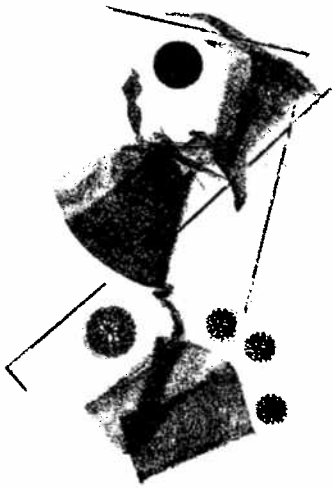

10 JUSTICE AND SOCIETY

Man is by nature an animal designed for living in states.

ARISTOTLE

"Man is a social animal," wrote Aristotle. Therefore, he is a political animal as well. We live with other people, not just our friends and families but thousands and millions of others, most of whom we will never meet and many of whom we come across in only the most casual way—passing them as we cross the street or buying a ticket at the movie theater. Yet we have to be concerned about them, and they about us, for there is a sense in which we are all clearly dependent upon each other. For example, we depend on them not to attack us without reason or steal our possessions. Of course, our confidence varies from person to person and from city to city. But it is clear that, in general, we have duties toward people we never know, for example, the duty not to contaminate their water or air supplies or to place their lives in danger. And they have similar duties to us. We also claim certain rights for ourselves: for example, the right not to be attacked as we walk down the street, the right to speak our mind about politically controversial issues without being thrown in jail, the right to believe in this religion or that religion or no religion without having our jobs, our homes, or our freedom taken from us.

Political and social philosophy is the study of people in societies with particular attention to the abstract claims they have on each other in the form of "rights," "duties," and "privileges," and their demands for "justice," "equality," and "freedom." (It is important to distinguish this sense of *political* freedom from the causal or metaphysical freedom that we discussed earlier. These can be and are almost always discussed independently of each other). At least ideally, politics is continuous with morality. Our political duties and obligations, for example, are often the same as our

moral duties and obligations. Our claims to certain "moral rights" are often claims to political rights as well, and political rights—particularly those very general and absolute rights which we call human rights (for example, the right not to be tortured or degraded, the right not to be exploited by powerful institutions or persons)—are typically defended on the basis of moral principles. The virtues of government are ideally the virtues of individuals: Government should be just, temperate, courageous, honest, humane, considerate, and reasonable.

Plato and Aristotle, for example, portrayed their visions of the ideal state in precisely these terms. (Both Plato and Aristotle, unlike most modern philosophers, actually had the opportunity to set up such governments; both failed, but for reasons that were hardly their fault.) This is not to say that all politics or all politicians are moral; we know much better than that. But it is to say that our politics are constrained and determined by our sense of morality. Morality is concerned more with relations between particular people while politics is concerned more with large and impersonal groups. But the difference is one of degree. In ancient Greece, Plato and Aristotle lived in relatively small "city-states" (each called a *polis*), with fewer citizens than even most U.S. towns. It was much easier for them to treat morality and politics together. But even today, we still speak hopefully of "the human family" and "international brotherhood," which is to reassert our enduring belief that politics—even at the international level—ought to be based on interpersonal moral principles.

The key to a successful society is cooperation. With few exceptions, it is in everyone's interest that society work smoothly, without vast bureaucratic confusion, without corruption, without general chaos, without exploitation of the weaker members of our society, and without forcing anyone to feel that he or she is justified in stealing, cheating, murdering, or "getting even" with society as a whole. But the smooth working of society as a whole, even though it generally benefits everyone, is not the only concern. Societies of ants and bees work more "smoothly" than any human society, but they are not to be envied or imitated. Even if it is agreed that the smooth working of society is generally in everyone's interest, what we may call the public interest, individual interests deserve and sometimes demand recognition even in opposition to this broader public interest. A person who is critical of the government may very well disrupt the smooth operations of that government. He or she may even, at least for a short time, interfere with the public interest. But most of us would agree that such a person has a right to speak his or her mind and that he or she has a right to be heard as well.

Or, to take a very different example, scientists or artists might feel the need to act in ways that are very unpopular or antisocial in order to do their work with the intensity they require. Despite the fact that they might annoy us, we would say that they have a right to live that way. Or, to take still a different example, people who have sexual preferences and desires that are not approved of by most people around them—perhaps they just enjoy an occasional obscene movie—can claim to have rights as well, so long as they don't force their preferences on other people or otherwise interfere with other people's lives. But you can see that with this last set of examples we have entered an area of continuing controversy. Do people have rights to enjoy things that are disapproved of by the rest of society? Should governments dictate morals (for example, by passing laws against the things that most people or

at least some powerful people consider "immoral")? The very existence of such controversies shows very clearly how different we are from ants and bees. In their societies, species preservation and instinct dictate all; in our societies, there must always be a balance between the public interest on the one hand and individual rights and interests on the other. Ideally, these will agree as much as possible. In fact, they often do not agree, and political and social philosophy makes this disagreement its primary concern.

If people do not cooperate, the success of society requires that some authority have the power to bring individual interests into line with the public interest. This authority is generally called the state. The state passes laws and enforces them; its purpose is to protect the public interest. But is it only this? We would probably say *no.* Its purpose is also to protect individual rights, for example, against powerful corporations and against strongly mobilized pressure groups that try to interfere with individual lives. In general, we might say that the function of the state is to protect justice. But there has been disagreement ever since ancient times about what that means and how much the primary emphasis should be placed on the public interest and how much on individual rights and interests.

Our concept of the state and the extent of its power and **authority** depends very much on our conception of human nature and of people's willingness to cooperate without being forced to do so. At one extreme are those who place such strong emphasis on the smooth workings of society that they are willing to sacrifice most individual rights and interests; they are generally called *authoritarians,* and their confidence in willing individual cooperation is very slight compared to their confidence in a strong authoritarian state. ("He makes the trains run on time" was often said of the fascist Italian dictator Benito Mussolini.) At the other extreme are people with so much confidence in individual cooperation and so little confidence in the state that they argue that the state should be eliminated altogether. They are called **anarchists.** Between these extremes are more moderate positions, for example, people who have some confidence both in individual cooperation and in the possibility of a reasonably just state, but don't have complete confidence in either. Democrats and Republicans, for example, both believe in a government that is at least partially run by the people themselves but with sufficient power to enforce its laws over individual interests whenever necessary. All these people believe in varying solutions to the same central problem: the problem of a balance between the public interest and the need for cooperation on the one hand and individual rights and interests on the other—in other words, the problem of **justice.**

A. THE PROBLEM OF JUSTICE

When we think of justice, we first tend to think of criminal cases and of punishment. Justice, in this sense, is catching the criminal and "making him pay for his crime." The oldest sense of the word *justice,* therefore, is what philosophers call **retributive justice,** or simply, "getting even." Retribution for a crime is making the criminal suffer or pay an amount appropriate to the severity of the crime. In ancient traditions,

the key phrase was "an eye for an eye, a tooth for a tooth." If a criminal caused a person to be blind, he was in turn blinded. We now view this as brutal and less than civilized. But is it so clear that we have in fact given up this retributive sense of justice? Do we punish our criminals (that is, demand retribution), or do we sincerely attempt to reform them? Or is the purpose of prison simply to keep them off the street? Should we ever punish people for crimes, or should we simply protect ourselves against their doing the same thing again? If a man commits an atrocious murder, is it enough that we guarantee that he won't do another one? Or does he deserve punishment even if we know that he won't do it again?

But retributive justice and the problems of punishment are really only a small piece of a much larger concern. Justice is not just "getting even" for crimes and offenses. It concerns the running of society as a whole in day-to-day civil matters as well as the more dramatic criminal concerns. Given the relative scarcity of wealth and goods, how should they be distributed? Should everyone receive exactly the same amount? Should the person who works hard at an unpleasant job receive no more than the person who refuses to work at all and prefers to watch TV all day and just amuse himself or herself? Should the person who uses his wealth to the benefit of others receive no more than the person who "throws away" his or her money on gambling, drinking, and debauchery? If a class of people has historically been deprived of its adequate share because of the color of their skin, their religious beliefs, or their sex or age, should that class now be given more than its share in compensation, or is this too an injustice against other people?

Not only are wealth and goods at issue here, however. Distribution of privileges and power are equally important. Who will vote? Will everyone's vote count exactly the same? Should the opinions of an illiterate who does not even know the name of his political leaders have as much say in the government as the political scientist or economist who has studied these matters for years? Should everyone be allowed to drive? Or to drink? Should everyone receive exactly the same treatment before the law? Or are there concerns that would indicate that some people (for example, congressmen or foreign diplomats) should receive special privileges?

Enjoyment of society's cultural gifts is also at issue. Should everyone receive the same education? What if that turns out to be "impractical" (since job training is much more efficient than "liberal arts")? But doesn't that mean that some—the workers and career persons who are trained to do a job—are deprived of the education necessary to enjoy great books, music, poetry, philosophy, intellectual debate, or proficiency in foreign languages, which give considerable enjoyment to those who have been taught to appreciate them?

There are also questions of status. Should there be social classes? What if it could be proved that such divisions make a society run more smoothly? How minimal should distinctions in status be? This in turn leads to the more general question: Shouldn't all members of society be able to expect equal treatment and respect not only by the law but in every conceivable social situation? All of these are the concerns of justice. But what is just? Who decides? And how?

Theories of justice, in one sense, are as old as human society. The ancient codes of the Hebrews, the Persians, and the Babylonians were theories of justice in the

sense that they tried, in their various ways, to develop rules to cover fair dealing and distribution of goods, the punishment of criminals, and the settling of disputes. A fully developed theory of justice, however, should go beyond this and try to analyze the nature of justice itself. The first great theories of justice to try to do this were those of Plato and Aristotle. In *The Republic,* Plato argues that justice in the state is precisely the same as justice in the individual, that is, a harmony between the various parts for the good of the whole. In other words, cooperation among all for the sake of a successful society is the key to justice. But this means that the interests of the individual take a clearly secondary role to the interests of society. In ancient Greece, this may have been only rarely true for the wealthy and powerful, but for the majority of people—especially the slaves—this secondary role was the norm. Because their docile submission was seen as necessary to the overall success of society, their individual interests and rights were extremely minimal. They expected to be rewarded and satisfied only insofar as their efforts benefited their betters, and then they expected their betters to reap far more reward from their labor than they themselves. In Plato's universe, everyone has his or her "place," and justice means that they act and are treated accordingly:

FROM ***THE REPUBLIC,***
BY **PLATO**

I think that justice is the very thing, or some form of the thing which, when we were beginning to found our city, we said had to be established throughout. We stated, and often repeated, if you remember, that everyone must pursue one occupation of those in the city, that for which his nature best fitted him.

Yes, we kept saying that.

Further, we have heard many people say, and have often said ourselves, that justice is to perform one's own task, and not to meddle with that of others.

We have said that.

This then, my friend, I said, when it happens, is in some way justice, to do one's own job. And do you know what I take to be a proof of this?

No, tell me.

I think what is left over of those things we have been investigating, after moderation and courage and wisdom have been found, was that which made it possible for those three qualities to appear in the city and to continue as long as it was present. We also said that what remained after we found the other three was justice.

It had to be.

And surely, I said, if we had to decide which of the four will make the city good by its presence, it would be hard to judge whether it is a common belief among the rulers and the ruled, or the preservation among the soldiers of a law-inspired belief as to the nature of what is, and what is not, to be feared, or the knowledge and guardianship of the rulers, or whether it is, above all, the presence of this fourth in child and woman, slave and free, artisan, ruler and subject,

namely that each man, a unity in himself, performed his own task and was not meddling with that of others.

How could this not be hard to judge?

It seems then that the capacity for each in the city to perform his own task rivals wisdom, moderation, and courage as a source of excellence for the city.

It certainly does.

You would then describe justice as a rival to them for excellence in the city?

Most certainly.

Look at it this way and see whether you agree: you will order your rulers to act as judges in the courts of the city?

Surely.

And will their exclusive aim in delivering judgment not be that no citizen should have what belongs to another or be deprived of what is his own?

That would be their aim.

That being just?

Yes.

In some way then possession of one's own and the performance of one's own task could be agreed to be justice.

That is so.

Consider then whether you agree with me in this: if a carpenter attempts to do the work of a cobbler, or a cobbler that of a carpenter, and they exchange their tools and the esteem that goes with the job, or the same man tries to do both, and all the other exchanges are made, do you think that this does any great harm to the city?

No.

But I think that when one who is by nature a worker or some other kind of moneymaker is puffed up by wealth, or by the mob, or by his own strength, or some other such thing, and attempts to enter the warrior class, or one of the soldiers tries to enter the group of counselors or guardians, though he is unworthy of it, and these exchange their tools and the public esteem, or when the same man tries to perform all these jobs together, then I think you will agree that these exchanges and this meddling bring the city to ruin.

They certainly do.

The meddling and exchange between the three established orders does very great harm to the city and would most correctly be called wickedness.

Very definitely.

And you would call the greatest wickedness worked against one's own city injustice?

Of course.

That then is injustice. And let us repeat that the doing of one's own job by the moneymaking, auxiliary, and guardian groups, when each group is performing its own task in the city, is the opposite, it is justice and makes the city just.

I agree with you that this is so.[1]

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[1] Plato, *The Republic,* Bk. VI, trans. G. M. A. Grube (Indianapolis, IN: Hackett, 1974).

Plato's rigid hierarchy of social classes and insistence on the inequality of people offends our sense of universal equality, but it is important to see that equality (or, more properly, **egalitarianism,** the view that all men and women are equal just by virtue of their being human) is a position that must be argued and is not a "natural" state of affairs or a belief that has always been accepted by everyone. The same is true of Aristotle's theory of justice.

In his *Politics,* Aristotle gives an unabashed defense of slavery, not only on the grounds that slaves are efficient and good for society as a whole, but because those who are slaves are "naturally" meant to be slaves and would be unhappy and unable to cope if they were granted freedom and made citizens. (This is not just an ancient argument, however, I am sure you have heard similar arguments about other groups of people in your own lifetime.) For Aristotle as for Plato, different people have different roles, and to treat unequals equally is as unjust, according to them, as it is to treat equals unequally. They would consider the view that morons and children and foreigners deserve the same respect and treatment as citizens ridiculous. So too would they find the contemporary argument that we should treat men and women as equals.[2] But despite these opinions, Plato and Aristotle laid the foundations of much of our own conceptions of justice. The idea that equals must be treated as equals is the foundation of our sense of justice just as much as theirs. The difference is that we are taught to believe that everybody is an equal. Similarly, the theory of what is called **distributive justice,** the fair distribution of wealth and goods among the members of society, is a current international as well as national concern that owes much to Aristotle's original formulations. The idea that individuals are due certain rewards for their labor is also Aristotle's idea. But despite his aristocratic opinions and his harsh elitism, Aristotle saw quite clearly that the members of society who depended most upon an adequate theory of justice were the poorer and less powerful members. It was for them that the just society was most vital (since the powerful and wealthy had a much better chance of taking care of themselves). It was also Aristotle who made the vital distinction, with which we began this section, between that restricted concern for justice that rights certain wrongs (in crimes, in bad business deals, and in public misfortunes) and the general concern of justice for a well-balanced and reasonable society.

FROM *THE NICOMACHEAN ETHICS,* BY ARISTOTLE

Let us take as a starting-point, then, the various meanings of "an unjust man." Both the lawless man and the greedy and unfair man are thought to be unjust, so that evidently both the law-abiding and the fair man will be just. The just, then, is the lawful and the fair, the unjust the unlawful and the unfair.

Since the lawless man was seen to be unjust and the law-abiding man just, evidently all lawful acts are in a sense just acts; for the acts laid down by the

[2] Plato did venture that women as well as men ought to be rulers.

legislative art are lawful, and each of these, we say, is just. Now the laws in their enactments on all subjects aim at the common advantage either of all or of the best of those who hold power, or something of the sort; so that in one sense we call those acts just that tend to produce and preserve happiness and its components for the political society. And the law bids us do both the acts of a brave man (*e.g.* not to desert our post nor take to flight nor throw away our arms), and those of a temperate man (*e.g.* not to commit adultery nor to gratify one's lust), and those of a good-tempered man (*e.g.* not to strike another nor to speak evil), and similarly with regard to the other virtues and forms of wickedness, commanding some acts and forbidding others; and the rightly-framed law does this rightly, and the hastily conceived one less well.

This form of justice, then, is complete virtue, but not absolutely, but in relation to our neighbour. And therefore justice is often thought to be the greatest of virtues, and "neither evening nor morning star" is so wonderful; and proverbially "in justice is every virtue comprehended." And it is complete virtue in its fullest sense, because it is the actual exercise of complete virtue. It is complete because he who possesses it can exercise his virtue not only in himself but towards his neighbour also; for many men can exercise virtue in their own affairs, but not in their relations to their neighbour.

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But at all events what we are investigating is the justice which is a *part* of virtue; for there is a justice of this kind, as we maintain. Similarly it is with injustice in the particular sense that we are concerned.

That there is such a thing is indicated by the fact that while the man who exhibits in action the other forms of wickedness acts wrongly indeed, but not graspingly (*e.g.* the man who throws away his shield through cowardice or speaks harshly through bad temper or fails to help a friend with money through meanness), when a man acts graspingly he often exhibits none of these vices—no, nor all together, but certainly wickedness of some kind (for we blame him) and injustice. There is, then, another kind of injustice which is a part of injustice in the wide sense, and a use of the word "unjust" which answers to a part of what is unjust in the wide sense of "contrary to the law." Again, if one man commits adultery for the sake of gain and makes money by it, while another does so at the bidding of appetite though he loses money and is penalized for it, the latter would be held to be self-indulgent rather than grasping, but the former is unjust, but not self-indulgent; evidently, therefore, he is unjust by reason of his making gain by his act. Again, all other unjust acts are ascribed invariably to some particular kind of wickedness, for example adultery to self-indulgence, the desertion of a comrade in battle to cowardice, physical violence to anger; but if a man makes gain, his action is ascribed to no form of wickedness but injustice. Evidently, therefore, there is apart from injustice in the wide sense another, "particular," injustice which shares the name and nature of the first, because its definition falls within the same genus; for the significance of both consists in a relation to one's neighbour, but the one is concerned with honour or money or safety—or that which includes all these, if we had a single name for it—and its

motive is the pleasure that arises from gain; while the other is concerned with all the objects with which the good man is concerned.

It is clear, then, that there is more than one kind of justice, and that there is one which is distinct from virtue entire; we must try to grasp its genus and differentia. . . .

Of particular justice and that which is just in the corresponding sense, (A) one kind is that which is manifested in distributions of honour or money or the other things that fall to be divided among those who have a share in the constitution (for in these it is possible for one man to have a share either unequal or equal to that of another), and (B) one is that which plays a rectifying part in transactions between man and man. Of this there are two divisions; of transactions (1) some are voluntary, and (2) others involuntary—voluntary such transactions as sale, purchase, loan for consumption, pledging, loan for use, depositing, letting (they are called voluntary because the origin of these transactions is voluntary), while of the involuntary (a) some are clandestine, such as theft, adultery, poisoning, procuring, enticement of slaves, assassination, false witness, and (b) others are violent, such as assault, imprisonment, murder, robbery with violence, mutilation, abuse, insult.

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(A) We have shown that both the unjust man and the unjust act are unfair or unequal; now it is clear that there is also an intermediate between the two unequals involved in either case. And this is the equal; for in any kind of action in which there is a more and a less there is also what is equal. If, then, the unjust is unequal, the just is equal, as all men suppose it to be, even apart from argument. And since the equal is intermediate, the just will be an intermediate. Now equality implies at least two things. The just, then, must be both intermediate and equal and relative (*i.e.* for certain persons). And *qua* intermediate it must be between certain things (which are respectively greater and less); *qua* equal, it involves *two* things; *qua* just, it is for certain people. The just, therefore, involves at least four terms; for the persons for whom it is in fact just are two, and the things in which it is manifested, the objects distributed, are two. And the same equality will exist between the persons and between the things concerned; for as the latter—the things concerned—are related, so are the former; if they are not equal, they will not have what is equal, but this is the origin of quarrels and complaints—when either equals have and are awarded unequal shares, or unequals equal shares. Further, this is plain from the fact that awards should be "according to merit"; for all men agree that what is just in distribution must be according to merit in some sense, though they do not all specify the same sort of merit, but democrats identify it with the status of freeman, supporters of oligarchy with wealth (or with noble birth), and supporters of aristocracy with excellence.

This, then, is what the just is—the proportional; the unjust is what violates the proportion. Hence one term becomes too great, the other too small, as indeed happens in practice, for the man who acts unjustly has too much, and the man who is unjustly treated too little, of what is good. In the case of evil the reverse

is true; for the lesser evil is reckoned a good in comparison with the greater, and what is worthy of choice is good, and what is worthier of choice a greater good.

This, then, is one species of the just.

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(B) The remaining one is the rectificatory, which arises in connexion with transactions both voluntary and involuntary. This form of the just has a different specific character from the former. For the justice which distributes common possessions is always in accordance with the kind of proportion mentioned above (for in the case also in which the distribution is made from the common funds of a partnership it will be according to the same ratio which the funds put into the business by the partners bear to one another); and the injustice opposed to this kind of justice is that which violates the proportion. But the justice in transactions between man and man is a sort of equality indeed, and the injustice a sort of inequality; not according to that kind of proportion, however, but according to arithmetical proportion. For it makes no difference whether a good man has defrauded a bad man or a bad man a good one, nor whether it is a good or a bad man that has committed adultery; the law looks only to the distinctive character of the injury, and treats the parties as equal, if one is in the wrong and the other is being wronged, and if one inflicted injury and the other has received it. Therefore, this kind of injustice being an inequality, the judge tries to equalize it; for in the case also in which one has received and the other has inflicted a wound, or one has slain and the other has been slain, the suffering and the action have been unequally distributed; but the judge tries to equalize things by means of the penalty, taking away from the gain of the assailant. For the term "gain" is applied generally to such cases, even if it be not a term appropriate to certain cases, for example to the person who inflicts a wound—and "loss" to the sufferer; at all events when the suffering has been estimated, the one is called loss and the other gain. Therefore the equal is intermediate between the greater and less in contrary ways; more of the good and less of the evil are gain, and the contrary is loss; intermediate between them is, as we saw, the equal, which we say is just; therefore corrective justice will be the intermediate between loss and gain. This is why, when people dispute, they take refuge in the judge; and to go to the judge is to go to justice; for the nature of the judge is to be a sort of animate justice; and they seek the judge as an intermediate; and in some states they call judges mediators, on the assumption that if they get what is intermediate they will get what is just. The just, then, is an intermediate, since the judge is so. The judge restores equality.[3]

In contrast to the Greeks, the premise of most modern theories of justice has been the equality of everyone with everyone else. No one is "better" than anyone else,

[3] Aristotle, *Nicomachean Ethics,* trans. W. D. Ross (Oxford: Oxford University Press, 1925).

whatever his or her talents, achievements, wealth, family, or intelligence. This view rules out slavery on principle, whatever the benefits to society as a whole and whatever the alleged benefits to the slaves. Slavery is inequality and is thus to be condemned. But this egalitarian principle has its problems too. It is obvious that, as a matter of fact, all people are not equally endowed with intelligence or talent, good looks or abilities. Is it therefore to the good of all that everyone should be treated equally? One person is a doctor, capable of saving many lives; another is a chronic profligate and drunkard. If they were to commit exactly the same crime, would it be to the public interest to give them equal jail terms? Obviously not. But would it be just to give them different terms? It doesn't appear so. One problem that recent theorists have tried to answer is connected with cases in which the public interest seems at odds with the demands for equal treatment. A similar problem gives rise to one of the "paradoxes of democracy," which we mentioned before. Does it make sense to treat the opinions of an ignorant person whose only knowledge of current events comes from fifteen minutes (at best) of television news a day in the way that we treat the opinions of a skilled political veteran? But the ballots we vote on make no such distinction. And it is obvious that our society, despite its egalitarian principles, treats people who are cleverer at business or power-brokering much better than everyone else. Is this an example of systematic injustice? Or are there cases, even for us, in which inequality can still be justified as justice?

The theory of justice has been one of the central concerns of British philosophy for several centuries. Thomas Hobbes developed a theory that began with equality as a "natural fact" and took justice to be that which "assured peace and security to all" enforced by the government. There is no justice in "the state of nature," Hobbes argued; justice like law comes into existence only with society, through a "social compact" in which everyone agrees to abide by certain rules and to cooperate rather than compete—all for their mutual benefit. Several years later, John Locke and then David Hume argued a similar theory of justice; again, equality was the premise, and mutual agreement the basis of government authority. For both philosophers, the ultimate criterion of justice was utility, the public interest, and therefore the satisfaction of the interests of at least most citizens. This would have been rejected by Plato and Aristotle.

Hume exemplifies this modern view—that justice is to be characterized not just in terms of the structure of the overall society and everyone's "place" in it, but by the interests and well-being of each and every individual. But what about an instance, Hume asks, in which a particular act of justice clearly is contrary to the public interests, such as the case in which an obviously guilty criminal is released for technical reasons or a disgusting pornographer is allowed to publish and sell his or her wares under the protection of "free speech"? Hume replies that there is a need to distinguish between the utility of a single act and the utility of an overall system; that although a specific act of justice might go against the public interest, the system of justice necessarily will be in the public interest. This means that a single unjust act is to be challenged not as an isolated occurrence but as an example of a general set of rules and practices.

ON "JUSTICE AND UTILITY," BY DAVID HUME

To make this more evident, consider, that though the rules of justice are established merely by interest, their connection with interest is somewhat singular, and is different from what may be observed on other occasions. A single act of justice is frequently contrary to *public interest;* and were it to stand alone, without being followed by other acts, may, in itself, be very prejudicial to society. When a man of merit, of a beneficent disposition, restores a great fortune to a miser, or a seditious bigot, he has acted justly and laudably, but the public is a real sufferer. Nor is every single act of justice, considered apart, more conducive to private interest, than to public; and it is easily conceived how a man may impoverish himself by a single instance of integrity, and have reason to wish that with regard to that single act, the laws of justice were for a moment suspended in the universe. But however single acts of justice may be contrary, either to public or private interest, it is certain, that the whole plan or scheme is highly conducive, or indeed absolutely requisite, both to the support of society, and the well-being of every individual.[4]

The most explicitly "utilitarian" statement of justice as utility is found, however, in John Stuart Mill's influential pamphlet, *Utilitarianism.*

FROM *UTILITARIANISM,* BY JOHN STUART MILL

In the case of this, as of our other moral sentiments, there is no necessary connexion between the question of its origin and that of its binding force. That a feeling is bestowed on us by nature does not necessarily legitimate all its promptings. The feeling of justice might be a peculiar instinct, and might yet require, like our other instincts, to be controlled and enlightened by a higher reason. If we have intellectual instincts leading us to judge in a particular way, as well as animal instincts that prompt us to act in a particular way, there is no necessity that the former should be more infallible in their sphere than the latter in theirs; it may as well happen that wrong judgments are occasionally suggested by those, as wrong actions by those.

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In the first place, it is mostly considered unjust to deprive anyone of his personal liberty, his property, or any other thing which belongs to him by law. Here, therefore, is one instance of the application of the terms "just" and "unjust" in a perfectly definite sense, namely, that it is just to respect, unjust to violate, the *legal rights* of anyone. But this judgment admits of several exceptions, arising

[4] David Hume, *Enquiry Concerning the Principles of Morals* (La Salle, IL: Open Court, 1912).

from the other forms in which the notions of justice and injustice present themselves. For example, the person who suffers the deprivation may (as the phrase is) have forfeited the rights which he is so deprived of—a case to which we shall return presently. . . .

Secondly, the legal rights of which he is deprived may be rights which *ought* not to have belonged to him; in other words, the law which confers on him these rights may be a bad law. When it is so or when (which is the same thing for our purpose) it is supposed to be so, opinions will differ as to the justice or injustice of infringing it. Some maintain that no law, however bad, ought to be disobeyed by an individual citizen; that his opposition to it, if shown at all, should only be shown in endeavoring to get it altered by competent authority. This opinion (which condemns many of the most illustrious benefactors of mankind, and would often protect pernicious institutions against the only weapons which, in the state of things existing at the time, have any chance of succeeding against them) is defended by those who hold it on grounds of expediency, principally on that of the importance to the common interest of mankind, of maintaining inviolate the sentiment of submission to law. Other persons, again, hold the directly contrary opinion that any law, judged to be bad, may blamelessly be disobeyed, even though it be not judged to be unjust but only inexpedient, while others would confine the license of disobedience to the case of unjust laws; but, again, some say that all laws which are inexpedient are unjust, since every law imposes some restriction on the natural liberty of mankind, which restriction is an injustice unless legitimated by tending to their good. Among these diversities of opinion it seems to be universally admitted that there may be unjust laws, and that law, consequently, is not the ultimate criterion of justice, but may give to one person a benefit, or impose on another an evil, which justice condemns. When, however, a law is thought to be unjust, it seems always to be regarded as being so in the same way in which a breach of law is unjust, namely, by infringing somebody's right, which, as it cannot in this case be a legal right, receives a different appellation and is called a moral right. We may say, therefore, that a second case of injustice consists in taking or withholding from any person that to which he has a *moral right.*

Thirdly, it is universally considered just that each person should obtain that (whether good or evil) which he *deserves,* and unjust that he should obtain a good or be made to undergo an evil which he does not deserve. This is, perhaps, the clearest and most emphatic form in which the idea of justice is conceived by the general mind. As it involves the notion of desert, the question arises what constitutes desert? Speaking in a general way, a person is understood to deserve good if he does right, evil if he does wrong; and in a more particular sense, to deserve good from those to whom he does or has done good, and evil from those to whom he does or has done evil. The precept of returning good for evil has never been regarded as a case of the fulfillment of justice, but as one in which the claims of justice are waived, in obedience to other considerations.

Fourthly, it is confessedly unjust to *break faith* with anyone: to violate an engagement, either express or implied, or disappoint expectations raised by our

own conduct, at least if we have raised those expectations knowingly and voluntarily. Like the other obligations of justice already spoken of, this one is not regarded as absolute, but as capable of being overruled by a stronger obligation of justice on the other side, or by such conduct on the part of the person concerned as is deemed to absolve us from our obligation to him and to constitute a *forfeiture* of the benefit which he has been led to expect.

Fifthly, it is, by universal admission, inconsistent with justice to be *partial*—to show favor or preference to one person over another in matters to which favor and preference do not properly apply. Impartiality, however, does not seem to be regarded as a duty in itself, but rather as instrumental to some other duty; for it is admitted that favor and preference are not always censurable, and, indeed, the cases in which they are condemned are rather the exception than the rule. A person would be more likely to be blamed than applauded for giving his family or friends no superiority in good offices over strangers when he could do so without violating any other duty; and no one thinks it unjust to seek one person in preference to another as a friend, connection, or companion. Impartiality where rights are concerned is of course obligatory, but this is involved in the more general obligation of giving to everyone his right. A tribunal, for example, must be impartial because it is bound to award, without regard to any other consideration, a disputed object to the one of two parties who has the right to it. There are other cases in which impartiality means being solely influenced by desert, as with those who, in the capacity of judges, preceptors, or parents, administer reward and punishment as such. There are cases, again, in which it means being solely influenced by consideration for the public interest, as in making a selection among candidates for a government employment. Impartiality, in short, as an obligation of justice, may be said to mean being exclusively influenced by the considerations which it is supposed ought to influence the particular case in hand, and resisting solicitation of any motives which prompt to conduct different from what those considerations would dictate.

Nearly allied to the idea of impartiality is that of *equality,* which often enters as a component part both into the conception of justice and into the practice of it, and, in the eyes of many persons, constitutes its essence. But in this, still more than in any other case, the notion of justice varies in different persons, and always conforms in its variations to their notion of utility. Each person maintains that equality is the dictate of justice, except where he thinks that expediency requires inequality. The justice of giving equal protection to the rights of all is maintained by those who support the most outrageous inequality in the rights themselves. Even in slave countries it is theoretically admitted that the rights of the slave, such as they are, ought to be as sacred as those of the master, and that a tribunal which fails to enforce them with equal strictness is wanting in justice; while, at the same time, institutions which leave to the slave scarcely any rights to enforce are not deemed unjust because they are not deemed inexpedient. Those who think that utility requires distinctions of rank do not consider it unjust that riches and social privileges should be unequally dispensed; but those who think this inequality inexpedient think it unjust also. Whoever thinks that

> government is necessary sees no injustice in as much inequality as is constituted by giving to the magistrate powers not granted to other people. Even among those who hold leveling doctrines, there are differences of opinion about expediency. Some communists consider it unjust that the produce of the labor of the community should be shared on any other principle than that of exact equality; others think it just that those should receive most whose wants are greatest; while others hold that those who work harder, or who produce more, or whose services are more valuable to the community, may justly claim a larger quota in the division of the produce. And the sense of natural justice may be plausibly appealed to in behalf of every one of the opinions.

Mill then goes on to define a **right:**

> When we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law or by that of education and opinion. If he has what we consider a sufficient claim, on whatever account, to have something guaranteed to him by society, we say that he has a right to it.
>
> To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask why it ought, I can give him no other reason than general utility. If that expression does not seem to convey a sufficient feeling of the strength of the obligation, nor to account for the peculiar energy of the feeling, it is because there goes to the composition of the sentiment, not a rational only but also an animal element—the thirst for retaliation; and this thirst derives its intensity, as well as its moral justification, from the extraordinarily important and impressive kind of utility which is concerned. The interest involved is that of security, to everyone's feelings the most vital of all interests. All other earthly benefits are needed by one person, not needed by another; and many of them can, if necessary, be cheerfully foregone or replaced by something else; but security no human being can possibly do without; on it we depend for all our immunity from evil and for the whole value of all and every good, beyond the passing moment, since nothing but the gratification of the instant could be of any worth to us if we could be deprived of everything the next instant by whoever was momentarily stronger than ourselves. Now this most indispensable of all necessaries, after physical nutriment, cannot be had unless the machinery for providing it is kept unintermittedly in active play. Our notion, therefore, of the claim we have on our fellow creatures to join in making safe for us the very groundwork of our existence gathers feelings around it so much more intense than those concerned in any of the more common cases of utility that the difference in degree (as is often the case in psychology) becomes a real difference in kind. The claim assumes that character of absoluteness, that apparent infinity and incommensurability with all other considerations which constitute the distinction between the feeling of right and wrong and that of ordinary expediency and inexpediency. The feelings concerned are so powerful, and we count so positively on finding a responsive

> feeling in others (all being alike interested) that *ought* and *should* grow into *must,* and recognized indispensability becomes a moral necessity, analogous to physical, and often not inferior to it in binding force.[5]

Mill's utilitarian theory of justice is a logical extension of his ethical theories: What is good and desirable is what is best for the greatest number of people. But although it might at first seem as if the greatest happiness of the greatest number leaves no room for such abstract concerns as justice, Mill argues that, to the contrary, only utility can give that abstract sense of justice some concrete basis in human life.

The problem with the utilitarian theory of justice is identical to the problem we saw with the utilitarian theory of morals. Could there not be a case in which the public interest and general utility would be served only at the clearly unjust expense of a single unfortunate individual? Suppose we lived in a society that ran extremely well, such that we had few if any complaints about our government and the way it was run, when a single muckraking journalist started turning the peace upside down with his insistence that something was very wrong in the government. We might easily suppose that, at least in the short run, the public confusion and trauma would be much more harmful to the public interest than the slight correction that would result from public exposure. Should the government forcefully silence the journalist? We would say no. He has a right to his inquiries and a right to speak his mind. Or suppose that the most efficient way to solve a series of ongoing crimes was to torture a recently captured suspect and hold him without evidence? Here again public interest and justice are at odds. Or more generally, should the government have the authority to throw people in jail just because it has reason (even good reason) to believe that they will create a public disturbance or commit certain crimes? Public interest says yes; justice says no.

This is the problem with utilitarian theories of justice in general: although we may well agree that justice *ought* to serve the public interest and every individual's interests as well, the utilitarian view is always in an awkward position when it must choose to serve the public interest at the intolerable expense and injustice of a small number of individuals or even a single individual. Consider the extreme example of an entire city that would prosper if it would sacrifice the life of one innocent child. Arguably, utilitarianism would seem to defend the sacrifice; justice, however, says that such a sacrifice is inexcusable.

It is because of increased sensitivity to the unacceptability of such scenarios that a very different conception of justice has once again begun to dominate—a set of views that recognizes the desirability of serving every individual's interests while having a primary concern for justice, not in terms of utility but in terms of *rights.* Thus, public interest is important but respect for every individual's rights is even more important. This view dates back (at least) to Kant, who defended the notions of "duty" and "obligation" as morally basic to any concern for utility. In its modern conception, this view is most ably defended by Harvard philosopher John Rawls in his profound work entitled *Theory of Justice.* For nearly six hundred pages, Rawls

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[5] John Stuart Mill, *Utilitarianism* (New York: Bobbs-Merrill, 1957).

essentially defends two principles in order of priority. The first (and more fundamental) principle asserts that we all have basic rights and equal rights, in particular with reference to our personal freedom. The second principle (which assumes the first) asserts that although we cannot expect everyone in society to enjoy equal wealth, equal health, and equal opportunities, we can and should insist that all inequalities are to every individual's advantage. For example, it should not be such that society allows that "the rich get richer and the poor get poorer." Rawls' actual statement from *Theory of Justice* is as follows:

> *First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.*
>
> *Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.*

Rawls' justification for establishing the rationality and necessity of these "liberal" principles derives from his view that all of us (or our ancestors) might be in "the original position"—like Hobbes' "State of Nature"—and "unencumbered" by any of our particular traits or interests. In such a situation, what would be rational for us to choose by way of the principles according to which society would be run? Because we do not know, in the essential sense, who we will be in that society, it does us no good to adopt principles that benefit the persons we are now. For example, in a society composed entirely of purple people and green people (remembering that in the original position we do not know which we will be), it would only be rational, Rawls argues, to enact a law that would treat all people equally, whether purple or green. It is much like (but much more complicated and uncertain than) the childhood example involving one of us being asked to cut a pie into sections, giving everyone else first choice. The only rational decision—even if you suspect that the other children are dullards, is to divide the pie equally. So too, the aim of Rawls' dual principles is to cut for all of us—if not equal pieces of the social pie, at least pieces that are as equal as possible.

The following selection is from one of Rawls' early essays.

FROM "JUSTICE AS FAIRNESS," BY JOHN RAWLS

Throughout I consider justice only as a virtue of social institutions, or what I shall call practices.[6] The principles of justice are regarded as formulating restrictions as to how practices may define positions and offices, and assign thereto

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[6] I use the word *practice* throughout as a sort of technical term meaning any form of activity specified by a system of rules which defines offices, roles, moves, penalties, defences, and so on, and which gives the activity its structure. As examples one may think of games and rituals, trials and parliaments, markets and systems or property. I have attempted a partial analysis of the notion of a practice in a paper, "Two Concepts of Rules," *Philosophical Review* 64 (1955), pp. 3–32 [Rawls' note].

powers and liabilities, rights and duties. Justice as a virtue of particular actions or of persons I do not take up at all. It is important to distinguish these various subjects of justice, since the meaning of the concept varies according to whether it is applied to practices, particular actions, or persons. These meanings are, indeed, connected, but they are not identical. I shall confine my discussion to the sense of justice as applied to practices, since this sense is the basic one. Once it is understood, the other senses should go quite easily.

The conception of justice which I want to develop may be stated in the form of two principles as follows: first, each person participating in a practice, or affected by it, has an equal right to the most extensive liberty compatible with a like liberty for all; and second, inequalities are arbitrary unless it is reasonable to expect that they will work out for everyone's advantage, and provided the positions and offices to which they attach, or from which they may be gained, are open to all. These principles express justice as a complex of three ideas: liberty, equality, and reward for services contributing to the common good.

The term "person" is to be construed variously depending on the circumstances. On some occasions it will mean human individuals, but in others it may refer to nations, provinces, business firms, churches, teams, and so on. The principles of justice apply in all these instances, although there is a certain logical priority to the case of human individuals. As I shall use the term "person," it will be ambiguous in the manner indicated.

The first principle holds, of course, only if other things are equal: that is, while there must always be a justification for departing from the initial position of equal liberty (which is defined by the pattern of rights and duties, powers and liabilities, established by a practice), and the burden or proof is placed on him who would depart from it, nevertheless, there can be, and often there is, a justification for doing so. Now, that similar particular cases, as defined by a practice, should be treated similarly as they arise, is part of the very concept of a practice; it is involved in the notion of an activity in accordance with rules. The first principle expresses an analogous conception, but as applied to the structure of practices themselves. It holds, for example, that there is a presumption against the distinctions and classifications made by legal systems and other practices to the extent that they infringe on the original and equal liberty of the persons participating in them. The second principle defines how this presumption may be rebutted.

It might be argued at this point that justice requires only an equal liberty. If, however, a greater liberty were possible for all without loss or conflict, then it would be irrational to settle on a lesser liberty. There is no reason for circumscribing rights unless their exercise would be incompatible, or would render the practice defining them less effective. Therefore no serious distortion of the concept of justice is likely to follow from including within it the concept of the greatest equal liberty.

The second principle defines what sorts of inequalities are permissible; it specifies how the presumption laid down by the first principle may be put aside. Now by inequalities it is best to understand not *any* differences between offices and positions, but differences in the benefits and burdens attached to them either

directly or indirectly, such as prestige and wealth, or liability to taxation and compulsory services. Players in a game do not protest against there being different positions, such as batter, pitcher, catcher, and the like, nor to there being various privileges and powers as specified by the rules; nor do the citizens of a country object to there being the different offices of government such as president, senator, governor, judge, and so on, each with their special rights and duties. It is not differences in the resulting distribution established by a practice, or made possible by it, of the things men strive to attain or avoid. Thus they may complain about the pattern of honors and rewards set up by a practice (*e.g.* the privileges and salaries of government officials) or they may object to the distribution of power and wealth which results from the various ways in which men avail themselves of the opportunities allowed by it (*e.g.* the concentration of wealth which may develop in a free price system allowing large entrepreneurial or speculative gains).

It should be noted that the second principle holds that an inequality is allowed only if there is reason to believe that the practice with the inequality, or resulting from it, will work for the advantage of *every* party engaging in it. Here it is important to stress that *every* party must gain from the inequality. Since the principle applies to practices, it implies that the representative man in every office or position defined by a practice, when he views it as a going concern, must find it reasonable to prefer his condition and prospects with the inequality to what they would be under the practice without it. The principle excludes, therefore, the justification of inequalities on the grounds that the disadvantages of those in one position are outweighed by the greater advantages of those in another position. This rather simple restriction is the main modification I wish to make in the utilitarian principle as usually understood.[7]

Rawls, like Hume in particular, ties the concept of "justice" to the concept of "equality." The main theme of his work is an attempt to develop this connection and to state precisely the kind of "equality" that is most important for justice. Against the conservative suggestion that people are equal in legal rights and "opportunities" alone, without any right to material goods and social services, he argues that a just society will consider the welfare of the worst-off members of society as an obligation. Here he differs with Mill and the utilitarians, who would say that such help is a matter of utility; for Rawls, it is more like a Kantian duty. Moreover, Rawls clearly distinguishes himself from socialists as well, who would argue that all property should be shared; he says only that it is obligatory to help out the worst-off members of society, but nowhere does he suggest that all people therefore ought to have equal wealth and property. Justice, in other words, does not equate fair distribution with equal distribution. Equality becomes a far more complex notion, therefore, than simple egalitarianism, often takes it to be.

Is equality the primary concern of justice? Even Rawls admits that a society in which everyone had exactly equal shares of social goods is impossible. But why is it

[7] John Rawls, "Justice as Fairness," in *The Philosophical Review* 67 (April 1958).

impossible? We can all imagine a situation—and some radical thinkers even propose it—in which all material goods (at least) would be collected and cataloged by the state, then redistributed to every citizen in precisely equal shares. Most of us, including Rawls, find this suggestion intolerable. Yet why, if it realizes the equality that justice demands? Something stops us, and it is not simply the idea that we might lose our own goods, for many of us would in fact benefit from such a redistribution scheme. What bothers us initially is the very idea of anyone, including (perhaps especially) the government, intruding into our lives and exerting such power. However, we also sense that such a scheme for redistributing the wealth violates something very basic to justice—namely, the rights we have to our possessions. Rawls, of course, gives rights top priority in his theory; but they are rights having to do with liberty in general, not rights having to do with possession as such. We all feel, with whatever reservations, that we have a right to what we earn and that we have a right to keep what we already possess. We resent that the government takes from us a substantial percentage of our earnings to use in ways not directly (or perhaps even indirectly) under our control. And we believe we have the right, for instance, to the modest sum that grandfather left us in his will (presumably the residue of earlier taxation), even though we did not earn it in any sense. Thus many philosophers have become increasingly aware of another kind of right that is not treated adequately by such liberal theories of Rawls'—in fact, a right that goes against the modest scheme of redistribution (for example, through taxation) encouraged by his principles. This other kind of right, known as **entitlement,** gives rise to a very different kind of theory of justice.

The popular name for this alternative theory is *libertarianism,* and it has recently become a powerful force in American politics. The basic idea, an "entitlement theory," puts the right to private property first and foremost, and couples with it a deep skepticism as to the wisdom or fairness of government. The original entitlement theory was developed by John Locke, who argued that the right to private property was so basic that it preceded any social conventions or laws and existed quite independent of any government or state. What gave a person the right to a piece of property, Locke argued, was that he had "mixed his labor with it," in other words, worked with it and improved it and so had the right to it. In today's terms—where what is at stake consists mainly of salaries and what we can buy with them (Locke was thinking mainly of land)—we would say that a person has the basic right to keep what he or she earns. Very recently, Locke's theory has been updated considerably and argued forcefully by John Rawls' younger Harvard colleague, Robert Nozick. In *Anarchy, State and Utopia,* Nozick argues for the entitlement theory and against any attempt to set "patterns" of fair distribution, for the enforcement of any such pattern must result in the violation of people's rights.

FROM *ANARCHY, STATE AND UTOPIA* BY **ROBERT NOZICK**

Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that

they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state? . . . Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons' rights not be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right. Two noteworthy implications are that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their *own* good or protection.

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THE ENTITLEMENT THEORY

The subject of justice in holdings consists of three major topics. The first is the *original acquisition of holdings,* the appropriation of unheld things. This includes the issues of how unheld things may come to be held, the process, or processes, by which unheld things may come to be held, the things that may come to be held by these processes, the extent of what comes to be held by a particular process, and so on. We shall refer to the complicated truth about this topic, which we shall not formulate here, as the principle of justice in acquisition. The second topic concerns the *transfer of holdings* from one person to another. By what processes may a person transfer holdings to another? How may a person acquire a holding from another who holds it? Under this topic come general descriptions of voluntary exchange, and gift and (on the other hand) fraud, as well as reference to particular conventional details fixed upon in a given society. The complicated truth about this subject (with placeholders for conventional details) we shall call the principle of justice in transfer. (And we shall suppose it also includes principles governing how a person may divest himself of a holding, passing it into an unheld state.)

If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2.

The complete principle of distributive justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution.

A distribution is just if it arises from another just distribution by legitimate means. The legitimate means of moving from one distribution to another are specified by the principle of justice in transfer. The legitimate first "moves" are specified by the principle of justice in acquisition. Whatever arises from a just situation by just steps is itself just. . . .

Not all actual situations are generated in accordance with the two principles of justice in holdings: the principle of justice in acquisition and the principle of justice in transfer. Some people steal from others, or defraud them, or enslave them, seizing their product and preventing them from living as they choose, or forcibly exclude others from competing in exchanges. None of these are permissible modes of transition from one situation to another. And some persons acquire holdings by means not sanctioned by the principle of justice in acquisition. The existence of past injustice (previous violations of the first two principles of justice in holdings) raises the third major topic under justice in holdings: the rectification of injustice in holdings. If past injustice has shaped present holdings in various ways, some identifiable and some not, what now, if anything, ought to be done to rectify these injustices? What obligations do the performers of injustice have toward those whose position is worse than it would have been had the injustice not been done? Or, than it would have had compensation been paid promptly? How, if at all, do things change if the beneficiaries and those made worse off are not the direct parties in the act of injustice, but, for example, their descendants? Is an injustice done to someone whose holding was itself based upon an unrectified injustice? How far back must one go in wiping clean the historical slate of injustices? What may victims of injustice permissibly do in order to rectify the injustices being done to them, including the many injustices done by persons acting through their government? I do not know of a thorough or theoretically sophisticated treatment of such issues. Idealizing greatly, let us suppose theoretical investigations will produce a principle of rectification. This principle uses historical information about previous situations and injustices done in them (as defined by the first two principles of justice and rights against interference), and information about the actual course of events that flowed from these injustices, until the present, and it yields a description (or descriptions) of holdings in the society. . . .

HISTORICAL PRINCIPLES AND END-RESULT PRINCIPLES

The general outlines of the entitlement theory illuminate the nature and defects of other conceptions of distributive justice. The entitlement theory of justice in distribution is *historical;* whether a distribution is just depends upon how it came about. In contrast, *current time-slice principles* of justice hold that the justice of a distribution is determined by how things are distributed (who has what) as judged by some *structural* principle(s) of just distribution. A utilitarian who judges between any two distributions by seeing which has the greater sum of utility and, if the sums tie, applies some fixed equality criterion to choose the more equal distribution, would hold a current time-slice principle of justice. As would someone who had a fixed schedule of trade-offs between the sum of happiness and equality. According to a current time-slice principle, all that needs to be looked at, in judging the justice of a distribution, is who ends up with what; in comparing any two distributions one need look only at the matrix presenting the distributions. No further information need be fed into a principle of justice.

It is a consequence of such principles of justice that any two structurally identical distributions are equally just. (Two distributions are structurally identical if they present the same profile, but perhaps have different persons occupying the particular slots. My having ten and your having five, and my having five and your having ten are structurally identical distributions.) Welfare economics is the theory of current time-slice principles of justice. The subject is conceived as operating on matrices representing only current information about distribution. This, as well as some of the usual conditions (for example, the choice of distribution is invariant under relabeling of columns), guarantees that welfare economics will be a current time-slice theory, with all of its inadequacies.

Most persons do not accept current time-slice principles as constituting the whole story about distributive shares. They think it relevant in assessing the justice of a situation to consider not only the distribution it embodies, but also how that distribution came about. If some persons are in prison for murder or war crimes, we do not say that to assess the justice of the distribution in the society we must look only at what this person has, and that person has, and that person has, . . . at the current time. We think it relevant to ask whether someone did something so that he *deserved* to be punished, deserved to have a lower share. Most will agree to the relevance of further information with regard to punishments and penalties. Consider also desired things. One traditional socialist view is that workers are entitled to the product and full fruits of their labor; they have earned it; a distribution is unjust if it does not give the workers what they are entitled to. Such entitlements are based upon some past history. No socialist holding this view would find it comforting to be told that because the actual distribution *A* happens to coincide structurally with the one he desires *D, A* therefore is no less just than *D;* . . . This socialist rightly, in my view, holds onto the notions of earning, producing, entitlement, desert, and so forth, and he rejects current time-slice principles that look only to the structure of the resulting set of holdings. . . . His mistake lies in his view of what entitlements arise out of what sorts of productive processes.[8]

B. THE LEGITIMACY OF THE STATE

The entitlement theory questions whether government ought to have the power to take away people's property, not to mention their lives. But when people do not cooperate willingly with the government and act for the public interest, they are often forced to relinquish their property. How does government get the power and the authority to take people's property or threaten their lives? Ought the government to have such power?

[8] Robert Nozick, *Anarchy, State and Utopia* (Cambridge, MA: Harvard University Press, 1974).

The authority with the power to define the public interest and to enforce its definition is what philosophers call the **state.**[9] But it must not be thought that the state or its instrument—the government—is merely a bookkeeping and organizational institution. Ideally, in a well-functioning society in which most people act in the public interest, it may be not much more than this, and then as minimally as necessary. But since people do not always act in the public interest, the role of the state is necessarily that of *legislator,* making laws and rules that tell people how to act (and how not to act), and that of *enforcer,* applying enough force through threat of punishment to make sure that people obey those laws and rules. Then too it is the state that may have to step in when the rights of an individual are threatened and pass laws to protect those rights and punish those who violate them.

Ideally, the function of the state is to keep the balance between the public interest and individual rights, in other words, to preserve justice. Some theorists would add that the function of the state is to make life for its citizens such that the public interest and individual rights and interests almost always coincide. Others would hope that the state would serve this function so well that it would no longer be needed, except perhaps as a bureau of records and an occasional enforcer of contracts. Some people think that the state is an end in itself, a matter of pride and a rallying point for its citizens, something like a football team in a small town. Still others would say that the only proper state is virtually no state at all.

We have been talking about the state as the center of power and authority, and many people would simply define "politics" in terms of "power." But "power" alone is not enough to characterize the state; we must add that it is legitimate power. **Legitimacy** means that this power must be justified. A person or organization might have tremendous power and rule a society with an iron hand. But rulers might be gangsters who rule by force alone. Or they might be invaders from another country who rule without popular consent. Or they might be citizens who, because of powerful positions in the government or the army, acquire this power in illegal or unacceptable ways. The idea of the state, therefore, is not simply that it is the center of power; it is the center of legitimate power or, in other words, *authority.* When philosophers and political scientists use the term *authority,* they almost always mean "legitimate authority." And sometimes, when they say that "the state has the power to do such and such," they mean "that the state has the legitimate power to do such and such." Legitimate authority (or simply, authority) has the legal power to make laws. Crude military or political power is only the ability to force people to do what one wants; it is not therefore legitimate. A central question of political philosophy, accordingly, is "What makes a state's power legitimate?" In other words, "what gives a state its authority?"

It is necessary to distinguish three different levels on which the question of legitimacy and authority must be raised. First, there is the question of the legitimacy

[9]This is a general term for any highest authority in a society; it includes federal government as well as "states" in a more restricted sense, for example, Alabama and Massachusetts. Thus the sovereign cities of the ancient Greeks were called "city-states."

of the state itself. On what authority did the English, for example, rule over the American colonies and consider them a part of the British Empire? Conversely, what authority did the American colonists claim when they declared themselves independent of England and set themselves up as a separate state? Much recent history involves the creation, recreation, and realignment of various states. If we look at maps of Europe for the past fifty years, for example, we will see that states go into and out of existence, sometimes several times. The question of the legitimacy of the state itself, therefore, is one of the main causes of the wars and political battles of our times (and earlier times as well).

Second, there is the question of the legitimacy of a certain form of government. In some Asian and Latin American countries, for example, there are frequent changes between military dictatorships and republics or democracies. In the recent history of Spain, as another example, there have been changes from a monarchy to a republic to a dictatorship back to a monarchy trying to establish democratic processes. The geographical boundaries of the state in all these instances remain the same, the population also remains pretty much the same (making allowances for casualties and refugees), but the form of government changes radically. It is possible that the same people or party, however, will remain in power even though the form of government changes. (For example, the president of a democracy may become the dictator in a dictatorship.)

This brings us to our third level of legitimacy: Particular governments must be shown to be legitimate within the framework of the form of government in a state. The form of government confers legitimacy. For example, a democracy confers legitimacy through elections, a monarchy confers legitimacy on a new king or queen through birth. In our own state, the form of government has remained constant for the past two hundred years, but the particular governments have changed quite frequently, from one party to the other, and sometimes new parties are created and succeed in getting elected. A particular government (whether Republican or Democratic, for example) is made legitimate by the election laws created by our form of government. Usually these laws make it clear which particular government (that is, which party) is the legitimate government at a particular time. In a close election, however, this may be in hot dispute, and in such instances the distinction between the form of government and particular governments is thrown into sharp contrast.

1. Five Theories of Legitimacy

The legitimacy of a particular government, a form of government, or a state means that its power is justified. But what justifies this power? We might say that what justifies a particular government, form of government, or state is the willingness of its citizens to obey its laws, the recognition of it by other governments and states whom it in turn recognizes, and in general the widespread belief in its legitimacy by virtue of which the people or party in power are accepted as such. But this extremely loose definition encounters many problems, particularly in dictatorships where people are forced to accept governments, in powerful military states that can force recognition from other states, and powerful governments that are able to force their

citizens to obey them, whether the citizens really want to or not. Moreover, the crucial belief in a government, form of government, or state may be based on many different kinds of justifications. It is necessary, therefore, to mention at least five different kinds of justifications for this belief, each of which might be called a theory of legitimacy.

DIVINE RIGHT TO RULE THEORY Since ancient times it has been argued that kings, queens, pharaohs, princes, and emperors have been given their authority directly by God or gods. Until modern times this was a difficult theory to refute and a dangerous one to argue against. But even in ancient times, for example, in Greece, it was maintained that this divine right had to be supported by justice and a modicum of wisdom and, at least to a small extent, the acceptance of the people ruled. But since the people who were ruled were more often than not forced to accept the authority of the divinely appointed ruler, this last qualification was mostly nominal. Kings sometimes enjoyed the support of the people, but it is debatable whether they actually needed it.

MIGHT-MAKES-RIGHT THEORY This theory holds that power itself makes a government legitimate. In a sense, therefore, this theory rejects the very idea of legitimacy, since according to it any government or state that has power has legitimate power and therefore the distinction between legitimate and illegitimate power disappears. For obvious reasons, this theory is usually favored more by those who are already in power than by those who are not in power. But it is rare that a government or state that has power will publicly state the might-makes-right theory. Usually it will invoke one of the other theories in its defense.

UTILITARIAN THEORY Just as utilitarianism in moral theory defends that action that will promote the greatest good for the greatest number, utilitarianism in political theory defends the government or state that will promote the greatest good for the greatest number of its citizens. Jeremy Bentham's classic treatise, for example, is called *An Introduction to the Principles of Morals and Legislation.* And Mill's pamphlet, *Utilitarianism,* is partly devoted to the political problem of justice. According to the utilitarian theory, a government is legitimate so long as it provides the most services and best protection for its citizens in general. Or to characterize this theory slightly differently, the utilitarian theory says that a government is justified insofar as it furthers the public interest. (Thus it might also be called "public interest theory.")

JUSTICE THEORY One possible problem with the utilitarian theory, as we have seen in other contexts in this chapter, is that it may promote the best interests of most of the people at the expense of a small minority. Neither the divine right nor might-makes-right theories include any mention of justice at all, and so it is important that the demand that governments and states be just be made independently of these others. Plato and Aristotle, for example, used a justice theory to defend their conceptions of the state. But the fact that Plato's and Aristotle's conception of the state

was so different from ours (and so unjust in some respects) points to an important qualification of this kind of theory. What the theory amounts to depends wholly on the concept of justice one defends. If justice means equality, then the legitimate state will maximize equality; if justice means "everyone in his or her proper place" (as in Plato and Aristotle), then the state will be legitimate if the various parts of the state are "in harmony" and working together smoothly.

CONSENT OF THE GOVERNED THEORY This theory is the one that most people accept today. It is assumed, however, that the consent of the governed will also ensure the public interest and justice for everyone as well. Consent of the governed theory is based on the idea that the people who are ruled should have some say in how they are ruled and perhaps even have a choice in who rules them. These two ideas are not equivalent, although they usually go together in our society. People might have a say in government policies without being able to choose the government, as in most monarchies, for example. Even Plato accepted this theory to some degree. In *The Republic,* he argues (through Socrates), "in our state, if anywhere, the governors and the governed will share the same conviction on the question who ought to rule. Don't you think so?"[10]

The most powerful modern versions of the consent of the governed theory are summed up in the phrase, "social contract." According to the theory of the social contract, governments and states are legitimate only because the citizens agree to be ruled by them.

2. *The Social Contract*

The single most influential defense of the legitimacy of the state in modern times has been called the "social contract theory." The **social contract** is an agreement among people to share certain interests and make certain compromises for the good of them all. It is a "consent of the governed theory." In one form or another, it existed even in ancient times. For example, read Socrates' argument in the *Crito,* in which he says that by staying in Athens he had implicitly agreed to abide by its laws, even when those laws unfairly condemned him to death. What is most important in understanding the nature of this social contract is that, as in Socrates' argument, there need not have been any actual, physical contract or even oral agreement in order to talk about it. We are bound by social contract, in other words, even if we never signed or saw such a contract. Moreover, it may not be the case that there was ever such a contract, even in past history. It happens, however, that Americans are among the few people in the world whose state was actually formed explicitly by such a contract, namely, our *Constitution.* But the actual existence of such a piece of paper is not necessary to a discussion about a social contract. Simply to live in a society, according to these philosophers, is to have agreed, at least implicitly, to such an agreement.

[10]Plato, *The Republic,* trans. Francis M. Cornford (Oxford: Oxford University Press, 1941).

(Thus, living in a society you are expected to obey its laws; "ignorance is no excuse," and you cannot get out of an arrest by saying "I don't really live here," much less "I don't recognize your right to arrest me.")

Two very different pictures of the original social contract are presented to us by the English philosopher Thomas Hobbes and the French philosopher Jean-Jacques Rousseau. Both begin by considering man in "the state of nature," without laws and without society, before men and women came together to accept the social contract. Hobbes bases his conception of the social contract, however, on an extremely unfavorable conception of human nature. He attacks the idealistic political philosophies of Plato and Aristotle for being unrealistic and assuming wrongly that people are naturally capable of virtue and wisdom. Like Machiavelli, whom he follows with praise, he considers himself a "realist." As with most realists, this meant seeing the nasty side of things. So, according to his theory of human nature, natural man is a selfish beast, fighting for his own interests against everyone else. Human life is a "war of all against all" and a person's life, consequently, is "nasty, brutish and short." He dismisses reason and appeals to human passions, particularly the passion for self-preservation. The social contract, therefore, is mainly an agreement of equally selfish and self-seeking persons not to commit mutual murder.

FROM *LEVIATHAN,* BY **THOMAS HOBBES**

OF THE NATURAL CONDITION OF MANKIND AS CONCERNING THEIR FELICITY, AND MISERY

Men by nature equal. Nature hath made men so equal, in the faculties of the body, and mind; as that though there be found one man sometimes manifestly stronger in body, or of quicker mind than another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himself any benefit, to which another may not pretend, as well as he. For as to the strength of the body, the weakest has strength enough to kill the strongest, either by secret machination or by confederacy with others, that are in the same danger with himself.

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For such is the nature of men, that howsoever they may acknowledge many others to be more witty, or more eloquent, or more learned; yet they will hardly believe there be many so wise as themselves; for they see their own wit at hand, and other men's at a distance. But this proveth rather that men are in that point equal, than unequal. For there is not ordinarily a greater sign of the equal distribution of any thing, than that every man is contented with his share.

From equality proceeds diffidence. From this equality of ability, ariseth equality of hope in the attaining of our ends. And therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their end, which is principally their own conservation,

and sometimes their delectation only, endeavour to destroy, or subdue one another. And from hence it comes to pass, that where an invader hath no more to fear, than another man's single power; if one plant, sow, build, or possess a convenient seat, others may probably be expected to come prepared with forces united, to dispossess, and deprive him, not only of the fruit of his labour, but also of his life, or liberty. And the invader again is in the like danger of another.

From diffidence war. And from this diffidence of one another, there is no way for any man to secure himself, so reasonable, as anticipation; that is, by force, or wiles, to master the persons of all men he can, so long, till he see no other power great enough to endanger him: and this is no more than his own conservation requireth, and is generally allowed. Also because there be some, that taking pleasure in contemplating their own power in the acts of conquest, which they pursue farther than their security requires; if others, that otherwise would be glad to be at ease within modest bounds, should not by invasion increase their power, they would not be able, long time, by standing only on their defence, to subsist. And by consequence, such augmentation of dominion over men being necessary to a man's conservation, it ought to be allowed him.

Again, men have no pleasure, but on the contrary a great deal of grief, in keeping company, where there is no power able to over-awe them all. For every man looketh that his companion should value him, at the same rate he sets upon himself: and upon all signs of contempt, or undervaluing, naturally endeavors, as far as he dares (which amongst them that have no common power to keep them in quiet, is far enough to make them destroy each other), to extort a greater value from his contemners, by damage; and from others, by the example.

So that in the nature of man, we find three principal causes of quarrel. First, competition; secondly, diffidence; thirdly, glory.

The first, maketh men invade for gain; the second, for safety; and the third, for reputation. The first use violence, to make themselves masters of other men's persons, wives, children, and cattle; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other sign of undervalue, either direct in their persons, or by reflection in their kindred, their friends, their nation, their profession, or their name.

Out of civil states, there is always war of every one against every one. Hereby it is manifest, that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war, as is of every man, against every man. For war, consisteth not in battle only, or the act of fighting, but in a tract of time, wherein the will to contend by battle is sufficiently known. . . .

The incommodities of such a war. Whatsoever therefore is consequent to a time of war, where every man is enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own invention shall furnish them withal. In such condition, there is no place for industry; because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving, and

removing, such things as require much force; no knowledge of the face of the earth; no account of time; 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.

It may seem strange to some man, that has not well weighed these things; that nature should thus dissociate, and render men apt to invade, and destroy one another: and he may therefore, not trusting to this inference, made from the passions, desire perhaps to have the same confirmed by experience. Let him therefore consider with himself, when taking a journey, he arms himself, and seeks to go well accompanied; when going to sleep, he locks his doors; when even in his house he locks his chests; and this when he knows there be laws, and public officers, armed to revenge all injuries shall be done him; what opinion he has of his fellow-subjects, when he rides armed; of his fellow citizens, when he locks his doors; and of his children, and servants, when he locks his chests. Does he not there as much accuse mankind by his actions, as I do by my words? But neither of us accuse men's nature in it. The desires, and other passions of man, are in themselves no sin. No more are the actions, that proceed from those passions, till they know a law that forbids them: which till laws be made they cannot know: nor can any law be made, till they have agreed upon the person that shall make it.

It may peradventure be thought, there was never such a time, nor condition of war as this; and I believe it was never generally so, over all the world: but there are many places, where they live so now. For the savage people in many places of America, except the government of small families, the concord whereof dependeth on natural lust, have no government at all; and live at this day in that brutish manner, as I said before. Howsoever, it may be perceived what manner of life there would be, where there were no common power to fear, by the manner of life, which men that have formerly lived under a peaceful government, use to degenerate into, in a civil war.

OF THE FIRST AND SECOND NATURAL LAWS, AND OF CONTRACTS

Right of nature what. The right of nature, which writers commonly call *jus naturale,* is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life; and consequently, of doing any thing, which in his own judgment, and reason, he shall conceive to be the aptest means thereunto.

Liberty what. By liberty, is understood, according to the proper signification of the word, the absence of external impediments: which impediments, may oft take away part of a man's power to do what he would; but cannot hinder him from using the power left him, according as his judgment, and reason shall dictate to him.

A law of nature what. A law of nature, *lex naturalis,* 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 taketh away the means of preserving the same; and to omit that, by which he thinketh it may be best preserved.

Difference of right and law. For though they that speak of this subject, use to confound *jus,* and *lex, right* and *law:* yet they ought to be distinguished; because right, consisteth in liberty to do, or to forbear: whereas law, determineth, and bindeth to one of them: so that law, and right, differ as much, as obligation, and liberty; which in one and the same matter are inconsistent.

Naturally every man has right to every thing. And because the condition of man, as hath been declared in the precedent chapter, is a condition of war of every one against every one; in which case every one is governed by his own reason; and there is nothing he can make use of, that may not be of help unto him, in preserving his life against his enemies; it followeth, that in such a condition, every man has a right to every thing; even to one another's body. And therefore, as long as this natural right of every man to every thing endureth, there can be no security to any man, how strong or wise soever he be, of living out the time, which nature ordinarily alloweth men to live.

The fundamental law of nature. And consequently it is a precept, or general rule of reason, *that every man, ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of war.*

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The second law of nature. From this fundamental law of nature, by which men are commanded to endeavour peace, is derived this second law; *that a man be willing, when others are so too, as far-forth, as for peace, and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himself.* For as long as every man holdeth this right, of doing any thing he liketh; so long are all men in the condition of war. But if other men will not lay down their right, as well as he; then there is no reason for any one, to divest himself of his: for that were to expose himself to prey, which no man is bound to, rather than to dispose himself to peace. This is that law of the Gospel; *whatsoever you require that others should do to you, that do ye to them.*

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What it is to lay down a right. To *lay down* man's *right to* any thing, is to *divest* himself of the *liberty,* of hindering another of the benefit of his own right to the same. For he that renounceth, or passeth away his right, giveth not to any other man a right which he had not before; because there is nothing to which every man had not right by nature: but only standeth out of his way, that he may enjoy his own original right, without hindrance from him; not without hindrance from another. So that the effect which redoundeth to one man, by another man's defect of right, is but so much diminution of impediments to the use of his own right original.

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Not all rights are alienable. Whensoever a man transferreth his right, or renounceth it; it is either in consideration of some right reciprocally transferred to himself; or for some other good he hopeth for thereby. For it is a voluntary

act: and of the voluntary acts of every man, the object is some *good to himself.* And therefore there be some rights, which no man can be understood by any words, or other signs, to have abandoned, or transferred. As first a man cannot lay down the right of resisting them, that assault him by force, to take away his life; because he cannot be understood to aim thereby, at any good to himself. The same may be said of wounds, and chains, and imprisonment; both because there is no benefit consequent to such patience; as there is to the patience of suffering another to be wounded, or imprisoned: as also because a man cannot tell, when he seeth men proceed against him by violence, whether they intend his death or not. And lastly the motive, and end for which this renouncing, and transferring of right is introduced, is nothing else but the security of man's person, in his life, and in the means of so preserving life, as not to be weary of it. And therefore if a man by words, or other signs, seem to despoil himself of the end, for which those signs were intended; he is not to be understood as if he meant it, or that it was his will; but that he was ignorant of how such words and actions were to be interpreted.

Contract what. The mutual transferring of right, as that which men call CONTRACT.

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Covenants of mutual trust, when invalid. If a covenant be made, wherein neither of the parties perform presently, but trust one another; in the condition of mere nature, which is a condition of war of every man against every man, upon any reasonable suspicion, it is void: but if there be a common power set over them both, with right and force sufficient to compel performance, it is not void. 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; which in the condition of mere nature, where all men are equal, and judges of the justness of their own fears, cannot possibly be supposed. And therefore he which performeth first, does but betray himself to his enemy; contrary to the right, he can never abandon, of defending his life, and means of living.

But in a civil estate, where there is a power set up to constrain those that would otherwise violate their faith, that fear is no more reasonable; and for that cause, he which by the covenant is to perform first, is obliged so to do.

The cause of fear, which maketh such a covenant invalid, must be always something arising after the covenant made; as some new fact, or other sign of the will not to perform: else it cannot make the covenant void. For that which could not hinder a man from promising, ought not to be admitted as a hindrance of performing.

Right to the end, containeth right to the means. He that transferreth any right, transferreth the means of enjoying it, as far as lieth in his power. As he that selleth land, is understood to transfer the herbage, and whatsoever grows upon it: nor can he that sells a mill turn away the stream that drives it. And they that give to a man the right of government in sovereignty, are understood to give

> him the right of levying money to maintain soldiers; and of appointing magistrates for the administration of justice.[11]

Hobbes begins his argument with the perhaps surprising observation that people are basically equal in nature. He is not talking here about legal equality or equal rights (for there are no laws and no legal rights) but rather equality in abilities, talents, and power. This seems strange, because the problem of equality usually pays attention to the great differences between people. Instead Hobbes points out our similarities. In particular, he points out that almost everyone is strong and smart enough to kill or inflict grievous injury on others. Even a puny moron can, with a knife or a handgun, kill the strongest and smartest person on earth. Accordingly, the basis of the social contract (or "covenant") according to Hobbes is our mutual protection. Everyone agrees not to kill other people and in return is guaranteed that he or she won't be killed. Although it is a cynical view of human nature, it also continues to be one of the most powerful arguments for strong governments. (Hobbes himself was a conservative monarchist.)

Rousseau, quite to the contrary, had an extremely optimistic view of human nature, as we saw in the preceding chapter. He believed that people were "naturally good," and it was only the corruptions of society that made them selfish and destructive. Rousseau does not take the social contract, therefore, to be simply a doctrine of protection between mutually brutish individuals. The function of the state is rather to allow people to develop the "natural goodness" that they had in the absence of any state at all. This is not to say (although Rousseau is often interpreted this way) that he was nostalgic and wanted to "go back to the state of nature." That is impossible. (It is not even clear that Rousseau believed that there ever was a "state of nature" as such; his example, like Hobbes' example, is a way of giving a picture of "human nature," whether or not it is historically accurate.) We are already in society; that is a given fact. So Rousseau's aim is to develop a conception of the state that will allow us to live as morally as possible. This is important, for Rousseau, unlike most social contract theorists, is not at all a utilitarian; it is not happiness that is most important but goodness. (Hobbes, by way of contrast, took utility, pleasure and well-being, in addition to self-preservation, to be the purpose of the social contract.)

Rousseau's ambition, therefore, is not to "get us back to nature" but rather to revise our conception of the state. His "revision," however, is one of the most radical documents in modern history and has rightly been said to be one of the causes of both the American and French revolutions. The main thesis is one that Rousseau inherits from Locke: The state has legitimate power only so long as it serves the people it governs. The revolutionary corollary is that when a state ceases to serve its citizens, the citizens have a right to overthrow that government. This was a radical claim, again reminiscent of Locke. Even Rousseau was not comfortable with it. (Locke had made his statement *after* the English Revolution.) He called revolution

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[11] Thomas Hobbes, *Leviathan* (New York: Hafner, 1926).

"the most horrible alternative," to be avoided wherever possible. But subsequent French history took his theories quite literally and demonstrated too the "horror" that may follow too radical and abrupt a change in the authority that citizens accept as legitimate.

In earlier works, Rousseau argued his famous thesis that "natural man" is "naturally good" and that contemporary society has corrupted him (and her). He went on to say that competition and the artificiality of our lust for private property are responsible for this corruption, and he even included marriage and romantic love as forms of this "lust for private property." In the state of nature, he suggests, people mated when they felt like it, with whomever they felt like, and duels fought between rivals were unheard of. Rousseau does not suggest that we return to that prehistoric custom, but he does use it as a wedge to pry open even the most sacred of our modern civil institutions. All of these, he argues, must be reexamined, and the tool for that reexamination is the social contract.

The key to his most famous book, appropriately called *The Social Contract,* is that man must regain his freedom within society. This does not mean, however, that a person can do whatever he or she would like to do. Quite the contrary—to be a citizen, according to Rousseau, is to want and do what is good for the society as well. To be free is precisely to want to do what is good for the society. In fact, in one of the most problematic statements of the social contract, Rousseau says that a person who does not so act for the good of the society may have to "be forced to be free." Here is the basis for a strange paradox. On the one hand, Rousseau has properly been regarded as the father of the most liberal and revolutionary political theories of our time. (Marx, for example, claims a great debt to Rousseau). His political philosophy stresses individual freedom and rights above all, even above the state itself. But another side to Rousseau emerges in his paradoxical phrase; his stress on the state as an entity in itself ("the sovereign," presumably the king, but essentially any government) and the subservience of the individual to the state has also caused him to be labeled an authoritarian and the forerunner of totalitarian and fascist governments.

This paradox is not easily resolved, but we can at least explain how it comes about. Rousseau believes that the state is subject to and receives its legitimacy from the people it governs. But that does not mean that individual people need have any real power in determining the form or functions of government. Rousseau is not a democrat. What he says instead is that the state is subject to what he calls the general will, which is not simply a collection of individuals but something more. For example, we talk about "the spirit of the revolution" or "the discontent of the working class," but this spirit or discontent is not simply the product of each individual person. A poll of workers or revolutionaries would not show it either way. The revolution may have spirit even though some participants do not; indeed, they may even dislike the whole idea. Here is the source of the paradox: Legitimacy is given to the state by the general will, not by every individual person. The person who does not agree with the general will, therefore, may very well find himself or herself forced into compliance with the state (as Rousseau says, "forced to be free"). How much force, however, is a matter about which Rousseau is not very clear; nor have his

many followers agreed on that crucial point either. On one extreme, Rousseau's authoritarian followers have insisted that all dissent from the general will must be stifled; on the other extreme, Rousseau's most libertarian and anarchist followers have insisted that the rights of the individual to be free from government intervention and to live according to his or her own "natural goodness" outweigh any claims that the state may have. What follows are a few selections from *The Social Contract,* beginning with one of Rousseau's best-known slogans.

FROM *THE SOCIAL CONTRACT,* BY JEAN-JACQUES ROUSSEAU

Man is born free; and everywhere he is in chains. 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. What can make it legitimate? That question I think I can answer.

If I took into account only force, and the effects derived from it, I should say: "As long as a people is compelled to obey, and obeys, it does well; as soon as it can shake off the yoke, and shakes it off, it does still better; for, regaining its liberty by the same right as took it away, either it is justified in resuming it, or there was no justification for those who took it away." But the social order is a sacred right which is the basis of all other rights. Nevertheless, this right does not come from nature, and must therefore be founded on conventions. Before coming to that, I have to prove what I have just asserted.

THE FIRST SOCIETIES

The most ancient of all societies, and the only one that is natural, is the family: and even so the children remain attached to the father only so long as they need him for their preservation. As soon as this need ceases, the natural bond is dissolved. The children, released from the obedience they owed to the father, and the father, released from the care he owed his children, return equally to independence. If they remain united, they continue so no longer naturally, but voluntarily; and the family itself is then maintained only by convention.

This common liberty results from the nature of man. His first law is to provide for his own preservation, his first cares are those which he owes to himself; and, as soon as he reaches years of discretion, he is the sole judge of the proper means of preserving himself, and consequently becomes his own master.

The family then may be called the first model of political societies; the ruler corresponds to the father, and the people to the children; and all, being born free and equal, alienate their liberty only for their own advantage. The whole difference is that, in the family, the love of the father for his children repays him for the care he takes of them, while, in the State, the pleasure of commanding takes the place of the love which the chief cannot have for the peoples under him.

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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.

This sum of forces can arise only where several persons come together: but, as the force and liberty of each man are the chief instruments of his self-preservation, how can he pledge them without harming his own interests, and neglecting the care he owes to himself? This difficulty, in its bearing on my present subject, may be stated in the following terms:

"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." This is the fundamental problem of which the *Social Contract* provides the solution.

The clauses of this contract are so determined by the nature of the act that 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, until, on the violation of the social compact, each regains his original rights and resumes his natural liberty, while losing the conventional liberty in favour of which he renounced it.

These clauses, properly understood, may be reduced to one—the total alienation of each associate, together with all his rights, to the whole community; for, in the first place, 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.

Moreover, the alienation being without reserve, the union is as perfect as it can be, and no associate has anything more to demand: for, if the individuals retained certain rights, as there would be no common superior to decide between them and the public, each, being on one point his own judge, would ask to be so on all; the state of nature would thus continue, and the association would necessarily become inoperative or tyrannical.

Finally, 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.

If then we discard from the social contract what is not of its essence, we shall find that it reduces itself to the following terms:

"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."

At once, in place of the individual personality of each contracting party, this act of association creates a moral and collective body, composed of as many members as the assembly contains voters, and receiving from this act its unity, its common identity, its life, and its will. This public person, so formed by the union of all other persons, formerly took the name of *city,* and now takes that of *Republic* or *body politic;* it is called by its members *State* when passive, *Sovereign* when active, and *Power* when compared with others like itself. Those who are associated in it take collectively the name of *people,* and severally are called *citizens,* as sharing in the sovereign power, and *subjects,* as being under the laws of the State. But these terms are often confused and take one for another: it is enough to know how to distinguish them when they are being used with precision.

THE SOVEREIGN

This formula shows us that the act of association comprises a mutual understanding between the public and the individuals, and that each individual, in making a contract, as we may say, with himself, is bound in a double capacity; as a member of the Sovereign he is bound to the individuals, and as a member of the State to the Sovereign. But the maxim of civil right, that no one is bound by undertakings made to himself, does not apply in this case; for there is a great difference between incurring an obligation to yourself and incurring one to a whole of which you form a part.

Attention must further be called to the fact that public deliberation, while competent to bind all the subjects to the Sovereign, because of the two different capacities in which each of them may be regarded, cannot, for the opposite reason, bind that Sovereign to itself; and that it is consequently against the nature of the body politic for the Sovereign to impose on itself a law which it cannot infringe. Being able to regard itself in only one capacity, it is in the position of an individual who makes a contract with himself; and this makes it clear that there neither is nor can be any kind of fundamental law binding on the body of the people—not even the social contract itself. This does not mean that the body politic cannot enter into undertakings with others, provided the contract is not infringed by them; for in relation to what is external to it, it becomes a simple being, an individual.

But the body politic or the Sovereign, drawing its being wholly from the sanctity of the contract, can never bind itself, even to an outsider, to do anything derogatory to the original act, for instance, to alienate any part of itself, or to submit to another Sovereign. Violation of the act by which it exists would be self-annihilation; and that which is itself nothing can create nothing.

As soon as this multitude is so united in one body, it is impossible to offend against one of the members without attacking the body, and still more to offend

against the body without the members resenting it. Duty and interest therefore equally oblige the two contracting parties to give each other help; and the same men should seek to combine, in their double capacity, all the advantages dependent upon that capacity.

Again, the Sovereign, being formed wholly of the individuals who compose it, neither has nor can have any interest contrary to theirs; and consequently the sovereign power need give no guarantee to its subjects, because it is impossible for the body to wish to hurt all its members. . . .

In fact, each individual, as a man, may have a particular will contrary or dissimilar to the general will which he has as a citizen. His particular interest may speak to him quite differently from the common interest: his absolute and naturally independent existence may make him 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, regarding the moral person which constitutes the State as a *persona ficta,* because not a man, he may wish to enjoy the rights of citizenship without being ready to fulfil the duties of a subject. The continuance of such an injustice 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, which alone can give force to the rest, 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 all personal dependence. In this lies the key to the working of the political machine; this alone legitimizes civil undertakings, which, without it, would be absurd, tyrannical, and liable to the most frightful abuses.

THE CIVIL STATE

The passage from the state of nature to the civil state produces a very remarkable change in man, by substituting justice for instinct in his conduct, and giving his actions the morality they had formerly lacked. Then only, when the voice of duty takes the place of physical impulses and right of appetite, does man, who so far had considered only himself, find that he is forced to act on different principles, and to consult his reason before listening to his inclinations. Although, in this state, he deprives himself of some advantages which he got from 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.

Let us draw up the whole account in terms easily commensurable. What man loses by the social contract is his natural liberty and an unlimited right to everything he tries to get and succeeds in getting; what he gains is civil liberty and the

proprietorship of all he possesses. If we are to avoid mistake in weighing one against the other, we must clearly distinguish natural liberty, which is bounded only by the strength of the individual, from civil liberty, which is limited by the general will; and possession, which is merely the effect of force or the right of the first occupier, from property, which can be founded only on a positive title.

We might, over and above all this, add, to what man acquires in the civil state, moral liberty, which alone makes him truly master of himself; for the mere impulse of appetite is slavery, while obedience to a law which we prescribe to ourselves is liberty.[12]

Although Rousseau shares with Hobbes a belief in the social contract theory, the differences between them could not be more striking. Where Hobbes begins with a brutal view of human nature forced into agreement by fear of mutual violence, Rousseau begins by saying that "man is born free." For Rousseau, the social contract is not an instrument of mutual protection but a means of improving people and bringing out what is best in them. His central theme is not antagonism but humanity's "natural goodness." With unmistakable clarity, Rousseau rejects all might-makes-right theories and insists that legitimacy must always be a matter of the consent of the governed. "The general will" is not a general compromise but the creation of a new power, the power of the people, which for Rousseau is the ultimate voice of authority.

The most famous example of social contract theory at work is in our own Declaration of Independence. In that document, social contract theory combined with a theory of "natural" ("unalienable") rights provided an epoch-making announcement of the right of a people to overthrow an established government:

FROM **THE DECLARATION OF INDEPENDENCE,**
BY **THOMAS JEFFERSON** ET AL.

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness—That to secure these rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will indicate that Governments long established should not be changed for light and transient causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while

[12] Jean-Jacques Rousseau, *The Social Contract and Discourses,* trans. G. D. H. Cole (New York: Everyman's Library Edition, E. P. Dutton, 1947.)

> Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security.

C. INDIVIDUAL RIGHTS AND FREEDOM

If our concern were only the smooth workings of society, almost any government would do—the stronger the better, the more authoritarian the more efficient. But efficiency is only one of several concerns and probably not the most important. You might argue that the public interest could be served by such a government, but it is clear that justice and individual rights could not. The importance of the social contract theory (and consent-of-the governed theories in general) is precisely its clear emphasis on justice and rights, even when these go against the general public interest. However, the social contract theory by itself is not entirely clear about the status of individual rights. Those rights concerning freedom are of particular concern here. How much personal freedom does the social contract guarantee us? Thus any discussion of justice and the state must include some special concern for the status of basic freedoms and "unalienable rights" (that is, rights that no one and no government may take away), such as freedom to speak one's political opinions without harassment, freedom to worship (or not worship) without being penalized or punished, freedom to defend oneself against attack ("the right to bear arms" is a controversial case), and the freedom to pursue one's own interests (where these do not interfere with the rights of others). In addition, we can add the right not to be imprisoned without reason, or accused without a fair trial, or punished unduly for a crime committed. Our best-known list of such freedoms and rights is the American Bill of Rights, appended to the main body of the Constitution as a kind of contractual guarantee of personal rights.

1. The Proper Extent of the State

But even if the importance of such rights is indisputable, the precise formulation and extent of those rights are highly debatable. We speak of "unalienable rights," but should such rights be left unrestricted, for example, even in wartime? It is clear, to mention the most common example, that freedom of speech does not extend so far as the right to falsely yell "fire" in a crowded theater. Freedom of speech, therefore, like other rights, is limited by considerations of public welfare and utility. But how limited? Is mere annoyance to the government sufficient, or general boredom among the populace? Similarly, we can go back to the difficult examples we raised in earlier sections. Are the rights against imprisonment and harsh punishment always valid against overwhelming public interest? For example, are they valid in the case of a