the majority enacts even though it may be unjust. In this way we become bound to follow unjust laws, not always, of course, but provided the injustice does not exceed certain limits. We recognize that we must run the risk of suffering from the defects of one another's sense of justice; and this burden we are prepared to carry as long as it is more or less evenly distributed or does not weigh too heavily."<sup>26</sup>

In spite of the fact that the majority may not choose the best policy, or may err on the side of injustice in its enforcement, the fairness of the practice of majority rule (and the benefits to be derived from that scheme of things) provides the foundation of our civil duties and obligation. As Brian Barry remarks, perhaps a little unfairly,

"What Rawls suggests, like many contract theorists and many who are not, is that morality is, at the minimum, a game of mutual informal coercion in which each person finds an advantage in helping to maintain the institutions even if it would sometimes pay him to be a 'free rider' and break the rules."<sup>27</sup>

What the foregoing discussion has been designed to demonstrate is that Rawls' theory of obligation is founded not on our natural duty to be just, but on our natural drive to pursue personal interests and to secure individual benefits. Contrary to the notion that "pure procedural justice" is the end of the Rawlsian search and thus the grounds of our duty to obey the law, it is the mutual benefit derived from social cooperation that gives force to his theory of obligation. Since our duty to uphold just institutions is, in part, based on the proper distribution of social rewards and responsibilities, that distributive pattern requires our careful scrutiny. Armed with the knowledge that each member of society is also out to further his own interests, Rawls' theory of civil disobedience - insofar as it is designed to ensure the ability of minorities to protect themselves - must be broad and pervasive, not narrow and restrictive.

## III

Unfortunately, Rawls has not seen fit to provide individuals in the "nearly just" society with such a conception of civil disobedience. Instead, Rawls not only limits the acceptable forms of dissidence but he confines the subject matter of dissent as well. Given the ability of citizens to make judgements about what is just or unjust, and consistent with their selection of *both* principles of justice in the original position, an appeal to the majority should be permitted in reference to either principle of justice. But such is not the case in Rawls' conception of civil disobedience. His theory of disobedience falls into a problematic separation of economic and political liberty. Although the first principle takes lexical priority over the second, this ordering in no way diminishes the necessary interdependence of the two principles in achieving a just or fair social system. Clearly, then, the sense of justice and the theory of moral development attach to both principles of justice, and not simply to the first one. With this in mind, it is difficult to understand Rawls' reasons for limiting the appeal of civil disobedience to the first principle. Rawls explains:

"The violation of the principle of equal liberty is, then, the more appropriate object of civil disobedience. This principle defines the common status of citizenship in a constitutional regime and lies at the basis of the political order. When it is fully honored the presumption is that other injustices, while persistent and significant, will not get out of hand."<sup>28</sup>

Perhaps Rawls' faith in the self-corrective nature of injustices flowing from the second principle is well-founded. It may be that remedying imperfections of the first principle will carry over to violations of the second principle, or the difference principle. Nowhere does Rawls show how contriving changes in equal opportunity, the major tenet of the first principle, will ensure just operation of the distributive dynamics of the difference principle. However, what is most surprising about this linkage is that it is only in his detailing of a theory of obligation that Rawls mentions this remarkable feature of the first principle of justice.

Further investigation reveals that the source of this anomaly is not something 'magical' in the second principle that justifies withdrawing it

from public scrutiny. Rather, this action is necessitated, according to Rawls, by a flaw in the conception of justice on which the principle of justice as fairness is premised. Rawls offers the following instructive example:

"Thus, unless tax laws, for example, are clearly designed to attack or to abridge a basic equal liberty, they should not normally be protested by civil disobedience. The appeal to the *public's conception of justice is not sufficiently clear.*"<sup>29</sup>

What is so troublesome about this rationale is that it conflicts with other things that Rawls has said about the role and function of our sense of justice. It is the clarity and compelling force of our sense of justice that Rawls describes in his discussion of moral development and the attraction of the principles of justice. In the original position one's ability to invoke the sense of justice and one's clear recognition of the dictates of our natural duties prove to be essential ingredients in the choice of justice as fairness over alternative conceptions of justice. Rawls' suspension of this critical faculty to evaluate important questions of economic or distributive justice appears to be calculated to ensure the stability of social arrangements rather than their justice. Unless men lose this evaluative ability in the transmigration from the original position to the well-ordered society there seems no justification for denying its active involvement in questions of civil disobedience.

Rawls attempts another explanation for the withdrawal of distributive issues from the realm of civil disobedience. He does not totally ignore the fact that if there can be serious violations of the first principle there can be corresponding, if not more serious, abridgements of the second principle. But the defense of this bifurcation of economic and political liberty derives from the uncertainty of what constitutes "justice" in the world of economic policy.<sup>30</sup> Rawls states his case in this manner:

"There is usually a wide range of conflicting yet rational opinion as to whether this (second) principle is satisfied. The reason for this is that it applies to economic and social institutions and policies. A choice among these depends upon the theoretical and speculative beliefs as well as other information, all of this seasoned with shrewd judgment and plain hunch."<sup>31</sup>

This justification, assuming it was allowed to filter through the veil of ignorance into the original position, makes one even more sceptical about the choice of this aspect of justice as fairness. If judgements about the economic justice of society are made on the basis of "shrewd judgement and plain hunch", then this is an even greater reason for those in the original position, for their own protection, to insist that these matters be subject to the appeal of civil disobedience.

The assumption that a faceless, dispassionate bureaucracy can properly administer the second principle is reminiscent of Weber's description of legal-rational authority. As Weber writes: "Bureaucratic administration means fundamentally the exercise of control on the basis of knowledge. This is the feature of it which makes it specifically rational."<sup>32</sup> The notion that policy administration by technocrats is pursued "without hatred or passions, and hence without affection or enthusiasm...." but nonetheless with "the highest degree of efficiency" and by "the most rational means known" seems to dominate Rawls' view of the operation of the second principle of justice.<sup>33</sup> Yet, while this may be an inescapable aspect of modern social organization, it is misplaced as the guiding principle of a theory of civil disobedience. For example, while the statistical analysis of unemployment is a technical matter, the actual level of unemployment is of no small concern to those whose interests, benefits, and obligations are directly affected by it. Furthermore, faith in the inexhaustible capacity of technical-bureaucratic knowledge to resolve problems flowing from the second principle seems totally unwarranted. It is not at all obvious that an evaluation or quantification of the distribution of primary social goods, one of the most important of which is self-respect,<sup>34</sup> is possible.<sup>35</sup> Finally, the denial of the right to dissent on matters other than the first principle assumes the perfect administration of (or universal concurrence in) other economic and social policies and institutions not covered by either principle of justice. The assumption that there will be no cause to disagree with or be morally (or politically) offended by budget priorities, environmental pollution, educational or judicial policies, etc. is unlikely to gain widespread acceptance in the original position or beyond it.

To preclude civil disobedience from focusing on the 'justice' of economic distributions or the nature of social policy, as Rawls suggests, is a decision totally at odds with almost everything else that is known about



the concerns of individuals in the original position. For instance, it must be commonly known in the original position that, as Rawls admits, it is close to impossible "to check the influence of self-interest and prejudice".<sup>36</sup> Indeed, in the original position Rawls urges the "minimal risk strategy" on the participants; that is, Rawls advises them to choose a set or principles of justice as if one's worst enemy were assigning one a place in society. It is "rational prudence" that governs the choice of justice as fairness; a selection for which the primary motivation is a desire to protect oneself from other men, while at the same time permitting one to advance one's own rational life-plans. Rawls reminds us of the need to remember this characterization of human nature in the area of civil disobedience when he cautions us against provoking "the harsh retaliation of the majority".<sup>37</sup> With this approach having dominated the choice of justice as fairness, why is it that the Rawlsian individual should be convinced in matters of civil disobedience to accept the "good faith" of the majority? If the minority (and anyone in the original position could be a member of a minority) cannot be assured that their protest on issues flowing from the first principle would be met with good faith, it seems untenable to ask them to accept on good faith, for purposes of the second principle, the majority's definition of what constitutes a "just" distribution. If Rawls wishes to rely on the dominance of self-interest and prudence in the choice of justice as fairness, then he cannot suddenly depend upon our 'natural' sentiments for justice when it comes to questions of civil disobedience.

#### IV

In the face of grave injustices, one's duty to obey the law and one's duty to promote justice conflict, and one may be required to break the law. This dilemma is implicit in Rawls' long list of 'natural' duties. But Rawls does not seem willing to deal with the full ramification of this inevitable conflict. For example, if one determines that a law is unjust and is compelled by one's moral convictions to break it, why should one be under an obligation, as Rawls insists,<sup>38</sup> to submit to arrest or to pay the penalty. While a willingness to be arrested or to pay the penalty may be required to convince others of the sincerity of one's belief, it would not seem to be required by the nature of justice as fairness or under the guise of preserving the "nearly just" society. If one acknowledges that the law

is unjust why is the penalty attached to violating that law suddenly *just*? Similarly, if one sincerely believes that a law violates the conception of justice on which the society is founded, then by violating the law - and exposing its injustice to the majority - one is contributing to the establishment of the 'just' order and not undermining it. The burden of justifying one's choice of tactics, whether violent or non-violent, whether one resists or submits to the penalty, is a matter that should be left to the dissenter to explain in reference to particular acts and cases. The questions involved in any one case, let alone all the possible cases that Rawls would like to cover with his rules, are too complex and too diverse to resolve in advance in a narrow and restrictive way. Rawls would have been well advised to follow his own instincts when he wrote: "I do not know if this problem (of conflicting duties) can be settled, or even whether a systematic solution formulating useful and practicable rules is possible."<sup>39</sup> In the final analysis an appeal to the various forms of civil disobedience may be the only resort - short of rebellion - available to the minority in the "nearly just" society; it would be foolish for them to agree to a restriction on all forms of violence or resistance under all circumstances and for all time.<sup>40</sup>

A final problem with Rawls' conception of civil disobedience is its inconsistent treatment of violence in the context of domestic affairs as opposed to international affairs. While Rawls steadfastly defends non-violence in civil society, he becomes the proponent of the "just war" theory in international affairs. Given an external threat to the stability of the well-ordered or "nearly just" society, Rawls stands in defense of the state's use of force on behalf of its principles or its security. On the presumption of the equality of nations, Rawls asserts the principle of self-determination of all nations, and the related obligation (or is it a duty?) to help other nations maintain this right. Most importantly, Rawls is prepared to judge international conflicts by the guidelines provided by justice as fairness. While it is not at all certain how the conflicting claims of participants in the international community could be resolved by the principles of justice, the notion that this is possible gives rise to two problems: (1) Rawls has earlier criticized utilitarians for taking the principles of utility from the realm of personal ethics and generalizing them to social principles. It seems rather obvious that Rawls is guilty of a similar jump from the well-ordered society into the international commu-

nity, and (2) if there is such a thing as a just war and a just peace then there must be some criterion by which to recognize when one would be justified in using violence or force as a legitimate tactic in civil disobedience. It cannot be very much more difficult to identify justifiable cases for violence in domestic affairs than it is to make the same determinations in international disputes.

Rawls indirectly tries to answer this last problem. True to the utilitarian spirit that in many ways characterizes his view of civil disobedience, Rawls reminds us that the goal of a just war must be to bring justice and liberty to the international community:

"Even in a just war certain forms of violence are strictly inadmissible.... The aim of war is a just peace, and therefore the means employed must not destroy the possibility of peace or encourage contempt for human life that puts the safety of ourselves and mankind in jeopardy."<sup>41</sup>

Now it is difficult enough, if not impossible, to know what justice as fairness prescribes in domestic affairs, but surely it is next to impossible to resolve international conflict in a 'just' or 'fair' way by reference to justice as fairness. What would "equal opportunity" mean in the context of international affairs? In a dispute between Vietnam and her neighbours, or between the Arabs and Israelis, or between the oil producing and the oil consuming nations, is there any hope that justice as fairness could end the conflict in a way that would be regarded as 'just' by all the parties? Some of the things that the original position can assume away, and that international affairs can *never* escape, is history, culture, and national pride. Given the radical inequalities of economic, social or political, or natural resources, nations are in some irreconcilable way doomed to be partisans of one or another party in an international conflict. Joseph Margolis, in his "On Defending Violence and Destruction", captures the sense of equality that is most significant to parties to international conflict:

"And this means once again that we are, in a most profound sense, moral partisans, pitted against or joined to one another solely in terms of our convictions - and that given the mounting evidence favoring our reliance on violence and destructive means, we had better understand the import of this radical equality of alternative ethical means."<sup>42</sup>

While there may be a way of discovering, in a nuclear age, a means of employing violence without "jeopardizing ourselves and mankind", it is unlikely that there will be any simple way of deciding when to deploy it. It is also highly unlikely that justice as fairness represents the solution to the use of violence in international affairs.

Whatever the contribution of justice as fairness to international conflict resolution, it is certain that trying to determine the effect of limited violence in international affairs can be no more difficult than making the same judgement in cases of civil disobedience. Yet, in spite of this fact, Rawls imposes a disproportionately heavy burden on those seeking justice at home as opposed to those wishing to wage a "just" war abroad. Traditional "just war" theorists listed a long series of conditions on the use of the tools of warfare and enumerated a long list of preconditions to involvement in a war. Rawls requires no such demanding evaluation of the motives or likely effects of such actions. When the government feels the need to declare that liberty or justice is being threatened somewhere in the world, conscription - the legalization and organization of force - is the just calling of the people. Rawls explains:

"Conscription is permissible only if it is demanded for the defense of liberty itself, including here not only the liberties of the society in question, but also those of persons in other societies as well."<sup>43</sup>

If liberty is so prized a possession - at home and in other countries - and the resort to warfare is justified to preserve liberty all over the world, then there is no reason that any lesser means should be accepted by those in the original position or by those wishing to ensure their own liberty in the "nearly just" society. No interpretation of our 'natural' duties, moral development, or sense of justice can alter this fact. Rawls cannot tolerate the use of violence in international relations and then deny it as a tool to those seeking liberty and justice at home.

One can sense in the inconsistent treatment of violence as a tool of domestic reform and as a means of achieving liberty and justice abroad a tension within Rawls' conception of man. On the one hand, the use of force in international affairs is justified because corporate entities - nation-states - cannot be expected to possess the same sense of justice as do

individual citizens. Thus, the necessity or likelihood of having to engage in a just war to secure liberty and justice. In short, citizens are defined by the presence of the sense of justice, and nations by its absence. But, clearly, this is the very same unwarranted dichotomy that Rawls has drawn in his argument for justice as fairness. Those in the original position are characterized in much the same way as the foreigner whose "sense of justice" cannot be trusted. Like those in the original position, citizens of other states are as likely to be brutal as kind, unjust as just, competitive as cooperative, and anti-social as social; in any case, one must always be prepared to defend oneself against their aggression.

The problem, then, of bringing justice and liberty to members of the international community is geographically, not conceptually, more difficult than bridging the gap between man in the original position and in the well-ordered society. If human nature, both in the original position and in the international community, is properly described by Rawls, then the chance of successfully transforming men into persons or nations possessed by a strong sense of justice is undoubtedly slim. The point, of course, is that just as Rawls could not employ moral development theory to bridge the gap between his two views of man, so, once having begun with radical individualism - either corporate or personal - Rawls must be content with the type of world that results.

APPENDIX SIXNotes

1. John Rawls, A Theory of Justice, Oxford, 1973, pp 111-112
2. Ibid., p.355
3. Ibid., pp 113-114 and p.171. There is no one place where Rawls lists all those "natural duties" to which he turns; they seem to be appended and modified as the argument requires.
4. Ibid., pp 115-116
5. Ibid., p.115
6. Ibid.
7. J. Rawls, "Justice as Reciprocity", in Mill: Utilitarianism, S. Gorovitz (ed), New York, 1971, p.259
8. A Theory of Justice, Op Cit, p.127
9. Ibid., pp 127-128
10. Joel Feinberg, "Duty and Obligation in the Non-Ideal World", The Journal of Philosophy, vol.LXX, May, 1973, pp 265-266
11. A Theory of Justice, Op Cit, p.339
12. Ibid., p.340
13. J. Feinberg, Op Cit, p.264
14. A Theory of Justice, Op Cit, p.364
15. Ibid., p.137
16. Ibid., pp 230-231. Rawls argues that majority rule is an essential part of the just arrangement of the "nearly just" society.
17. Ibid., p.364
18. Ibid., p.115
19. John Rawls, "Legal Obligation and the Duty of Fair Play", in Law and Philosophy, S. Hook (ed), New York, 1964
20. Ibid., pp 113-116
21. A Theory of Justice, Op Cit, pp 48-51
22. Ibid., p.129

23. Ibid., p.127
24. Hannah Arendt, On Violence, New York, 1969, pp 78-79
25. Rawls, "Legal Obligation and the Duty of Fair Play", Op Cit, p.114
26. J. Rawls, "The Justification of Civil Disobedience", in Revolution and the Rule of Law, E. Kent (ed), Englewood Cliffs, 1971, p.35  
  
Rawls seems to be echoing Locke's famous passage where he says that persons will endure a long train of abuses. However, he has neglected to mention Locke's acknowledgement that citizens have the right "to an Appeal to Heaven".
27. Brian Barry, The Liberal Theory of Justice, Oxford, 1973, p.14
28. A Theory of Justice, Op Cit, p.373
29. Ibid, p.372
30. Rawls, of course, is presented with the difficulty that the question of which distribution is 'just' among a range of distribution curves (all with a positive slope) is not clear.
31. Ibid., pp 372-373
32. Max Weber, The Theory of Social and Economic Organization, trans. T. Parsons and A.M. Henderson, New York, 1947, p.339
33. Ibid., p.337
34. c.f. A Theory of Justice, Op Cit, p.61
35. See Kenneth Arrow, "Some Ordinalist-Utilitarian Notes on Rawls' Theory of Justice", Journal of Philosophy, vol.LXX, May, 1973, pp 245-263. See also B. Barry, The Liberal Theory of Justice, Op Cit, pp 53-58
36. A Theory of Justice, Op Cit, p.372. It is interesting to note that Rawls proscribes envy, claiming that it is an unnecessary force in the well-ordered society. However, while he excludes envy as one of the acceptable passions, Rawls includes acquisitiveness, prudence, competitiveness and others that seem to serve the purposes of his argument.
37. Ibid., p.376. The notion that the majority is even capable of harsh retaliation of an admittedly unjustified sort is inconsistent with our natural duty to be just, civil and to provide mutual aid.
38. See Gordon Schochet, "The Morality of Resisting the Penalty", in Philosophy and Political Action, V. Held, K. Neilsen and C. Parsons (eds), New York, 1972, pp 175-196
39. A Theory of Justice, Op Cit, p.340

40. See Christian Bay, "Civil Disobedience: Prerequisite for Democracy in Mass Society", in Civil Disobedience and Violence, J.G. Murphy (ed), Belmont, California, 1971, pp 79-80; G. Schochet, "From Dissent to Disobedience: A Justification of Rational Protest", in Politics and Society, February, 1971; R.P Wolff, "On Violence", in Journal of Philosophy, vol.LVI, n.19, October, 1969, pp 601-616; Howard Zinn, "A Fallacy on Law and Order: That Civil Disobedience Must be Non-Violent", in Civil Disobedience and Violence, Op Cit, pp 103-111
41. A Theory of Justice, Op Cit, p.379
42. Joseph Margolis, Values and Conduct, Oxford, 1971, pp 201-202
43. A Theory of Justice, Op Cit, p.480. Rawls seems to hold, along with other liberal theorists, that liberty, justice and majoritarian democracy are universally applicable concepts.



## APPENDIX SEVEN

Hegel chid Rousseau for a tendency which seems opposite to the one we have just emphasized. In spite of Rousseau's admiration for Sparta and the notorious *on le forcera d'être libre*, Hegel regarded him as a protectionist, as another contractarian bent on defending the atomistic individual and his self-centred rights.<sup>1</sup> This half-truth reveals the unsurpassed intensity of Hegel's dedication to the 'metaphysical' theory of the state. Like Rousseau, of course, Hegel had one eye on the Hellenic polis (where "politicians incessantly talked about morals and virtue") and the other eye on the modern *bürgerliche Gesellschaft* (where politicians "talk only of business and money"). Much more systematically than Rousseau, Hegel aimed at a "reconciliation" (*Versöhnung*) between antiquity and modernity, between the *polités* and the *Bürger*.

Doubtlessly, what enticed Hegel about the idea of substituting social function for private right was the example of the Greeks. The same influence was evident in his conception of philosophy's task as that of "always treating the part in its relation to the whole".<sup>2</sup> It is quite important to keep this methodological commitment in mind, for it helps explain why Hegel felt compelled to 'sublate' the liberal principles of private right and societal differentiation into a pious and holistic *étatisme*.

The basic goal of the *Philosophy of Right* is to recreate the "ethical totality" of the Hellenic polis in the midst of *Gesellschaft*: in a non-contractarian way to transform the capitalist market into an agora. Indeed, Hegel does not want to 'impose' antiquity on modernity so much as to 'reconcile' the two. Or rather, he wants to show how the modern *Rechtsstaat* can be said to achieve this reconciliation. This *Versöhnung* of two social types, in the final analysis, rests on what might be called a 'synthesis' of Plato and Locke. The possibility of synthesis, of course, depends on the fact that each synthesized term is deficient in some vital respect. What the Greeks lacked, according to Hegel, was the modern principle of subjectivity, a sense of the positive element in human particularity:

"The general principle that underlies Plato's ideal state violates the right of personality by forbidding the holding of private property. The idea of a pious or friendly or even

compulsory brotherhood of men holding their goods in common and rejecting the principle of private property may readily present itself to the disposition which mistakes the true nature of the freedom of the mind and right and fails to apprehend it in its determinate moments."<sup>3</sup>

Such rebuffs of Hellenic holism sound reassuring to liberals, of course, as does the statement that "particular interests should not be put aside or completely suppressed" in the state.<sup>4</sup> Yet the alternative Hegel sees to suppression is *Aufhebung* (what was missing in Locke) and that pricks the bubble of liberal consolation. What mitigates Hegel's concern for differentiation, diversity and the satisfaction of individual needs in civil society is his capacity to view them all as "moments". Since individuality and the rights rooted in civil society are mere "abstractions", they need to be rewelded into the ethical totality which is the state. As a consequence, the categories employed by Locke to explain private right have been "transcended" once we get to the "level" of politics. Echoing Aristotle, Hegel banishes contractarianism to the lower domains of a sublated *oikos*:

"The intrusion of this contractual relation, and the relationships concerning private property generally, into the relation between the individual and the state has been productive of the greatest confusion in both constitutional law and public life. Just as at one time (in feudal Europe) private rights and duties were considered and maintained to be an unqualified private property of particular individuals, something contrasted with the right of the monarch and the state, so also in more recent times the rights of the monarch and the state have been regarded as the subject of a contract and as grounded in contract, as something embodying merely a common will and resulting from the arbitrariness of parties united into a state. However different these two points of view may be, they have this in common, that they have transferred the characteristics of private property into a sphere of a quite different and higher nature."<sup>5</sup>

This "higher sphere", of course, was the national state.

It is important to see exactly how Hegel views the classicizing (i.e. apophradic) subordination of civil society to the state. Some of the most interesting sections of the *Philosophy of Right* are dedicated to an explanation of how egalitarian principles are "embedded" in the institutional ethos and structure of civil society. In this *Notund Verstandesstaat*,<sup>6</sup> he says, all men are equal since they meet each other as "persons with needs", a category not open to much refinement or differentiation of status. It is

in this context that the most famous phrase of the *Philosophy of Right* appears: "A man counts as a man in virtue of his manhood alone, not because he is a Jew, Catholic, Protestant, German, Italian &c."<sup>7</sup>. Unfortunately, the liberal implications of this idea are cut short by the next sentence. There, Hegel goes on to say that liberal egalitarianism is "deficient" when converted into a "cosmopolitanism in opposition to the concrete life of the state". What Hegel scorns most is the old suggestion: *fiat iustitia, pereat Germania*. No "justice" could ever undo a state, at least not if it originated in the "lower realms" of individuality and civil society. This follows from the idea that the state is the 'whole' of which individuals and institutions are the constituent 'parts'.

The force of Hegel's subordination of individuality and civil society to the state is most explicit in his discussion of war. Consider briefly Hegel's response to Kant:

"The ethical health of peoples is preserved in their indifference to the stabilization of finite institutions; just as the blowing of the winds preserves the sea from the foulness which would be the product of prolonged, let alone 'perpetual' peace."<sup>8</sup>

War "sublates" the individual's (corrupt) consciousness of himself as a unit, as a self-seeking atom sharply distinguished from his fellow atoms. Hence, Hegel can describe "sacrifice" as "the substantial tie between the state and all its members", and (thus) as "a universal duty".<sup>9</sup> Lack of comprehension for patriotism and willingness to lose one's property and even one's life for the fatherland, so the argument goes, reveal the mean-spiritedness of contractarian-liberal theories of politics:

"an entirely distorted account of the demand for this sacrifice results from regarding the state as a mere civil society and from regarding its final end as only the security of individual life and property. This security cannot possibly be obtained by the sacrifice of what is to be secured - on the contrary."<sup>10</sup>

Again, the underlying point is pro-Aristotelian and anti-Hobbesian. Like C.B. Macpherson in this century, Hegel argued for communal "belonging" and against possessive individualism. The subordination of the private *oikos* to the ethical polity signals the overcoming of "biological unfreedom". In

dying for his fatherland, a patriot "spiritualizes" a natural necessity (death) by converting it into a freely chosen act of moral self-realization. Notice too how an individual's willingness to be sublated for the *patria's* greater good is meant to suggest a (Machiavellian) connection between centralized sovereignty and national defense:

"People unwilling or afraid to tolerate sovereignty at home have been subjugated from abroad, and they have struggled for their independence with the less glory and success the less they have been able previously to organize the powers of the state in home affairs - their freedom has died from the fear of dying."<sup>11</sup>

It should be emphasised that the *Philosophy of Right* is a fascinatingly ambiguous book. If it lies within the "Graeco-totalitarian" tradition of political thought, there is nothing crude about it. Hegel too has a theory of anachronism, and he cannot be caught so easily in the Vichian trap. Still, his insistence on the idea that civil society is a *Verlust der Sittlichkeit*,<sup>12</sup> though true, is unhappily mixed with the otiose conviction that a 'political' topping to the economic cake can bring back *Sittlichkeit*. Where Hegel parts ways with Vico is in his belief (stemming from the Enlightenment which he scorned) that Reason is "one" and that all human values are ultimately compatible. On the basis of such a notion, Hegel interpreted the *Gang* of history as fundamentally *cumulative*. There is progress because the past can be redeemed in the present.

Moreover, and in the same spirit, the idea that "public conditions are ... to be regarded as all the more perfect the less (in comparison with what is arranged publicly) is left for an individual to do by himself as his private inclination directs"<sup>13</sup> implies a kind of political regimentation of social life inconsistent with what most of us think of as freedom.<sup>14</sup> Indeed, the highest virtue of Hegel's citizen<sup>15</sup> may sound like bliss to the Maori, the Andamanese, the Yir Yorant, and even to the Greeks; yet for us it is more easily associated with *Selbst-Aufopferung* than with anything like 'freedom' as we understand it. One can always argue, of course, that at least Hegel *understood* our 'foundationless' freedom, our freedom in the traffic. As a matter of fact, his repudiation of it, dedicated as he was to renewing *eleutheria* in the modern world, may well have been as much a moral as a theoretical failing.

APPENDIX SEVENNotes

1. The individualist core of Rousseau's general will, according to Hegel, suggests an overlooking of "the absolute infinity and rationality of the state" (Philosophy of Right, T.M. Knox (trans.), Oxford, 1978, sec. 258). It reveals a Jacobin arrogance, so Hegel asserts, which claims a capacity to build up a society from the bare ideas of equality and liberty. Rousseau "reduces the union of individuals in the state to a contract and therefore to something based on their arbitrary wills, their opinion, and their capriciously given express consent; and abstract reasoning proceeds to draw the logical inferences which destroy the absolute ly divine principle of the state, together with its majesty and absolute authority. For this reason, when these abstract conclusions came into power, they afforded for the first time in human history the prodigious spectacle of the overthrow of the constitution of a great actual state and its complete reconstruction ab initio on the basis of pure thought alone, after the destruction of all existing and given material. The will of its refounder was to give it what they alleged was a purely rational basis, but it was only abstract-ions that were being used; and the experiment ended in the maximum frightfulness and terror" (sec. 258). Here we see two fundamental strands of Hegel's political thought: first, his critique of individualism, and, second, his repudiation of traditionless "abstract-ions". Both are aspects of Hegel's intended 'reconciliation' of antiquity and modernity.
2. Ibid., sec. 260
3. Ibid., sec.46
4. Ibid., sec. 261
5. Ibid., sec. 75
6. Ibid., sec. 183
7. Ibid., sec. 209
8. Ibid., sec. 324
9. Ibid., sec. 325
10. Ibid., sec. 324
11. Ibid., sec. 324
12. Ibid., sec. 181

13. Ibid., sec. 242
14. Hegel compares archaic "integration" with etatist "integration". "...in ancient times, the pyramids and other huge monuments in Egypt and Asia were constructed for public ends and the worker's task was not mediated through his private choice and particular interest. This interest invokes freedom of trade and commerce against control from above; but the more blindly it sinks into self-seeking aims, the more it requires such control to bring it back to the universal". Ibid., sec. 236
15. Ibid., sec. 261

The major abstraction is the idea of man  
And major man is its exponent, abler  
In the abstract than in his singular,

More fecund as principle than particle,  
Happy fecundity, flor-abundant force,  
In being more than an exception, part,

Though an heroic part, of the commonal.  
The major abstraction is the commonal,  
The inanimate, difficult visage. Who is it?

What rabbi, grown furious with human wish,  
What chieftain, walking by himself, crying  
Most miserable, most victorious,

Does not see these separate figures one by one,  
And yet see only one, in his old coat,  
His slouching pantaloons, beyond the town,

Looking for what was, where it used to be?  
Cloudless the morning. It is he. The man  
In that old coat, those sagging pantaloons,

It is of him, ephebe, to make, to confect  
The final elegance, not to console  
Nor sanctify, but plainly to propound.

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