

**Consent and the basis of political
obligation with reference made
to Thomas Hobbes and John Locke**

Calliope Christina Samoulla Farsides
Submitted for the degree of Ph.D.
London School of Economics and Political Science

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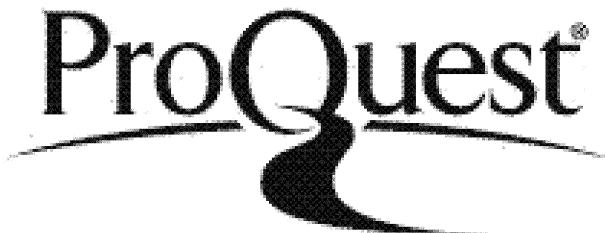
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Abstract

This thesis considers the status of consent within both contemporary theories of political obligation, and within the theories of Thomas Hobbes and John Locke. The definitions of consent and obligation offered at the beginning of the thesis seek to capture the paradigm meanings of both terms.

It is argued that consent, as defined here, is difficult to locate either in contemporary political society, or in the systems described by Hobbes and Locke. In the latter case, the reasons for reaching this conclusion are not the ones most commonly offered. In assessing the role and status of consent in classic social contract theory, particular attention is given to Hobbes's accounts of human nature and the state of nature, as well as his theory of determinism. Locke's theory of natural law is also examined in terms of its political significance.

The final conclusion reached in the thesis is that consent, as properly understood, should be a significant component of any acceptable theory of political obligation. However, this would require a substantial revision of the ordinary understanding of the concept, as well as a clearer understanding of the position of obligations within a general moral hierarchy.

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Introduction

The immediate purpose of this thesis is to consider the concept of consent as presented within the theories of political obligation offered by Thomas Hobbes and John Locke. Both Hobbes and Locke are taken to be traditional social contract theorists, and as such it is assumed that individual consent plays a central role in both of their theories. Generations of philosophers have offered their interpretations of how such consent operates, with few questioning the assumption that it is of crucial importance. I shall allow for the possibility that this concept plays a rather different role to that assumed by many commentators.

However, the work is not intended merely, or even primarily, as one of historical scholarship, and if it has nothing to offer beyond textual re-analysis it will somehow have failed. The 'problem' of political obligation to which so many philosophers refer is a current one, and the possibility of a consent-based solution is still being explored. There is, therefore, a second, and not necessarily subsidiary strand to this enquiry, such that a clearer understanding of the concepts and mechanisms employed by the classic social contract theorists should provide valuable insight for those attempting to utilise

consent within contemporary theories of political obligation.

Within this overall task, it becomes necessary not only to explore consent and obligation as presented by Hobbes and Locke, but also to look at the concepts as they are, or rather should be, employed in contemporary theory. This task is the subject of Chapter One in which the key vocabulary of social contract theory discourse is closely examined. Although there may not be anything particularly original to offer in this area it is important to address some persisting confusions of terminology, and to offer clear definitions which may then be employed in the later chapters of the thesis, and in subsequent work.

Chapter One therefore looks at the term obligation, and contrasts it with notions of duty, and statements of what one ought to do morally. After a discussion of specifically political obligations the term consent is introduced, defined and analyzed. The chapter closes with an account of the ideological and philosophical context within which consent is most frequently employed.

Chapters Two and Three of the thesis focus upon Hobbes, and as such are closely interrelated. Having said this, it is also important to remember that the definitions offered in the first chapter will have implications for what is said from there on, and that Hobbes's (and Locke's) use of key

terms will be judged against the standards set in that chapter. Furthermore, attention will be given to contemporary debates surrounding the important issues in each chapter, in the hope that past and present voices can join together and tackle the questions raised.

In Chapter Two I consider whether it is feasible to assume that men in a Hobbesian state of nature will be psychologically equipped to participate in a consenting process. This involves a reassessment of Hobbes's account of human nature, and of his account of social interactions prior to the formation of the commonwealth. Such a reassessment is only possible after first analysing the concepts 'state of nature' and 'human nature', and it is further dependent upon understanding the way in which Hobbes's scientific interests affect his political analysis.

Chapter Three examines the question of whether the Hobbesian individual is a suitable 'consenter' from a different angle. This time the issues arise out of Hobbes's claim that men do not have free will in the sense commonly understood by us. In order to establish whether determinism and voluntarism are in any sense compatible I first look at determinism in general, and then at Hobbes's account of the determined will. Once again it is important to understand the relationship between the scientific and the social scientific within his work.

The fourth chapter of the thesis turns our attention to Locke, and looks at the way in which his theory of natural law operates alongside his consent-based theory of political obligation. In order to explain how natural law relates to the question of political obligation in Locke's work I look at how men come to know the laws of nature, and where such laws stand in the hierarchy of moral commands. Having established the role of natural law I go on to see what implications this has for Locke's utilisation of individual consent.

When reading the works of these two great philosophers I have attempted to avoid aligning myself to any particular school of scholarship. Whilst it is useful to refer to the work of eminent commentators - indeed many are quoted - there are dangers involved in adopting their perspectives, as opposed to simply examining their opinions. If there is a methodological stand taken here it is that one should approach a philosophical text without prejudice or pre-conception, and beware of the way in which detail can be obscured by automatic pigeon-holing.

Some of the arguments offered in this thesis will require a careful re-reading of the texts, and an abandonment of certain traditional assumptions concerning what Hobbes and Locke say. The end results may be surprising but they should also be credible, because what is attempted is a re-reading as opposed to a re-writing. In any text the

writer puts a certain amount into his work and leaves it to the reader to derive meaning from it. Sometimes the writer facilitates this process, sometimes it is in his interest to hinder it, and no reader should become complacent about the meaning a writer intends. However familiar a text may be to a reader, or maybe even a generation of readers, it is always possible that the meaning as intended by the author has been obscured or even lost. This thesis attempts to read the texts in a manner faithful to the philosophers' intentions, and if it fails to do this then the whole project is undermined.

Chapter One

Obligation, Consent and Related Concepts

Social contract theory has not lacked attention in the three hundred odd years since Thomas Hobbes offered his particular version of it. It has to be said however, that familiarity has in this instance bred carelessness rather than contempt. The now familiar vocabulary of social contract discourse is rarely taken back to basics, definitions of key terms often differ in important respects, and as a result confusions arise. This is particularly regrettable given Hobbes's insistence upon definitional accuracy (Locke alas was less rigorous).

The appropriate starting point for any enquiry into political obligation must be to ask what it means to have, or be under, such an obligation. To understand this clearly it is necessary to strip the term back and explore first the general concept - obligation - of which political obligation is one type. The vagaries of ordinary usage demand not only that a clear definition of this term is offered, but also that it is separated off from those with which it is often taken to be synonymous, namely duty and 'ought'.

The Oxford English Dictionary makes no attempt to separate terms when, for example, it defines duty as "moral or legal

obligation, what one is bound or ought to do."¹ Admittedly in everyday language these terms are often used interchangeably, without discernable effect on understanding. Richard Brandt² is reluctant to make too much of the distinction between terms as adopted in ordinary usage, although he accepts that there is a paradigm usage in which distinctions are clearer.

There is sometimes a sub-class, within the wider class of all correct uses of a term, which has two features. First, members of this sub-class are felt to be especially natural uses of the term: there is no better word for the occasion and there are no better occasions for the word. We might express part of what this comes to in another way: there is a class of contexts such that, if speakers were given a choice between phrases incorporating 'duty' 'obligation' 'wrong' 'ought' and so on, the vast majority would make the same selection, although for other contexts where one of these words can be applied with perfect correctness, speakers would have no preference for one phrase over another. Second, the contexts in which a given term is felt to be especially appropriate have certain features in common, and the term has come to some extent, to suggest these features; speakers associate, the two to some degree. It seems likely that only relatively few words have paradigm uses in this sense.³

It will be suggested here that a political philosopher should be concerned precisely with such paradigm uses,

¹ *Concise Oxford English Dictionary*, Oxford, Oxford University Press, 1989, p.300.

² R. B. Brandt, 'The Concepts of Obligation and Duty', *Mind*, LXXXIII, 1964, pp.374-392.

³ *Ibid.*, p.385.

rather than, to borrow further from Brandt's vocabulary, the extended uses of ordinary discourse.⁴

Those who feel that there are important distinctions to be made, whether it be between paradigm or extended uses of the terms, reject what has been called the 'Traditional Assumption'⁵ that the statements 'You ought to do x', 'It is your duty to do x' and 'You have an obligation to do x' are logically equivalent. They in turn claim that this (false) assumption has led to the quite distinct features of each statement being obscured. Simmons states that "the looseness and inconsistencies of ordinary moral discourse do often result in their free substitution for one another. But it also seems clear that in their central or standard uses, judgements of obligation (and duty) play a special role in moral discourse to be distinguished from the roles of other sorts of moral judgements."⁶

The aim here is to establish the 'paradigm' use of each of these terms in the hope that the distinctions between them will thereby become apparent, and indeed helpful to the larger enquiry.

⁴ Cf. A.J. Simmons, *Moral Principles and Political Obligation*, Princeton, Princeton University Press, 1979, pp.11-14. Simmons is equally convinced that the philosopher's concern with paradigm meanings may lead them to be more rigorous than ordinary language requires.

⁵ Cf. H. Beran 'Ought, Obligation and Duty' *Australasian Journal of Philosophy*, Vol 50 No 3, Dec 1972, pp.207-221.

⁶ Simmons, *op cit.*, p.8.

In his article 'Ought, Obligation and Duty' Harry Beran offers a counter thesis (I) to the Traditional Assumption of similitude (AS), such that:

(Ia) Ought- and Obligation-statements are not logically equivalent.

(Ib) Ought- and Duty-statements are not logically equivalent.

(Ic) Obligation- and Duty-statements are not logically equivalent.⁷

It will be useful to test this counter thesis, especially (Ia) and (Ic) which are concerned most directly with obligation. First however, for reasons that will become clear below, it will be helpful to establish the meaning given to ought- statements generally, and, more importantly for present purposes, those delivered in a moral context.

Ought-statements

David Gauthier makes the distinction between two types of ought as follows:

a practical judgement which has moral force is based on considerations independent of the will (purpose, aims, desires) of the prospective agent and dependent solely on the intrinsic nature of the act itself, whereas a practical judgement which has prudential

⁷ Beran, op cit., p. 287.

force is based on considerations dependent on his will. The correctness of this distinction is of no concern; it does seem to establish two classes of grounds which, it may be urged, distinguish two species of judgements, and two senses of 'ought'.⁸

According to Gauthier, whether or not one ought to do something in the moral sense depends only upon the intrinsic nature of the act in question, whereas whether one ought prudentially to do something cannot be decided without reference to one's will.

Presumably one can distinguish between:

(i.) ought-statements with prudential force - of which there are a multitude of varieties eg. medical oughts, financial oughts, aesthetic oughts, etc.,

(ii.) ought-statements with moral force

and, although Gauthier does not discuss this third category.

(iii.) ought-statements with both prudential and moral force.

The dictate 'we ought to pay our bills' for example, is easily open to interpretation as a moral as well as

⁸ D. Gauthier, *Practical Reasoning*, Oxford, Oxford University Press, 1963, p.20.

prudential ought - we (morally) ought to pay our bills because we have entered a contract (promised) to do so and received services upon the basis of a promise of payment, and if we don't our services will be disconnected (prudential).

In Gauthier's terms we are doing what we ought to do morally only if we pay our bills because that is the right thing to do. If we pay them simply to avoid being cut off we are doing the right thing, but our judgement has prudential rather than moral force. A Kantian moral philosopher would choose to make a clear distinction between being moral (paying your bill because it is the right thing to do), or as Gauthier puts it acting independent of your will, and doing what ostensibly appears to be a moral act (paying your bill) for prudential reasons. If we knew that there was no possibility of being cut off the prudential reason for paying would disappear, but the moral reason would remain, and we would only be morally correct if we continued to act in the same way.⁹

Another way to present the distinction between prudential and moral oughts is this. According to Beran, a prudential ought-statement claims to be a solution to a problem, and as such it offers not only reasons, but conclusive reasons for acting in a particular way (this is stronger than

⁹ Cf. I. Kant, *Groundwork of the Metaphysics of Morals*, Chapter Two, edited by H.J. Paton under the title *The Moral Law*, London, Hutchinson, 1948.

Gauthier's idea of 'judgements').¹⁰ By this argument, 'A ought to do X' is logically equivalent to -

1. There is a problem.
2. The problem must be solved.
3. X will solve the problem.
4. Therefore, there are conclusive reasons for A doing X.

Adding to this idea Simmons points out that ought-statements usually arise out of a process of deliberation, and there is a conclusiveness about them that is lacking in both duty and obligation statements.¹¹ Although telling someone they ought to do something might be interpreted as offering advice, it is advice based on a consideration of all factors thought relevant to solving the problem at hand.

One is reminded of Kant's discussion of hypothetical imperatives¹² which generally take the form 'do X if you want Y'. A prudential ought will be the product of a process of deliberation directed towards solving the

¹⁰ 'If I am told that I ought to do X, I can legitimately ask 'Why ought I do X?' or 'what reasons are there for doing X?' and if it really is the case that I ought to do X then there must not be merely a reason for my doing X but conclusive reasons for my doing X; that is the reasons for my doing X must be better than any reasons for doing any alternative action open to me.' Beran op cit., p.211.

¹¹ Simmons, op cit. p.10.

¹² Kant, op cit., p. 78.

practical problem at hand (Y), and to say one ought to do X only makes sense if one is known to want Y. Hence Gauthier's requirement that reference be made to the will of the agent.

To fit the description offered by Beran, a moral ought statement also needs to arise from a process of deliberation, but it must be possible to show that the force of such a statement is somehow different ~~of~~ ^{from} a purely prudential ought. Simmons feels that a moral ought means 'all things considered you should do X'.¹³ Although this is a helpful starting point it does not get to the heart of the matter. It is not simply the case that finding out what one ought to do morally requires a fuller enquiry. Consider the following advice:

"Since you wish to avoid catching a cold you ought to wear your coat."

There is no way in which the ought in this quote could be construed as a moral ought, although it is no doubt the product of a process of deliberation considering all things relevant to the problem. It fits the Simmons definition, and suggests that after deliberation a conclusive reason has apparently been identified for acting in a particular way. The problem or end being the avoidance of a cold, and the ought being dependent for its force upon its perceived

¹³ Simmons, op cit., p.10.

appropriateness to that end. A complete disregard for moral questions is appropriate to the context because the problem does not have a moral aspect.

If instead one considers the claim:

"Given that you earn more than enough to live on you ought to give money to charity."

One immediately notices a difference in the nature of the second statement which has an obvious moral dimension, and therefore demands that an 'all things considered' solution addresses ethical or moral issues, that is questions of right and wrong. But one might also consider a less obvious example.

"If you want your hair to look nice you ought to use hair spray."

In this instance the problem addressed is a practical one, but there are ethical implications attached to the various solutions. I may accept that I ought (prudentially) to use hair spray, and simply choose a spray that works well on my hair. Alternatively I might acknowledge the environmental implications, and my responsibilities to future generations, and feel that I ought (morally) to choose an environmentally friendly product.

Essentially I can choose to tackle the problem at a purely practical level, or I might acknowledge that my choice is

in some sense a moral decision. Until fairly recently one would not have been expected to be aware of a moral dimension to an issue such as hair care. Now however one might believe that:

"If you want your hair to look nice you ought to use hair spray, some of which contain CFCs which are harmful to the atmosphere. This being so you ought to use the ozone friendly variety."

To return to Simmons's definition, a moral ought does mean that all things considered you should do X, but it is the nature of the problem which dictates the type of considerations appropriate. The true nature of the problem/issue towards which the ought statement is directed must be established *before* stating that by taking all things into consideration one establishes what one ought to do morally. The problem may be purely practical with no moral content, in which case moral ought statements would be redundant. It may be overtly moral, or increasingly it may be a practical problem with moral implications attached. In both the latter cases an 'all things considered' solution would necessarily address what one ought to do morally, which is often a very different form of enquiry to one concerning what one ought to do prudentially.

Essentially moral ought statements indicate what needs to be done in order to do the right thing morally. By stating you ought (morally) to do X we are saying that all things

considered there are conclusive reasons for believing that X is morally the right thing to do, or perhaps that doing X is the best way of achieving Y which is the best moral outcome.

However, if we accept Gauthier's idea that moral oughts are independent of the will, there may well be a gap between recognising that X is the right thing to do and actually doing it. Moral motivation may, as Hume believed, depend upon the presence of an accompanying desire to do what is right.¹⁴ If this is the case we might still prefer the formulation 'if you want to achieve Y (to be moral), do X'(the right thing). If the desire for Y is not present then there will be a grave problem in motivating people to do X.

Quite apart from the problems associated with getting people to act upon moral judgements it is also important to decide what shall be allowed to count as a conclusive reason in moral terms - that is what makes us believe it is right to do X. How can we identify the best moral outcome and the best way to achieve it? This in itself is an enormous subject which cannot be adequately tackled here, but it is possible to exclude some possibilities.

¹⁴ David Hume, *A Treatise of Human Nature*, Bk 2 Part 3 Section 3, (ed) P. Nidditch, Oxford, Clarendon Press, 1978.

Given our initial rejection of the assumption of similitude, it is not open to us to claim that what we ought ^{to do} is those things which we have an obligation or duty to do. As Beran points out, to say 'I have an obligation to do x, but ought (morally) not to do x' is not self-contradictory, and it is perfectly logical to state that 'A has an obligation to pay B \$5' without having to necessarily state that 'A ought to pay B \$5.'¹⁵ Similarly, if I have made a promise to someone I am obligated to do as I have promised, but it does not necessarily mean that, here and now, I ought to do that thing. So for example I might choose ^{to temporarily} overlook my obligation to visit my grandmother if on the way to her house I pass a distressed person requiring assistance. In both cases there may well be overriding moral considerations which determine that, from an all things considered moral point of view, what I am obligated to do is not the same as what I ought to do.

Obligations (and duties) are not the only reasons for moral actions,¹⁶ and other sorts of reasons may well be those that determine what we ought to do in certain situations, where reference to one's obligations is insufficient to account for 'all things having been considered'. As H.L.A. Hart points out obligations and duties account for only a

¹⁵ Beran, op cit., p. 207.

¹⁶ Ibid., p. 217.

'small segment' of morality¹⁷. Simmons makes a similar point by highlighting the existence of moral dilemmas, and conflicting obligations, both of which suggest that reference beyond one's obligations is sometimes necessary to determine what one ought to do.¹⁸ An obligation or a duty may be readily overridden by another choice of action which more successfully deals with 'the problem of morally doing the right thing'.

One can attempt to address the problem of what do morally by employing an ethical theory, of which there are many varieties. One is particularly interesting in this context because of the low priority it affords to obligations and duties.

Utilitarianism establishes what one ought to do by attempting to determine which of the options available to the agent will succeed in promoting the greatest good. Thus it focuses on the consequences of actions, rather than their status as duties, obligations or whatever else. An act utilitarian calculates the utility (good or value) of every individual action, and would be ruthless in his disregard of standing obligations, duties, and indeed rights that did not promote utility. Whilst allowing the

¹⁷ H.L.A. Hart, 'Legal and Moral Obligation' in A. Melden (ed.) *Essays in Moral Philosophy*, University of Washington Press, 1958. p.84.

¹⁸ Simmons, *op cit.*, p.7.

possibility of secondary principles (secondary that is to utility), a rule utilitarian would also, in the last resort, allow these to be abandoned in the face of a convincing (utilitarian) moral ought.¹⁹

To return to an earlier example, if more good would come of my helping a distressed stranger than from visiting my grandmother, the fact that I have an obligation to do the latter does not in itself determine that this is what I ought to do. It may form a part of my reason for my ultimate choice but it cannot, for the utilitarian, override the fact that more good will come of my helping the stranger. This will also be true for other 'brands' of ethical theorists.

In the light of the foregoing discussion an adequate definition would have to run something like this:

Ought-statements signal the existence of conclusive reasons for acting and in a moral context these reasons often exist *independent of commitment and roles*.²⁰

¹⁹ This is necessarily a very incomplete account of utilitarianism offered only as a brief example. Cf. A. Quinton *Utilitarian Ethics*, London, Duckworth, 1989 for a general historical introduction to utilitarianism, and S. Scheffler (ed) *Consequentialism and its Critics*, Oxford, Oxford University Press, 1988, for a more contemporary analysis.

²⁰ Beran, op cit., p.217.

This final qualification makes clear an important element of the distinctions to be made between ought-statements, and duty and obligation statements, respectively. As will become clear below, obligations are often seen to be born of specific commitments, and duties are frequently understood as attached to roles or positions in society. Moral ought-statements are therefore different ~~to~~, and at times conflict with not only prudential ought-statements, but also duty statements and obligation-statements in another important respect. An example in the following form highlights this point:

"It is my duty as an employee to do as my superiors instruct, it is possible that they will tell me that I ought (prudentially) to be ruthless in my dealings with competitors, and so I should if I wish to succeed within the firm, but I ought not (morally) to allow these goals to go against my principles of fair dealing."

In an amoral context what one ought to do can be linked clearly and explicitly to the solution of a practical problem, or fulfilment of a specific goal. It is determined by what one wants to achieve, and varies accordingly, it is therefore useful to know what role an individual has in relation to a specific task, so that you can find out what they (as opposed to anyone else) ought to be doing.

In a moral context, however, what we ought to do is essentially fixed - we ought to do what is right - the problem is adding content to this abstract ideal. In this context people's roles or positions do not tell us what they ought to be doing but rather whether they can do it, how they can do it, and possibly who can best do it ('it' being the right thing). This point will need to be discussed further below.

Suffice to say at this stage, in moral terms, what one ought to do is the bottom line. To not do what one ought to do is necessarily to act wrongly, whereas not to fulfil one's obligations or, to fail to do one's duty ²¹ is only *prima facie* wrong.²² However, as soon as we attempt to do what is right we realise that what we ought to do may not be what we want to do, nor may it be what we think we should do prudentially, or even what we have agreed to do. Rather it is what we *should* do based upon the best possible reason for acting ie. the belief that it is morally right. Furthermore, adding content to this notion 'morally right' introduces a host of new problems and issues.

²¹ The term 'duty' is used here to denote a special duty or legal duty as opposed to a moral duty. cf. H.L.A Hart 'Are there any Natural Rights?' *Philosophical Review*, Vol 64, 1955, especially pp.60-63 for a discussion of special rights and correlative duties.

²² The notion of *prima facie* right and wrong is most famously employed by the philosopher W. D. Ross in his work *The Right and the Good*, Oxford, Oxford University Press, 1967.

Duty-statements

Fortunately it is possible for present purposes to leave statements of what one ought to do in an essentially abstract form. We can assert that we ought to do what is right, whilst admitting that we do not as yet know what that entails. What is right may be open to fierce debate, people may also disagree as to the best means of determining what is right. We must *discover* what we ought to do, and initially it may be far from obvious. To speak of duty is to be immediately more specific.

In their most straight-forward form duties are generally understood as role-related, you acquire them by being a certain person, or by fulfilling a particular role. They tend to be easily identifiable and clearly promulgated. Certain duties exist without any particular person being required to fulfil them because, for example, the post or position to which they attach is vacant. However, when someone fills the post it is thought that the duties become their own. They can be on or off duty, they can swap duties, but they have little room for negotiation or personal interpretation of what the duties entail.

Brandt identifies the following paradigm context for the use of the duty-statements:

- a) An individual occupies an office or station in an organisation or some kind of system.

- b) A certain job is deemed of some value for the welfare of the organisation.
- c) This job is associated, somehow or other, with the office occupied by the individual.
- d) Performance is expected and required of him.²³

Brandt clearly sees the most appropriate use of the term duty being restricted to situations in which the key words indicated above are represented. Duties are a component of a system or organisation, with prescribed offices and jobs, which individuals are expected to fulfil. Indeed, one might choose to include in a discussion of the nature of duties the fact that they are generally backed by institutional sanctions which are brought in to force if they are not fulfilled.

For Hart, what duty and obligation statements have in common is that their use is most appropriate in a legal context. He considers it 'absurd' to transport the terms too readily into moral discourse. However, he is interested to see how the 'legally-coloured' concepts of obligation and duty can be used in certain moral situations.²⁴ Hart agrees with Kurt Baier²⁵ that duties are most usefully understood as attached to specific roles or offices in social life. As such they are not truly

²³ Brandt, *op cit.*, p.388.

²⁴ Hart, *op cit.*, p.84.

²⁵ K. Baier, 'Moral Obligation', *American Philosophical Quarterly*, Vol 3, Number 3, July 1966.

created by the deliberate choice of the individual. In accepting certain positions or adopting certain roles you by implication take on certain duties, some of which may not even be apparent when the choice is made. They are by no means universal, in that, for example, the duties of parenthood in one society may be quite different from those ascribed to the role in another. However, within a particular social system the duties of parenthood, at least to some minimum level are clearly stated, and often backed by law.

Before moving on, it is worth picking up on Hart's point concerning the appropriate employment of the term duty. It is interesting to note that we are selective in our use of the term, and wary of certain situations in which its use would be more than inappropriate, indeed it would be offensive. To illustrate this point one need only think of the way in which basic moral principles are generally taught. As Hart points out, we do not feel it necessary to impress upon people the idea of a duty not to torture children²⁶, however, we do try and instil in people a general duty to help those less fortunate than themselves.

This is an interesting difference which seems to suggest the following - in moral instruction the term duty is most readily employed in situations where we may be unable, or unwilling, ~~to~~ easily recognise what we ought to do. The ^A

²⁶ Hart, op cit., p.82.

idea that we have a duty to do X is used to encourage positive actions which may not otherwise be pursued, but it is not generally used to discourage those things which are easily identified as morally wrong.

For example, most of us believe that it is morally wrong to torture children. In the vast majority of cases, the knowledge of the pain involved, and the perception we have of the victim, have sufficient moral force to ensure that we do not do it (or tolerate it), without us needing to be told we have a duty not to do it. On the other hand, in cases where the moral rights and wrongs of an issue are debated the concept of duty is more readily introduced, sometimes in the hope of gaining acquiescence from those who cannot accept the specific reasons given for acting or refraining from acting in a particular way. This is most obviously demonstrated in the case of legal duties which sometimes require people to do things which morally they find unacceptable, or to refrain from doing things they have no moral qualms about.

Returning to the notion of duties being attached to positions, this seems to coincide with ordinary understanding. An applicant for a job is told of her duties, not obligations, and the terms are not necessarily interchangeable. The distinction may lie here: When occupants of particular posts or positions within a society or organisation are assumed to have specific jobs to

perform for the good of that society or organisation, the message is conveyed to them in terms of their duties. If they themselves see their task as requiring the acceptance of *further responsibilities*, they may be prepared to take these on as personal obligations. The duties one takes on are often stated in a contract of employment, and in some professions there may be a general ethical code which specifies duties of a moral nature specific to the profession.

It is fair to say that certain duties follow on, independent of any further specific commitments one makes. So for example, a teacher acquires certain specific duties as a part of their job, and they cannot avoid such duties without rejecting the post to which they are attached. If they move to a different school it will not necessarily be possible to assume that *exactly* the same duties will attach to their new post, although certain fundamental ones will remain unchanged.

Beyond this however they may be free to choose whether to add further obligations, and to a certain extent they are free to interpret what their professional duties entail. All teachers for example may have both a contractual and a moral duty to treat their pupils fairly and avoid discriminating between them. Some teachers will understand this duty as simply requiring them not to disadvantage any pupil through their own behaviour, others will feel that

the duty requires them to compensate in some way for past disadvantages. Beyond the basic requirement it is left to the individual to determine what the duty entails.

Speaking of obligations as opposed to duties, a teacher may, for example, undertake to coach the school badminton team after hours. Having done so she has a personal obligation to the pupils involved in the activity. Giving up her spare time is probably 'beyond the call of duty', but if she is willing to do it, and undertakes to do so, the teacher creates for herself an obligation to fulfil the task. If she fails to turn up for practices, she cannot be accused of not doing her duty as a teacher, but she can be criticised for failing to fulfil her obligations. Were she to ask to be released from the task, she would not be re-negotiating her professional duties, but requesting that she be released from a personal obligation. The importance of such distinctions should become apparent below.

It is of course possible to speak of duty in a wider sense such that it seems to coincide more closely or even exactly with what one ought to do. This happens when we utilise the idea of moral duties. In discussing the teacher, reference was made to her professional and moral duties. Once again it is possible that these duties will be identical, or that moral duties will be more demanding than professional duties, or indeed that her professional duties

will go beyond the moral duties of those who do not share her position or role.

If used in a Kantian sense, one's moral duty is what one ought to do, and what one ought to do is one's duty.²⁷ Kant makes duty logically equivalent to what is rational and moral rather than, for example, what is legally specified or contractually laid out. It might be worth considering whether this usage should be seen as an 'extended use' of the term duty, or a special case with its own paradigm context.

Simmons clearly distinguishes between what he calls positional duties and natural duties, in much the same way as attempted here.²⁸ Positional duties are attached to specific posts or positions in society, in the way that Hart and Baier would claim is only proper if the term duty is to be appropriately employed. Natural duties, on the other hand can be understood variously as the commands of natural law, God given duties, the dictates of pure reason, or the duties that one should ascribe to man *qua* man. The important point being that one is under such duties irrespective of the particular roles, positions or status one occupies, they are in fact universal.

²⁷ This is to stress the coincidence between what is rational and what is moral as well as the idea that establishing what is rational necessarily informs one of ones duty, and that acting from a sense of duty is what ought to be done.

²⁸ Simmons, *op cit.*, pp.16-24.

This distinction may not at first appear to offer much beyond the previous distinction between what one has a duty to do, and what one ought to do. However, it soon becomes apparent that Simmons wishes to say more than 'natural duties may override positional duties', he in fact appears to make the distinction in order to make clear that positional duties as such have no moral significance. For Simmons, the existence of a positional duty is "a morally neutral fact".²⁹

I will argue that these positional duties do not have moral weight, that my (eg.) "legal obligations" impose no moral constraints on action. And more generally I will argue that no positional duties establish anything concerning moral requirements..... I want to suggest...that all cases in which a positional duty seems to establish a moral requirement fit one of these two patterns....[Either]...it was the manner in which the position was entered which established the moral requirement in question; an obligation to perform the positional duties was undertaken, and in the absence of this undertaking the fact that an individual had those positional duties established nothing. In the second case, the existence of the positional duty was irrelevant to the moral requirement which anyone regardless of position, would have in the situation described. There simply happened to be a natural duty to do what there was also a positional duty to do.³⁰

Simmons's point is basically this. In every instance in which we can identify what we take to be a positional duty, one or both of the conditions outlined below must hold in

²⁹ Ibid, p.21.

³⁰ Ibid p.20.

order for the individual in the position to have that duty in a morally significant sense.

1. The individual entered the position to which the duties attach willingly.

2. The duty is such that anyone in the situation (as opposed to the position) described would have the same duty.

These requirements substantially alter the more traditional perceptions concerning positional duties, and are designed to protect against the concept of duty being used to excuse people from doing what they ought to do morally.

There are famous examples in history of people offering as their defence against accusations of immorality that they were 'only doing their duty'. Simmons rightly points out that this is no defence if one willingly and knowingly accepted the position to which these duties attached. By accepting the position you accept the duties attached to it (even though there may be overriding moral reasons for you not to perform them). If however a role or position was forced upon you, or unintentionally assumed, it is questionable whether you have the same responsibility to perform positional duties demanded of you.

Judith Jarvis Thomson uses this argument to powerful effect in her well-known article on abortion.³¹ She invokes the example of a famous violinist whose only chance of survival rests with your agreeing to be wired up to his body for the next nine months. You are not happy with this idea, but the violinist's fans kidnap you and you are rigged up against your will. Thomson is sure that you have no duty or obligation to this man, and to continue with the procedure would be a substantial act of charity. She sees this example as analogous to an unwanted pregnancy which results from rape or contraceptive failure, and states that a woman has no duty to bring a foetus to full term in such circumstances.

One can extend Thomson's argument beyond the point she takes it, and state that if you were to proceed with the pregnancy and give birth to the child, you would surely acquire the same duties of non-maleficence towards it as one has towards any other human being. Once you have chosen to take on the role of parent, the facts of conception become irrelevant, and would not justify subsequent acts of cruelty. Even if the option of termination were unavailable, choosing to raise the child once it has been born, rather than offering it for adoption, would mean that one had willingly taken on the duties of parenthood.

³¹ J. Jarvis Thomson, 'In Defence of Abortion', *Philosophy and Public Affairs*, Vol.1 no. 1, Fall 1971, pp.47-66.

It would appear that before enquiring as to the content of positional duties, it is important to establish "the manner in which the position was entered", and the extent to which these positional duties can be reinterpreted as moral duties. Only if the position has been voluntarily filled does the duty have any moral force, and that force is essentially the result of the duty being open to re-interpretation as an obligation. By voluntarily taking on a position, an individual is assumed to voluntarily take on the duties attached to it. A personal commitment makes what might seem at first glance a duty fit more easily into the category of obligation.

Simmons's second requirement places the emphasis upon the situations that people find themselves in, rather than the positions they hold. Consider for example an off duty doctor enjoying an evening at the theatre. Halfway through the performance someone is taken ill and a call goes out for a doctor. If such a call had gone out in the hospital five minutes before the doctor was due to come off duty then it is clear she had a positional duty to respond. Once the situation arises in the theatre the question surely is not whether the doctor has a positional duty to help, despite being off duty at present. Rather, we would assume that everyone has a (moral) duty to help in any way they can, and being a doctor means that she is in a particularly good position to do so. If she sat back and kept quiet, we might criticise her as a human being, rather

than as a doctor. If there is a coincidence between the demands of moral and positional duties, the distinction serves no moral purpose. The fact of the existence of a positional duty seems neither here nor there, what makes the difference is the fact that the doctor is better equipped to fulfil the moral duty which is shared by everybody in the theatre.

Mish'alani helps clarify the issue of when one needs to enquire beyond one's positional duties in order to establish what one ought to do in the following way.

The facts of one having certain duties and being under certain obligations...bear on what one ought to do. For there will be things which a person ought to do in view of the duties he bears, although the step from the fact that he bears such and such a duties to the judgement that he ought here-and-now to conduct himself thus-and-so is by no means a simple step.³²

Our positional duties are only relevant to our moral decisions if the positions to which they attach were chosen by us in some true sense, and/or if the actions they demand could be demanded of any individual in the same situation. Essentially, a positional duty might have very obvious and powerful legal force, and thus might signal quite clearly what we ought to do in a prudential sense. However, it is less obvious that it will signal what we ought to do in a

³² J.K. Mish'alani, "Duty", "Obligation" and "Ought", *Analysis*, 30, 1969, pp.33-40, cited in Beran op. cit.

moral sense. Our moral duties may at times conflict with our positional duties, and they may demand more of us than our positional duties.

It is therefore most important to retain a clear distinction between duties in the sense suggested by the paradigm case offered above, and those which are referred to as moral duties. It is also important to recognise that if we wish the existence of a positional duty to tell us something useful about what we morally ought to do, it has to be possible to interpret the duty as binding for the sorts of reasons discussed above.

It would appear that the paradigm case offered here does not close the gap between positional duties and moral duties, and therefore we must acknowledge that a consequence of accepting such a definition is that the existence of a duty to do X does not necessarily help us to discover whether we ought morally to do X in a particular situation.

Obligation Claims

In as much as a man regards himself as a social being and desires a social life, he gives up the solitary supremacy of his own will, and concedes that what is to happen is not to be determined by his will alone. He must either subject himself to obligations, or else

suffer the logical loneliness of the man without ties.³³

Having defined 'ought' and 'duty' we have to decide how if at all this contributes towards an understanding of obligation. As Hart suggests, there is more reason for linking obligation and duty, than linking obligation and ought statements. The first point to mention is that both types of statement are part of a social set up, most suitably perhaps a legal system. However, it will soon become apparent that to understand the binding force of those obligations that appear legal in form it is necessary to have an understanding of the nature of moral obligation.

Obligation³⁴ are usually seen as individual creations in that they arise out of specific commitments one takes upon oneself. They are not always independent of the will because whilst they may be directed towards the moral goal of 'doing the right thing', they could equally be directed towards furthering one's egotistic (non-moral) goals.

The involvement of a second party or parties, and the existence of a larger social environment is central to most definitions offered.

³³ J. Lucas, *The Principles of Politics*, Oxford, Clarendon Press, 1985, p.49.

If I tell you what your obligations are, I do not necessarily give you advice of any kind; I simply report that you stand in certain relations to other people, relations of commitment and trust. ³⁴

This seems a much more accurate statement concerning the basic function of obligation statements than that offered by Baier who states that:

...whenever a wrong-claim indicates a task to someone, then it constitutes a moral directive and being the addressee of such a moral directive amounts to having a moral obligation.³⁵

This appears to be a more appropriate description of an ought-statement, or perhaps a moral duty claim. If we tell someone it is wrong to drive past the scene of a traffic accident without offering assistance, then surely we are saying they ought to stop (assuming, for example, that they are not on their way to another emergency), and possibly, that it is their moral duty to stop. To say that it is their obligation to stop seems to include elements of commitment, and allude to specific relationships not

³⁴ J. Feinberg, 'Supererogation and Rules', *Ethics* 71, 1961, p.278.

³⁵ Baier, op cit., p.212.

apparent in the situation. Brandt's paradigm context seems to make this clear.³⁶

He identifies the following Paradigm context for obligation claims:

- a) A roughly specifiable service is 'required' of one person.
- b) Two parties are involved: the one who is required to perform a service, and the one for whom, or at the bidding of whom, the service is to be performed.
- c) A prior transaction, the promise or benefaction, is the source of the relationship.³⁷

Note the tone of language and terminology used here, and the subtle manner in which it differs from the paradigm case for duty. This is very much the vocabulary of the market place. The emphasis is on transactions, relationships and the exchange of 'services'. 'To show why or that someone has an obligation we show how he came to have it.'³⁸ Obligation is clearly a relational concept, which we seek to identify by locating what Lemmon calls a 'previous committing action'.³⁹

³⁶ Brandt's paradigm case is very similar to that put forward by H. L. A. Hart in his article 'Are There Any Natural Rights?' cited above.

³⁷ Brandt, *op cit.*, p.387.

³⁸ R. K. Dagger, 'What is Political Obligation?', *The American Political Science Review* 71, 1977, p.87.

³⁹ E.J. Lemmon, 'Moral Dilemmas', *Philosophical Review* 71, April 1962, p.141.

Their status as obligations may be independent of their content for we not only have legal duties and obligations, but we create or impose them (eg by making contracts). They may be varied and modified and extinguished and persons may (notably when obligations are created by contracts) be released from them.⁴⁰

Simmons borrows heavily from Hart to come up with the following points of distinction between duties and obligations as they are commonly understood. He sees an obligation as 'a moral requirement generated by the performance of some voluntary act (or omission).'⁴¹ Although the act may be the deliberate undertaking of an obligation, it need not be. For example, by convention, the acceptance of certain favours or services from others might be taken to create an obligation in you to provide the same, if the need arises.

The important point is this: unlike duties, of which we can be informed, obligations require special performances, as reflected in the language of obligation, whereby we 'oblige ourselves'.⁴² If we voluntarily enter a position with duties attached to it, the case is relatively straightforward (assuming that the duties are morally acceptable). Having accepted the post we are usually taken to have accepted an obligation to perform those duties.

⁴⁰ Hart, *op cit.*, p.84.

⁴¹ Simmons, *op cit.*, p.14.

⁴² *Ibid.*, p.14.

However, whilst you can slip into (accept) existing duties specified for you by someone else, you more commonly create obligations for yourself, the verb is significantly active.

I might take it for granted that if someone invites me to dinner more than once, that by accepting I place myself under an obligation to invite them back. My partner on the other hand might see no necessary connection between the events. As Hart explains, in situations where obligations rest on something other than specific express commitments, for example receipt of benefits, one requires that the obligee recognise internally the creation of an obligation. This might be the work of conscience or maybe even etiquette.

This raises some interesting points which need to be addressed in preparation for later discussions. When demanding 'internal recognition' Hart could be taken to mean one of two things. He could be claiming that the obligation only exists if it is recognised, meaning that I have an obligation but my partner doesn't. Alternatively he could mean that the obligation exists independent of our recognising it, having been created by the circumstances. In this case recognition is required to make it motivationally effective. We are both under the obligation, but only I will act because of it.

Irrespective of examples such as the above, it is still fair to say that obligations generally have a specificity that goes beyond even duty claims. The obligor, as a specific person, owes an obligation to an obligee[s], a specific person or persons. This is strikingly different from the idea of moral duties, where an individual owes certain duties to all other individuals. The language once again reflects this difference with the vocabulary of obligation claims being suggestive of personal debts, which can be discharged, whilst moral duties at least are continuously binding. Having said that, one can be on or off (non-moral) duty, in a way in which one cannot 'lose' an obligation without discharging it, or having it cancelled.

Obligations are usually more specific, in that there is usually a common agreement as to what one is obligated to do even in the less explicit cases. For example, the fact that my acquaintance has invited me to supper on more than one occasion would not be felt to create an obligation in me to invite him to my home for the entire Christmas period. However, if I accept a general moral duty to help those in need, this could involve me in anything from contributing to charity to rescuing a drowning man.

Duties and obligations also differ in terms of their relationship to rights. Simmons, following on from Hart, argues that obligations generate correlative rights, and

that by incurring an obligation one allows another person to acquire a special right to the performance of that which you are obliged to do.⁴³

Legal vocabulary provides a useful distinction here, which clearly points to the difference in terms of rights-entailment between duties and obligations. In the case of obligations the right created is a 'right in personam'—in other words we can identify the benefactor, and trace back the creation of the right to a special relationship between her and the obligee. It is by virtue of this that Hart calls such rights 'special rights'.⁴⁴ In the case of moral duties the rights are 'in rem', that is rights that are held in the same way by all other people. The security offered by such a right is far less than in the case of a right within personal relationships, because specific relationships of duty cannot be identified in the same way as for obligations.

I may have a moral duty to help those less fortunate than myself, but this fact is of little help to a starving man who tries to show that my duty is to him specifically. However, were I to take on a specific commitment to help him, through a charity, then I would have an obligation which he has a right to expect me to fulfil.

⁴³ Ibid., p.15.

⁴⁴ H.L.A. Hart "Are there Any Natural rights?" p.183-184.

Finally Simmons makes an extremely useful point when he states that

it is the nature of the transaction or relationships into which the obligor and obligee enter, not the nature of the required act, which renders the act obligatory.⁴⁵

This is not to say that the moral impermissibility of an act cannot render it incapable of being obligatory, the law certainly allows for this. The important point is that Simmons places voluntarism at the heart of the concept of obligation, and demands that so called obligation claims be thoroughly tested against strict voluntarist standards. Given the emphasis that has been placed upon the active nature of obligating oneself, it would be useful to investigate various explanations as to how this is achieved.

Just as there are different forms of ought claims there are, ⁴⁶ ostensibly at least, various different obligation claims.

According to Baier:

What is common to all cases of obligation is a moral directive which has somehow given rise to a task. The different ways in which the task arises generate the different "types" of obligation.⁴⁶

⁴⁵ Simmons, op cit., p.15.

⁴⁶ Baier, op cit., p. 213

He goes on to explain that an obligation may be moral in one of two senses, or maybe in both. Obligations are moral in a binding sense if they entail that one morally ought to do what they prescribe. They are moral in a 'genetic' sense if they come into existence as the result of falling under a general moral directive.

For example, if I have promised, as in the example Baier offers, to get home early my promise is moral in the genetic sense because "keep promises" is a general moral directive. "Getting home on time" is not a general moral directive, nor is it morally binding. However, if I promise to get home on time, the obligation to do so is morally binding as a result of the promise. That is "getting home on time" is morally binding upon me because "keeping promises" is morally genetic and binding (for everyone).

...every obligation even those which are non moral in the genetic sense, must be capable of reformulation in such a way as to make them moral also in the genetic sense. What is distinctive about such cases (eg. obligation arising from promises) is that their genesis requires both a general moral directive "keep promises" and an empirical fact- e.g., the fact that [Jones] did promise not to work late- which defines the specific task in which the obligation consists.⁴⁷

⁴⁷ Ibid p.212.

Dictionary definitions of obligation tend to emphasise the link with physical restraint, and conjure up images of being bound, forced or even coerced to act in accordance with one's obligations.⁴⁸ Some philosophers have similarly sought to emphasise this element, most obviously the command theorists such as Austin⁴⁹ and to a lesser extent Hart. However, if we accept the requirement of voluntarism, it is not easy to build in a strong element of coercion, sanction or restraint without diminishing the moral worth of obligation claims.⁵⁰

To explain: Basic command theory would run something like this:

1. X is in command (ie. in a position to issue commands backed by sanctions).
2. X commands that I do Y.
3. Therefore, I am obligated to do Y.

This is obviously unsatisfactory on a number of counts, not least because of its embodiment of the naturalistic fallacy. As Baier points out,⁵¹ if we wish to get close to

⁴⁸ *Concise Oxford English Dictionary*, p.700.

⁴⁹ J. Austin, *The Province of Jurisprudence Determined and the Uses and Study of Jurisprudence*, (ed). H.L.A. Hart, Reprint edition, New York, Library of Ideas, 1954.

⁵⁰ According to Lucas, explanations of political obligation that rely on the threat of force are 'intellectually opaque' cf. Lucas op cit., p.44.

⁵¹ Baier, op.cit., p.214.

saying that I ought (morally) to obey Y we need to include a further proposition

4. One has an obligation to obey sanctions backed by commands.

We should not however be prepared to accept (4.) as it stands. We need a further statement explaining **why** I am prepared to accept X's commands as obligatory.

One could take the opportunity to convert this into a version of voluntarism by stating the case thus -

1. X is in command
- 1a. I placed X in that position and agreed to obey him.
2. X commands that I do
3. Therefore, I am obligated to do Y

Here both the fact of a specific commitment, and the internal acceptance of the idea that the commitment should be honoured is required. The existence of sanctions, and the possibility of force being used, is relevant only in so far as it bears on the question of obedience rather than obligation.

Alternatively, one could leave the command theory intact by stating:

1. X is in command.

2. X commands that I do Y.
3. Therefore, I ought (prudentially) to do Y, because, if I don't I shall be punished by X.

Here it is the simple fact of X being in command and having the power to apply sanctions should I disobey that *explains* my decision to do as he commands. However, it is surely more correct in such an example to describe oneself as being *obliged* to obey, rather than having an obligation to do so. To fail to make such a distinction would imply a position whereby obligations exist whenever there is sufficient force available to ensure performance. The decision to obey becomes purely prudential, and obedience provides no evidence of preceding voluntary commitments or existing obligations.

Even if we accept Hart's claim that:

If we have an obligation to do something then there is a sense in which we are bound to do it, and where we are bound there is some sense in which we are compelled to do it.⁵²

There still remains the question of whether we are obligated because we are bound, as the command theorists seem to suggest, or, whether we are bound because we are obligated, which seems to be a more attractive idea.

⁵² Hart, op cit, p. 95.

This is not to say that there cannot be a close tie between obligation and coercion. In moral terms, the fact that someone fails to discharge their obligations is taken to require justification, and where such justification is not possible, sanctions are often imposed. Failure to meet obligations, when they have not been overridden by a stronger ought or moral duty claim, results in the imposition of pressure or sanctions, be they moral or legal. Sanctions are protective of obligations, not constitutive of them. It is interesting to note however, that if the act an individual is obligated to perform is illegal the law will have no part in enforcing its performance.⁵³

To contain the use of force within an explanation of the origin of obligations is not uncommon, but it should be discouraged. As Hart concludes 'reason demands voluntary co-operation in a coercive system.'⁵⁴ Whereas Dagger wishes only that 'coercion as related to obligation, is a

⁵³ This is in opposition to Simmons's point that the content of an obligation is irrelevant to its binding nature. Simmons was concerned with moral obligations but certainly in terms of legal obligations an individual would not be forced to fulfil an obligation if the actions required to do so were illegal. This is particularly interesting when the act has been deemed illegal because of its supposed immorality, for example contracts of surrogacy. In this country at least the courts have refused to uphold contractual obligations on the part of surrogate mothers to hand over their offspring.

⁵⁴ H.L.A. Hart, *The Concept of Law*, Oxford, Oxford University Press 1961, p 193. Having said this Hart has also justified the use of coercive means to ensure the performance of an obligation cf. 'Are there Any Natural Rights?' p.178.

response to one whose abuse threatens the practices through which we undertake obligations and conduct our lives.'⁵⁵

To return to the Traditional Assumption which is under examination, it has been argued that obligation in its paradigm form, (and in many instances of ordinary usage), is distinct from the concepts of 'duty', 'ought', and of 'being obliged'. Obligation is a relational concept, that relies on the existence and form of commitments made, rather than on the nature of the task involved. To have an obligation to do something, is to consider oneself bound to do that thing UNLESS, from an 'all things considered moral point of view' one can justify not doing it - the claim that we ought (morally) to do X 'trumps'⁵⁶ the claim that we have an obligation to do something else. So if I am obligated to someone, they have a right to expect me to perform the task in question UNLESS I can show that from an 'all things considered moral point of view' there are good reasons (conflicting moral duties perhaps) why I should not be required so to act. In the absence of such reasons, the obligation ends only when it is discharged or cancelled. The happiest context within which to place 'obligation' is within a framework such as a legal system, where the vocabulary common to the use of the concept is most readily found. In the light of this assessment an adequate

⁵⁵ Dagger, op.cit., p.89.

⁵⁶ The idea of 'trumping' is developed by A. Gewirth in his article 'Are there any Absolute rights?' *Philosophical Quarterly*, 31, 1981, pp.1-16.

definition of obligation would have to contain a fair amount of detail, and run something like this:

An obligation is a specific undertaking which results from voluntary act on the part of the person obligated. The committing act may be a direct expression of acceptance of the obligation, or it may rely on one accepting that other actions indirectly create obligations. Unless overridden by a stronger moral claim, an obligation remains in force until it is discharged. In moral terms the content of the obligation is irrelevant to its binding force.

As such it is distinct from a moral ought statement which has been defined as a statement signalling the existence of conclusive reasons for acting in a particular way to promote the moral good, and a non-moral duty which is bestowed by a system upon the position we accommodate within it. When employing these terms in either moral or political discourse it is important to bear these distinctions in mind and to avoid the tendency to use the interchangeably. To blur the distinctions is to forfeit valuable material.

Political Obligation

Having established a working definition for the term obligation, and an understanding of what it means in general terms to be obligated, one can move on and discuss political obligation. However, there are still confusions to be dealt with, and important distinctions to be made once the terms have been transported into a political context. McPherson for one is very nervous about utilising the terms introduced above in a political setting, and feels that our desire to do so is symptomatic of a more general tendency to interpret human behaviour in terms of an individualistic/moralistic model, rather than a behaviourist or functionalist model.

The effects on practice of regarding one's relation to the state too much in terms of 'duty', 'obligation' and the like, are to invite the wrong kind of enthusiasm for possibly doubtful ends and an inappropriate kind of guilt at failure to do one's bit adequately towards achieving them.⁵⁷

This is a helpful warning and one which should encourage us to enquire closely as to which, if any of the concepts can be most appropriately employed.

To define the 'political context' is itself a complex task. As Flathman points out - " 'politics' and 'political' are not among the more precisely delineated concepts in our

⁵⁷ T. McPherson, *Political Obligation*, London, Routledge & Kegan, op cit., p.85.

language."⁵⁸ Dagger in turn includes them in the class of *essentially contestable concepts*.⁵⁹ Lucas adopts the term in its 'wide, original sense in which it applies not only to politics in the modern, narrow sense, but to legal and social affairs, and all that pertains to men's (sic) public life.'⁶⁰ This has the merit of broadening the public out beyond the purely procedural aspects of politics, but it does not embrace the contemporary notion of the 'personal as political'. However, in this context such an understanding of the political will suffice. Political obligations thereby become obligations concerned with matters pertaining to a person's social/legal/public existence.⁶¹

There is little point in being more specific than this unless a far more limited definition of 'politics' is sought. However, it is worth pointing out that not all political obligations are legal obligations, not all social

⁵⁸ R. Flathman, *Political Obligation*, London, Croom Helm, 1972, p.46.

⁵⁹ Dagger *op. cit.*, p.92. Dagger credits the development of this notion to W. B. Gallie in his work *Philosophy and the Historical Understanding*, Schocken, 1966.

⁶⁰ Lucas, *op. cit.*, p.20.

⁶¹ It is however important to acknowledge a distinction in kind between legal and political obligations. cf. J. Raz *The Authority of Law*, Oxford, Clarendon Press, 1979, pp.232-249: M.B.E. Smith 'Is there a *prima facie* obligation to obey the Law?' *Yale Law Journal* Vol 82, 1973, p.950ff: R. Wasserstrom 'The Obligation to Obey the Law' in R. S. Summers (ed) *Essays in Legal Philosophy*, Oxford, Blackwell, 1968.

obligations have a political element, and certain areas of one's public life will not be subject to obligations one would describe as political.

Simmons says that "(as a rough approximation) a political obligation is a moral requirement to support and comply with the political institutions of one's country of residence."⁶² Flathman believes "an obligation is political when it is an integral part of the political arrangements and practices of the society".⁶³ What these definitions have in common is the sense in which they suggest that the very existence of political obligations is contextually determined, and that to identify political obligations one must first prove the existence of a viable political system. This is a familiar view to which philosophers ascribe in varying degrees, and it follows on from the paradigm case of obligation outlined above which relies on the existence of some form of system within which obigees and beneficiaries function.

To make the classification of obligations dependent on context is a wise move. As McPherson points out, reference to different types of obligation can be understood in one of two ways.⁶⁴ As is intended here, one might simply be

⁶² Simmons, op cit., p.29.

⁶³ Flathman, op cit., p.63.

⁶⁴ McPherson, op cit., p.70.

referring to the variety of contexts within which obligations can occur, and the different forms of obligatory relationships one can have. This is not the same as distinguishing between types of obligation on the basis of their moral force, such that certain types of obligation would be seen as in some sense superior to others. It also allows for the possibility of a common strand linking types of obligation that, ostensibly at least, appear quite different.

It is one thing to state that "clearly, political obligation exists only within a political context" ⁶⁵ but to add the following, as D'Entreves does, is to go much further:

If we really want to get rid of political obligation, we must get rid of the state altogether, or at any rate, deny it any positive value, unmask its pretences, denounce it as an instrument of oppression, as the embodiment of the *civitas diaboli* parading as the *civitas dei* ⁶⁶

Such statements suggest that obligations are a constitutive element of political society, government or the state. For any of these institutions to properly exist it must entail the existence of political obligations.

⁶⁵ A. D'Entreves 'On the Nature of Political Obligation', *Philosophy*, Vol XLIII, No 166, October 1968, p.316.

⁶⁶ *Ibid.*, p.320.

That social man has obligations is not an empirical fact (which might have been otherwise) that calls for explanation or justification. That social man has obligations is an analytic, not a synthetic, proposition. Thus any general question of the form 'Why should one accept obligations?' is misconceived. 'Why should I (a member) accept the rules of the club?' is an absurd question. We have not understood what it means to be a member of political society if we suppose that political obligation is something that we might not have had and that therefore needs to be justified.⁶⁷

To seek a general justification of political obligation - a justification of our being obliged at all in political society- is to pursue a meaningless question. It is to mistake something which is analytically connected with the concept of political society for something which is a purely empirical fact about political societies.⁶⁸

McPherson is strongly opposed to this view and claims that 'a political philosophy can be constructed that neither makes explicit use of this concept (obligation) or requires it.'⁶⁹ But if we accept the assumption for the time being, it would appear that an important forerunner to the commonly accepted questions concerning political obligation, is the question of whether or not a state/government/ political society is desirable.

This move is reminiscent of the earlier discussions concerning ought-statements, where the sense of a prudential ought X depends upon one wanting to achieve Y, and, as some would argue, the motivating force of a moral

⁶⁷ McPherson, op cit., p.64.

⁶⁸ Ibid., p.65.

⁶⁹ Ibid., pp.84-85.

ought depends upon one wanting to be moral. In this context, it is only appropriate to assume that political obligations will have to exist if there is a desire for political society to exist, and (in order to accommodate McPherson's objection), if the existence of political obligations is a constitutive element of such a society.

If we were to question, as an anarchist indeed might, the desirability of a formalised political state then we would need to enquire no further as to the subject of political obligations. If, however, we believe political organisation to be desirable, then we are by D'Entreve's account, committed to accepting the existence of such obligations as a necessary constituent of the desired system. This would render senseless any generalised questions about, or demands for justifications of political obligation.

To ask why should I obey any laws is to ask whether there might be a political society without political obligations, which is absurd. For we mean by political society, groups of people organized according to rules enforced by some of their number.⁷⁰

While the charge of absurdity may be questionable, the message is clear - if we are to accept, and indeed support the existence of political society, then we should not waste time asking why it is required of me that I obey the

⁷⁰ M. Macdonald 'The Language of Political Theory' *Proceedings of the Aristotelian Society*, xli, 1940-41, p.92.

laws. It is absurd to do so in the same way as it is absurd to ask why I should aim to score goals if I want my team to win at football.

However, this is not generally the form that questions of political obligation take, so to dismiss this question as senseless does little to solve 'the problem of political obligation'.

The answer to 'Why should I obey any law, acknowledge the authority of any state or support any government?' is that it is a senseless question. Therefore, any attempted reply to it is bound to be senseless....no general criterion applies to every instance.⁷¹

Rather, we are concerned with asking why we should feel obliged to obey the particular laws the government legislates, and even more fundamentally, why we are obliged to obey that particular government? When Flathman states that the question most commonly discussed under the rubric of political obligation is "should I obey the law?" he means the particular law or laws of a particular government or state.⁷² This more specific question cannot be dismissed as easily and is indeed at the heart of what any theory of political obligation should explain.

⁷¹ Ibid., p.184.

⁷² Flathman, op cit., p.46.

For this reason Simmons demands certain special features of a theory of political obligation, such that it ensures the following points are addressed.⁷³

1. It should explain why an individual has obligations to a particular state above all others, rather than seeking to establish obligations to a particular type of state.⁷⁴

2. There need not be only one ground for explaining such obligations. As MacPherson points out 'obligation to obey the government is in reality only a useful shorthand'.⁷⁵ As well as explicit agreements of obligation one can be seen to create obligations for oneself by for example accepting benefits or services.⁷⁶

3. There need not be universality of political obligation over some range of people. What we want to know is what class of person is obligated and why/how.⁷⁷

...a good practical reason for not demanding universality is that with this demand in mind, the theorist too easily finds grounds of obligation where there are none, believing that he must account for everyone or despair of accounting for anyone."⁷⁸

⁷³ Simmons, *op cit.*, pp.29-38.

⁷⁴ In this Simmons agrees with MacPherson's basic thesis, cf. MacPherson *op cit.*, Ch 7.

⁷⁵ *Ibid.*, p.51.

⁷⁶ Simmons cites the *Crito* in which Plato offers three distinct groundings for Socrates' obligations to the state - an argument from desert because the state was a just state, an argument from gratitude for the benefits bestowed by the state, and an argument based on Socrates' tacit consent to obey the laws. Of course another famous example is that offered by Locke in his theory of tacit consent. Simmons *op cit.*, p.35.

⁷⁷ Cf. C. Pateman *The Problem of Political Obligation*, Cambridge, Polity Press, 1985, and C. B. MacPherson *The Political Theory of Possessive Individualism*, Oxford, Oxford University Press, 1962, for two interesting discussions of this aspect of the theory.

⁷⁸ Simmons, *op cit.*, p.37.

Having listed Simmons's requirements it is worth testing the extent to which his demands are met in standard discussions of political obligation. Flathman immediately alerts us to an abuse of language that all too readily occurs when he observes that:

- the state assigns a substantial number of obligations to all of its citizens, obligations that many of the citizens would not undertake if left to their own devices.⁷⁹

Certain commentators feel that political obligations are taken on by citizens relative to their position as such, in many ways they seem to make them parallel with positional duties. By becoming a citizen you take on a number of duties the content of which is determined by the state. D'Entreves for example defines the content of one's political obligation as 'a duty to be a good citizen and to respect the laws of ones country or state'.⁸⁰

When the obligation is political and takes the bond of me as a citizen, and the governing authority as such, I am tied as a citizen to perform an act, or rather a number of acts, for the governing authority.⁸¹

A number of points arise here. In the light of the preceding discussion it is surely only permissible to speak of positional duties attached to citizenship if the

⁷⁹ Flathman op cit., p.44. (my emphasis)

⁸⁰ D'Entreves op cit., p.312.

⁸¹ Ibid.

individual chose in some real sense to become a citizen. If it is the case that an individual chose to become a citizen, knowing that this committed him or her to fulfilling duties X, Y and Z, then initially at least there is not a problem.

However, if the state can simply ascribe duties and assign obligations, there is little protection in the fact that one initially chose freely to become a citizen and accept duties X, Y, & Z, as the state appears to be free to add further duties A, B & C - some of which the individual may not have been prepared to accept. Unlike most forms of obligation there is a generality and non-specificity, both in terms of whether a particular commitment was made (does one explicitly agree to be citizen or understand the implications of receiving benefits), and in terms of what the commitment entails. Membership of a state is not really analogous to membership of a club as is sometimes suggested.⁸² In fact, one could claim that the only way to make the analogy work in most cases is to say that it is like being given (without requesting it) irrevocable life membership of the dangerous sports club.

Returning to Simmons's second requirement *vis à vis* positional duties, ie. that they do not conflict with what one would morally be required to do in the situation. If the state

⁸² Cf. P. Singer *Democracy and Disobedience*, Oxford, Oxford University Press, 1973.

rather than the individual defines the content of political obligations, it is at least possible that someone's obligations as a citizen will conflict with his or her personal moral values. When this occurs the individual may feel split between two identities, each of which demands a different response to the situation. They may, as a citizen, accept a general obligation to obey the laws of their government, but as a moral agent they may feel that a particular law is unworthy of their allegiance. The conflict is therefore one between political obligation and moral duty which can only be resolved in terms of deciding whether to act morally or prudentially, and how best to do so.

Political obligation may and very often does override moral scruples whilst moral duty requires us (to use the celebrated phrase) never go to sleep, political obligation may be a powerful soporific'⁸³

As was the case for obligations in general, being told of our political obligations does not necessarily inform us of how we ought to behave, nor do our positional duties as citizens necessarily exert moral force. As discussed earlier, moral oughts are the trump card, and the fact that our political obligations may be determined for us potentially increases the likelihood of there being a conflict between what we are obligated to do politically, and what we feel we ought to do morally.

⁸³ D'Entreves, op cit., p.317-8 .

Having said this, there is still an expectation of performance on the part of the obligee that goes beyond that common to most cases of obligation. Unlike an obligation to repay a favour which can be easily discharged, the obligation to obey a government is seen as ongoing. The statement: "I have done my bit I have fulfilled my obligations" will rarely serve to discharge this type of obligation, if as claimed the very existence of the political society depends upon the continual recognition that such obligations exist.

The only basis for overturning a political obligation seems to be to question the manner in which the obligation was created or extracted, or alternatively to show that it has been overridden by a stronger moral consideration. In considering this 'stronger moral consideration' many would argue that weight must be given to the thought that weakening the force of political obligations ultimately weakens the foundations of political society.

The proper form of the question 'Why ought I, a subject, to obey his ruler? must at least be: 'Why is there a claim on the subject to obey his ruler?' and unless we put the question in this form we shall only find ourselves in a state of confusion when considering whether he ought to obey in instances when obedience involves the failure to satisfy certain other claims- the question then really being; 'Does the claim to obey outweigh the other claims?'^84

⁸⁴ H. A. Prichard 'Moral Obligation' in *Moral Obligation and Duty and Interest*, Oxford, Oxford University Press, 1968, p.86.

At this point we should perhaps take heed of MacPherson's warning against 'moralizing' politics.⁸⁵ The claim to obey may outweigh other claims for profoundly prudential reasons. Maybe what one ought to do morally is not the issue. Political obligations are precisely obligations created in order to facilitate the performance of political tasks which make life easier in the society one lives in. This may on occasion entail accepting obligations to do things which one would not be able to justify doing in purely moral terms.

It is at least possible that a political society could exist in which only a small minority could be shown to have political obligations in the sense demanded by an ideal type theory - that is self assumed obligations to obey the laws of a particular government. It is also possible that the vast majority of citizens would be prepared to be guided by the duties they are told they have as citizens. Political obligations concern the effective management of society by government; only in special cases do they concern the moral welfare of individual citizens. If we leave the picture like this their role will be limited, and in terms of a moral hierarchy of demands they are placed well below considerations of what one ought to morally although of course they may coincide on occasion.

⁸⁵ MacPherson, *op cit.*, pp.79-83.

Political Obligation and Consent

Having established the special nature of political obligations, and having admitted the frequent gap between the paradigm case of obligation and more ordinary usage within a political context, the next task is to attempt to close that gap. In order to explain how a political obligation may be acquired by a citizen in an active sense, as opposed to being merely assumed or imputed by government, we must show that the obligation has been acquired through some act of will on the part of the citizen. Many philosophers attempt to do this by utilising the concept of consent or, as Steinberg calls it, 'the classic commitment model'⁸⁶

Consent is frequently offered as the most adequate basis for political obligation, especially in the case of non trivial obligations which begin to approach the status of moral oughts. As a mechanism, consent offers the possibility of demonstrating how political obligations are, in line with other forms of obligation, the product of individual acts of will on the part of those obligated. And that the content and extent of ones obligations can, to some extent at least, be personally determined, thus reducing the likelihood of their conflicting with private moral beliefs.

⁸⁶ J. Steinberg, *Locke, Rousseau, and the Idea of Consent*, Westport & London, Greenwood Press, 1978, p.11.

The Oxford English Dictionary defines the verb consent as 'to express willingness, give permission, agree'.⁸⁷ However, for consent to play the morally significant role demanded here it must display certain basic characteristics, not referred to in this definition. Even Plamenatz who offers one of the best definitions of consent available fails to highlight sufficiently certain basic requirements:

The expression of desire which constitutes a proper case of consent must be a real grant of permission, that is to say it must be made with the intention of informing another or others that they have been endowed with the right to perform a certain action.⁸⁸

Plamenatz correctly emphasises the intentionality that must be proven in a real case of consent, and this will be discussed below. His definition is also helpful in indicating what is actually achieved through the giving of consent, ie. the creation of rights in another party and presumably, an obligation on the part of the consenter to allow those rights to be exercised. He at least begins to separate consent from mere agreement or acquiescence. However, his definition fails to capture the further features required for a 'proper case of consent'.

⁸⁷ Concise Oxford Dictionary, p.200.

⁸⁸ J. Plamenatz, *Consent, Freedom and Political Obligation*, Oxford, Oxford University Press, (Second Edition) 1968, p.9.

For reasons which will be discussed below a true act of consent will be understood here as:

an intentional grant of permission given freely by an autonomous rational agent, on the basis of full and accurate information.

This is the paradigm case of consent, and included within this definition of consent are the demands that it be:

- a) freely given,
- b) autonomous,
- c) intentional and,
- d) informed.

These features are frequently offered as extra descriptions - freely given consent, fully informed consent - but here they are taken to be constitutive elements of the concept. This immediately makes the definition much stricter than it might otherwise have been, and restricts both the class of people capable of giving consent, the class of actions correctly interpreted as acts of consent, and, it will be argued, the situations in which it is appropriate to request consent. By adhering to this strict definition one is forced to acknowledge Plamenatz's warning that

If then the final definition appears so narrow as to make it appear that no actual government ever acts with the consent of even a majority of them (it's

citizens), it is not permissible, for that reason to conclude that the definition is wrong.⁸⁹

To fill out the definition of consent and construct a more accurate picture of the paradigm case these defining features must be further explained.

Freedom and Consent

The demand that a proper case of consent is freely given may be interpreted in a number of ways, and immediately raises at least two interesting questions:

1. Does freely-given consent imply freedom of the will?⁹⁰

Freedom of the individual operates at two levels - at the level of the will and at the level of actions proceeding from the will. The agent may be free in the sense that he has free will, or it may be that the actions he wills have been causally determined. This second scenario raises the metaphysical question as to whether someone can be determined, and at the same time act freely. And, most interestingly within this context, whether a voluntarist

⁸⁹ Ibid., p.1.

⁹⁰ This issue will be explored in Chapter 3, in which I shall consider whether Hobbes' determinism is compatible with a theory of political obligation based on free choice and individual consent.

based explanation of obligations can operate successfully within a deterministic framework.

2. Putting aside for a moment questions concerned with the freedom of the will, the question remains as to what extent someone is free to do as they will, whether that will is determined or not. The agent may not be free in the sense that there are external or internal obstacles in the way of his acting as he chooses/wills. This is a particularly important issue within a political context where power and coercion appear to be largely unavoidable realities.

This second aspect of individual freedom must be approached from two angles-

First, we must assess the freedom of the individuals asked to give consent, essentially looking to identify any internal obstacles to their free choice. Secondly, we must investigate the particular circumstances/context within which consent has been requested, in order to establish whether they are conducive to a free choice being made.

The first form of enquiry would assess the ability of the individual to give, or withhold, consent freely in a normal situation. This requires an assessment of the extent to which they are naturally able, or may be assisted towards

becoming able, to make free and rational choices.⁹¹ The second form of enquiry would look at when, where and how the consent was requested, in order to establish whether the circumstances in any way diminish the ability of the individual to choose freely.⁹²

Freedom, Autonomy, and Consent

Essentially the first form of enquiry outlined above is concerned with the relationship between freedom and individual autonomy. It must be established that an act of consent - if it is really such - is purely the result of an individual free choice and not of coercion, be it subtle or blatant. One way of diminishing the risk of coercion or undue influence is to request consent only from those who are thought to be sufficiently rational and autonomous to resist undue influence, and to do so only in situations where they have - or can be equipped with - the information and means required to make a rational judgement and a free choice.

Thus the first step in establishing whether an individual is free in the sense of being able to give or withhold

⁹¹ This issue will be explored further in Chapter 2 of the thesis where I shall look at the status of men emerging from an Hobbesian state of nature and ask whether they can be considered free in the sense required here.

⁹² This issue arises again in the discussions in Chapter 3 of the thesis.

consent on the basis of their own will, is to find out whether or not that person is equipped to make a rational choice. While the problems associated with requesting and acquiring consent from those who cannot be classified as conscious or rational are obvious, it cannot be assumed that acquiring consent from apparently rational individuals will be unproblematic. There may still be less obvious problems in terms of assessing autonomy and individual rational capabilities, which will inevitably vary enormously between individuals and across issues.

It would appear however that a minimum level of rationality is a necessary prerequisite to an individual's ability to participate in any consenting process. An interesting question then arises concerning the level at which this minimum requirement should be set. One's intuitions surely suggest that the level will vary given the importance and complexity of the issues involved, but that unless an appropriate level of rationality can be shown to exist it is improper to construct situations which depend on individual consent. So for example a child may be given complete autonomy in terms of deciding between two children's videos selected in advance, but would not be thought sufficiently rational to choose between the whole range of adult and children's films offered in a video store.

Nonetheless, in setting limits one could assume a very liberal attitude towards the question of autonomy, and state that anyone who is neither a child nor an idiot should be regarded as autonomous, and be afforded freedom to choose accordingly. The test of autonomy might then be the ability to give reasons for one's choices (even if the reasons don't seem very good), or the ability to act independently of others.

Definitions of autonomy have often stressed the idea of substantive independence, particularly when individual autonomy is pitched against control or influence by others. For example a frequently cited article on the subject states that being autonomous is equivalent to being "independent minded" and, that autonomy exists when "what he (the autonomous agent) thinks and does cannot be explained without reference to his own activity of mind."⁹³ Such definitions of autonomy seem initially appropriate to discussions of consent, the problems arise when one goes on to consider the obligations to which the consent gives rise.

What is essential to the person's remaining autonomous is that in any given case his mere recognition that a certain action is required by a law does not settle the question of whether he will do it.⁹⁴

⁹³ R.S. Downie & E. Telfer "Autonomy" *Philosophy* 46, 1971, p.301.

⁹⁴ T. Scanlon, "A Theory of Freedom of Expression", *Philosophy and Public Affairs* 1, Winter 1972, p.215.

The problem with this view is that if it is taken to its logical extreme it prevents the concepts of autonomy and obligation ever working successfully together. To quote Robert Wolff 'a promise to abide by the will of the majority creates an obligation, but it does so precisely by giving up one's autonomy'.⁹⁵ It should be possible to make the idea of obligation and autonomy work together, but to do so we have to separate the notions of independence and autonomy, and say something about autonomy that distinguishes it more clearly from individual liberty.

For this purpose Gerald Dworkin's discussion of autonomy is invaluable. For Dworkin,

.... autonomy is conceived of as a second-order capacity of persons to reflect critically upon their first-order preferences, desires, wishes, and so forth and the capacity to accept or attempt to change these in light of higher order preferences and values. By exercising such a capacity, persons define their nature, give meaning and coherence to their lives and take responsibility for the kind of person they are.⁹⁶

The distinction between first and second-order desires is frequently employed in moral philosophy, first-order desires being those which spring most obviously from an agent's impulsive basic beliefs about what he or she wants. So for example someone may have a persistent first-order

⁹⁵ R. Wolff, *In Defence of Anarchism*, New York, Harper & Row, 1970 pp.14,41.

⁹⁶ G. Dworkin *The Theory and Practice of Autonomy*, Cambridge, Cambridge University Press, 1989, p.20.

desire to smoke twenty cigarettes a day. However, he or she may also have a more rational second-order desire to give up smoking because it is bad for his or her health. Dworkin claims that an autonomous individual will be aware of this second level of desires, and will refer to them when making choices.⁹⁷

Dworkin's concept of autonomy thus has the advantage of allowing an autonomous person to choose to give up their independence in certain areas, as long as they do so for what can be shown to be appropriate/rational reasons. So for example a citizen may autonomously choose to give up specific aspects of his own independence in the hope of promoting a general good which goes beyond his particular interests. Or, to use a different kind of example, a patient may rationally choose to give up a certain degree of independence and control to a physician because he feels that the expert will be better able to satisfy his needs.

This definition of autonomy is particularly useful in the present context because it focuses on the nature of choices, as well as the agent's ability to choose appropriately. Rather than pronouncing an individual autonomous in a very general sense ⁹⁸ and assuming such a

⁹⁷ Ibid., p.15.

⁹⁸ Dworkin utilises the concept of 'personhood' in his definition, and attributes autonomy to persons only to beings with this status. Given that some humans will not be persons (and some animals may be persons) it is not possible to say all humans are autonomous, or even capable

capacity from there on, it demands that we establish whether the **particular choices** of individuals or groups are autonomous in the sense given here.⁹⁹

So, in terms of political obligations, individuals do not forfeit their autonomy if they consent to accept particular obligations for what can generally be accepted as rational reasons. This is true even if we have to accept that their level of independence or individual liberty may have been reduced as a result of doing so. Of course we must then enter a debate concerning what we will allow to count as rational reasons, but we shall leave this question aside for the time being.

Freedom, Coercion and Consent

Moving to the second form of consideration, the situation or circumstances within which consent is requested are significant to questions of freedom because they can do much to explain why an individual decides to give or withhold consent. It maybe sufficient to pronounce a

of being so. First we need to establish their personhood, and then we must evaluate their autonomy.

⁹⁹ As previously stated, this issue will be explored in Chapter 2 in which Hobbes's state of nature will be discussed. Some commentators claim that it is impossible to assume that men of the type Hobbes describes in this account will be able - let alone willing - to come together and form the original contract. In order to argue that they will, they must be shown to be - to some extent at least - autonomous, free and able to understand the consequences of their actions.

choice autonomous to show that the chooser has referred to an appropriate second-order desire, but it does not necessarily ensure that the choice was also free in the sense of uncoerced. To establish this fact we have to explore the concept of motive.

Some contemporary theorists take their cue from Hobbes and claim that motives are irrelevant to the validity of consent, and to a certain extent this is true. For example it is irrelevant to the fact that I consented to my daughter eating a chocolate bar that I did so because I wanted her to feel sick. My rather strange motive in this instance being prompted by a desire to teach her a lesson about greed. However, in a situation where the motive for consenting to something is to avoid death or torture, the validity of my consent may surely come into question if my motives became known.¹⁰⁰

For consent to be valid, there must be a real opportunity for choice. The existence of such an opportunity is dependent upon the status of the consenter as discussed above and the situation in which they find themselves. The situation must afford circumstances conducive to a free choice being made between reasonable alternatives. If one of the alternatives is necessarily overriding the 'choice' may not have been free in a real sense.

¹⁰⁰ Hence Hart's dissatisfaction with the Austinian style command theory.

Motive becomes relevant if my consent is determined by a motive from which I can not reasonably be expected to fail to act. This may be the case either because it is a motive that cannot rationally be ignored, or because it is a motive imposed upon me by a condition such as addiction or psychosis. For consent to be real an individual must be able to refuse or accept a proposition, and in such cases this opportunity does not in practice exist.

Intentionality and Consent

Having discussed the requirements relating to freedom as an integral component of consent we must now consider intentionality. All adequate definitions of consent require that the consenter must know that his or her action will be understood as a sign of consent, and that the consenter should intend the (predictable) consequences that follow on from his or her consent.

Questions of intentionality become particularly important if one acknowledges the possibility of tacit as well as express consent. If consent is to be based on anything other than an express act of consenting, then the agent must still be aware of the significance of his or her act, and should understand it as a signal of his or her consent, given for that express purpose. The tacit 'expression' of a wish does not exclude the need for intentionality.

To what extent we are willing to assert that A (some action other than an express case of consent) implies C (that one has consented to accept certain obligations) is a very important question, particularly given Locke's theory of tacit consent, which appears to abandon the requirement of intentionality.

Simmons states that if one is to allow for the existence of tacit consent, then the individual consenter must:

- a. be aware of the significance attached to his/her acts
- b. be in a position to act otherwise without too much hardship - so for example if I stay in my own country instead of emigrating, we must consider the cost to me of leaving before deciding that I have thereby consented to accept the obligations attached to my remaining.
- c. have some personal involvement with the consenting process ¹⁰¹

If any of these conditions are not met, then consent as properly understood has not been given. For tacit consent to perform the same function as express consent the only permissible difference must be in terms of expression.¹⁰²

One could at this point return to the example of the dinner party invitations discussed above, and test it against Simmons's requirements. It could be argued that whether or

¹⁰¹ Simmons, *op cit.*, pp.95-100.

¹⁰² For a useful (though not necessarily correct) discussion of what might count as tacit consent see Plamenatz, *op cit.*

not accepting an invitation entails accepting an obligation to reciprocate is culturally determined. If this is the case and my partner is not of my culture we could conclude that he did not know he was creating an obligation for himself, and should not therefore be assumed to have done so. I accepted the invitation on his behalf, thus excluding him from the consenting process as far as it exists, another of Simmons's requirements would fall by the way. My partner's position would be particularly lamentable if he had not wanted to go in the first place, and had only done so because of the serious repercussions I threatened.

Plamenatz argues enthusiastically that voting in an election constitutes tacit consent,¹⁰³ but once again the question of intentionality is surely important, especially given the idea that voting can on occasions be used as a form of protest.¹⁰⁴

¹⁰³ Plamenatz, *op cit.*, pp. 1-26.

¹⁰⁴ There are many examples one could choose to illustrate this point, one of the most powerful being the support given to IRA hunger striker Bobby Sands when he stood for the British Parliament he was committed to overthrowing. It is difficult to argue that a vote cast for such a candidate was in fact a vote of support for the British Government that was elected, and for the values it stood for.

Information and Consent

Finally a very practical question. To be in a position to consent one must first of all be aware of the existence of a choice where one exists. This may begin by sounding rather obvious, but it raises interesting questions within a political context, where those with power can effectively silence those who are offering a radically alternative agenda. We have to ask whether an individual has truly consented to be governed within a closely specified political ideology and system if that system has effectively deprived them of any accurate information concerning alternative options. Unless we are satisfied with the idea of the happy (ignorant) slave we must surely demand that consent be closely associated with choice, and that choice be facilitated by free, full and accurate information.

Appropriate information is also crucial to my deliberations over whether or not to consent. In a medical context my consent to an operation is invalidated if I have not been adequately informed of the risks attached to the procedure. Similarly, my consent to be governed could be invalidated if the government in question has been dishonest about their intentions once in power. In practice governments are given considerable leeway in terms of reinterpreting political manifestos, excused in part by the contingencies

of political life, but certain standards do have to be set.

It is also worth noting that the manner in which information is given can do much to facilitate or obstruct the consenting process. As will be shown below, information can be presented in such a way as to make its message irresistible, thus calling into question whether choices made on the basis of such information are motivated by rational autonomous deliberation, or determined by the force of rhetoric.¹⁰⁵

Consenting

Some of the examples already given suggest that consent may award a person or institution other than the consenter rights they did not previously have. For example, by consenting to medical treatment we grant the doctor the right to do things which, in the absence of consent, would be interpreted as battery or assault. However, in some cases this is only one side of the story. Once consent has been given the consenter may also acquire certain obligations which are necessary to enable the other person or institution to exercise their newly acquired rights. In

¹⁰⁵ All these points will be taken up in Chapter Three, and are therefore only dealt with briefly here.

the present context these obligations and the conditions in which they arise are of particular interest.

In discussions of consent and obligation the idea of a 'promise' is frequently invoked. In practical terms consenting is taken to be equivalent to promising, a practice which is often interpreted in a profoundly Kantian manner.¹⁰⁶ If one makes a promise (consents) one is then obligated to do that which one has promised to do. If one consents to accept an obligation, or if one consents to something which indirectly entails certain obligations, one is required to fulfil them. You are obligated precisely because you have consented.

This interpretation of consent is fraught with difficulties, and indeed reveals some of the limitations of the concept.

To explain. If consent is understood as analogous to making a promise, then we have to establish why it is thought that promises should be kept before we can understand how consent works. We may well share Hume's scepticism on this question.¹⁰⁷ If however we follow the

¹⁰⁶ Kant uses the example of 'lying promises' to illustrate the working of the categorical imperative, cf. Kant *op cit.*, p.92.

¹⁰⁷ Cf. D. Hume 'Of the Original Contract' in C.W. Hendel (ed) *Political Essays*, Library of Liberal Arts, New York, Bobs-Merrill, 1953.

Kantian line and state that the categorical imperative demands that one does not 'make lying promises', it becomes impossible to universalise the maxim that one *should* make lying promises. This is in itself uncontroversial. However, we would then have to universalise the maxim that promises must be kept, irrespective of the consequences of doing so, and, presumably, irrespective of the content of the promise. The justification is presented as purely deontological, but cannot remain so for long, as Kant's discussion of his example illustrates.¹⁰⁸

It is much easier to explain why one should not make a promise knowing that one cannot fulfil it, than it is to explain why, once made *all* promises should be kept. Carole Pateman warns against over-philosophising the problem.¹⁰⁹ Promising, she argues, is a social practice in which the idea that once made, promises (generally) ought to be kept is implicit. It is only difficult to understand why promises ought to be kept if one does not recognise them as social practices. Indeed, the social practice of promising can only continue to exist so long as promisseees can be fairly confident that promisers will remain true to their word. Given that it is a useful social practice, good reasons exist for seeking to ensure that this is the case. Pateman's analysis is not dissimilar to that offered by

¹⁰⁸ Kant op cit., p.92.

¹⁰⁹ Pateman, *The Problem of Political Obligation*, p. 14ff.

rule-utilitarians who would point to the social utility of promising to argue that in most cases promises should be kept.

However, Pateman still doubts whether it is really appropriate to see consent and promises as analogous. She believes that a promise is the purest form of a self-assumed obligation because one actually determines the content of one's promises. Ostensibly this seems to be an accurate observation, many promises are voluntarily offered and the terms are clearly set by the promiser - 'If you go to bed now I will read you a story'. However, promises can also be extracted - 'If I go to bed now, will you promise to read me a story?' Unless the parent renegotiates, in the second example the terms of the promise have been set by the promisee. Similarly, certain organisations make particular promises a condition of membership - 'I promise that I will do my best, do my duty to God, serve the Queen, help other people and keep the Brownie guide law.'

Just as we may consent to conditions or obligations which someone else poses, so we may promise to fulfil other people's requests or demands. Perhaps what worries Pateman is an issue more specific to consent within a political context than consent per se. Some acts of consent create very specific rights and obligations. For example, as argued above, consenting to become the coach for a netball team creates obligations tied to the training of the team.

Again, one frequently consents to a pre-existing list of duties, so although the obligation is freely accepted, it is not freely created because the content of what one is obligated to do has been set by someone else. The netball coach could of course make her consent conditional upon altering the received duties of the coach in some way, for example by getting rid of the requirement that she attend all post-match social events. Or, if she was in a particularly strong position she might entirely rewrite the job description, but this need not be the case. One way or another it is fairly easy to discover exactly what one is obligated to do, and it may also be possible to make changes.

Consenting to political rule is generally seen to entail acceptance of a much more general obligation to obey the laws of a particular government, and the dictates that make political rule effective. Furthermore, the rights acquired by government are wide-ranging and open to vast interpretation. Only at the establishment of a new political order might the consenters be able to determine the specific content of their obligations. And only when they are asked to renew their consent do they have a formal opportunity to demand change. In the worst-case scenario, consenting to obey a government appears to be as open-ended as promising to do whatever that government asks of you (so long as it is necessary to enable them to do their job).

However, there is much that can be done to modify this position.

Leaving these doubts behind for the present, we must still consider the ways in which promising and consenting are or can be similar. Making a promise is a rational process, by which an agent chooses to commit herself to the performance of certain actions, or to fulfilling a goal which will necessitate certain as yet unspecified actions. By consenting the agent is also rationally considering whether to accept a proposition or list of commitments set down by someone else. It is the fact that he or she has consented or promised which explains why he or she is bound to perform the action promised, or fulfil the obligations consented to. In both cases understanding the link between promising/consenting and commitment is an integral part of the rational process involved.

So far the binding nature of consent has been discussed purely by analogy to the binding effect of promising. Nothing has yet been said of how the content of what one consents to do might effect the situation. It is only because one has consented to do so that one is required to do X, nothing has been said of the nature of the act X, whether one ought to do this thing in itself, and indeed whether one might not have a duty not to do it. To speak of consent in this way is to utilise it as a purely abstract concept.

Unless one clings to the strict Kantian position outlined above, it is generally accepted that although one must intend to fulfil one's commitment at the moment of promising, one is sometimes free to reassess at a later point whether one ought to follow it through. Individuals differ concerning the extent to which they feel it is ever right to break a promise, even if it is generally thought to be intrinsically bad to do so. All would agree that the action of breaking a promise requires justification, and that the reasons given for failing to fulfil a commitment must be powerful. One should be able to show that the new course of action is morally preferable rather than simply a more convenient option. An act-utilitarian would have little difficulty with the idea of breaking a promise so long as the consequences of doing so brought about more utility than pursuing the option of keeping the promise. But even a non-utilitarian can have some leeway.

We have so far argued that consent creates obligations, and obligations generally ought to be fulfilled. However, if the content of those obligations does not coincide with what an agent ought to do morally, the fact that the agent has consented is not in itself a good enough reason to upset the moral hierarchy established above. The obligations taken on may be trumped by other more demanding obligations, or by the discovery of other decisive reasons dictating how one ought to behave. Thus the content of

what the agent has consented to do is relevant to the binding force of that consent.

This is not to say that the object of consent always has a moral content - indeed many issues of consent will be profoundly pragmatic and prudential. In these cases the fact that the agent has consented, or promised, to do X should ordinarily be taken as a decisive reason for doing X. The subsequent discovery of *prudential* reasons for not doing X is not usually sufficient to override the moral force of having promised to do so (unless of course one is an act utilitarian). So for example if a mother promises to take her children to the park, and then realises there is a play on the radio that she would like to listen to, this does not seem a good enough reason in itself to renege on her promise (despite the utilitarian's claims).

However, there may be cases in which a change of circumstances after a promise has been made can make it unreasonable to demand that the promise be kept. Consider, for example, a case in which a woman offers her kidney for transplant so that her daughter can come off dialysis treatment. If in the time between consenting to be a donor and the actual operation one of the woman's own kidneys fails, then it would seem unreasonable to insist that she donate her healthy kidney simply because she had promised to do so. In other words, one might have to ask 'did A

consent to X, and now given change of circumstance C, is it still reasonable to expect her to do X?'

Similarly, the mere fact that the agent has consented to do certain things does not in itself make them morally acceptable, ^T this point has already been raised but now it must be explored further. Most liberal consent theories restrict the extent to which one is free to consent by making certain rights inalienable, and certain actions impermissible, irrespective of consent. Beyond certain limits moral acceptability must be determined by something other than the individual's ^h willingness to consent. Questions then arise over the extent to which such restrictions can be built in without threatening the basic individualistic features of the theory.

Recently in Britain academic and press attention has focused on the issues surrounding sado-masochistic sexual acts between consenting adults, but one could also consider the issues of surrogacy and euthanasia. In each of these areas the state has decreed certain acts unacceptable, and the fact that autonomous rational adults willingly choose to participate in them does not ^h effect their official ^a ^a status as illegal and/or immoral.

These examples suggest that two quite separate questions should be asked. First, has A consented to X, and then, is

X morally acceptable/legal?¹¹⁰ If the answer to the second question is no, then consent becomes irrelevant or maybe even incriminating.

Steinberg represents this issue as a conflict between the deontological and teleological models of consent.¹¹¹ In other words, between the belief that when we consent we should be free to do as we choose (or conversely bound to do what one has consented to do), and the belief that consent should facilitate moral outcomes, thus making the fact of *what* one consents to relevant. By adhering to the strict definition of consent offered here it is possible that this conflict will be rendered less problematic .

To explain, if consent is understood as 'an intentional granting of permission given freely on the basis of full and accurate information by an autonomous and rational agent' (p. 71), then it could be argued that consent has only been given if the individual in question rationally considers both the content of what she is consenting to, and the consequences of giving or withholding consent. The process of deliberation that must precede a proper case of consent may not always establish whether what the agent is

¹¹⁰ This question raises interesting issues concerning the nature and appropriate status of public morality, but they are unfortunately beyond the scope of the present enquiry.

¹¹¹ Steinberg op cit., p.13.

consenting to is also what he or she ought to do, but at least there is the opportunity to decide.

A proper case of consent will be accompanied by reasons that the consenter can provide as a justification for making their decision. These reasons should refer to either the prudential or moral rectitude of doing that which is proposed. There should therefore be two bases for accepting obligations arising out of consent. First an active appreciation that one's consent is a committing action, and second the holding of good independent reasons for doing that which one has consented to do.

To pull all these strands together. Consent is by its very nature a committing action. By consenting the agent commits herself either to allow certain rights to be exercised or to fulfil certain obligations. However, the fact that an agent has consented is not sufficient in itself to determine that the thing consented to is morally right. The agent might become obligated to perform morally unacceptable acts, or might consent to engage in illegal/immoral practices. Even in situations where that which one has consented to is not of dubious character, because consent creates obligations as opposed to moral duties or oughts, reasons could emerge which determine that the agent ought not to do that which she has consented to do.

To make the fact of consent decisive the agent must find a way of making what she consents to do and what she ought to do coincide. This would be particularly difficult in a political context where immediate pre-occupations would more often be pragmatic rather than ethical. We might therefore have to accept that consent and the obligations arising from it might have a less fundamental role within an ethical political system than might initially be assumed.¹¹² Our consent creates our political obligations but these obligations may have little to do with the broader ethical, as opposed to political, welfare of the society in question.

Given the potentially limited effect ascribed to consent here, we arrive at the question of why it has proved so popular a concept, and why in the face of adversity, political philosophers continue to work with this 'attractive but difficult theory'.

Consent as Ideology

It has been suggested by some commentators that consent-based theories are highly ideological and attractive only within a very particular philosophical/political context. Carole Pateman for example believes

¹¹² This idea will be developed further in Chapter 4 when I re-evaluate the role of consent within Locke's political theory.

that the advent of consent is a profoundly modern phenomena, and that theorists are mistaken when they try to discuss classical equivalents.¹¹³ Consent, as a primarily political concept, was born alongside a particular political ideology - the market-oriented liberal view of society, which presents man in terms of abstract individualism, characterised by C.B. Macpherson as "possessive individualism".¹¹⁴

It is not difficult to see why consent is favoured within the liberal democratic tradition, especially considering the fundamental assumptions of the liberal democratic model.

Simmons offers the following list of assumptions as integral to the classic model of a liberal democratic state. It is of course a simplified approach, but it will suffice in this context:¹¹⁵

1. Man in his natural (pre-governmental) state is free, and is the bearer of certain natural rights.¹¹⁶
2. Man's natural freedom is a good unto himself.

¹¹³ Pateman, *op cit.*, p.2.

¹¹⁴ Macpherson, *op cit.*

¹¹⁵ Simmons, *op cit.*, pp.62-70.

¹¹⁶ Natural rights will give rise to correlative duties which will be the moral duties discussed above.

3. Given the assumption that man's natural freedom is a good unto himself, man only gives up this freedom by clearly signalling that he wishes to do so.

4. The state is an instrument for serving the interests of its citizens.

According to the classic liberal accounts man in the state of nature is born free, although this freedom is 'naturally' restricted by his having been born under the laws of nature. The extent to which these laws are effective varies between accounts. In terms of the preceding discussion, these natural restrictions can be interpreted as the moral oughts (and natural moral duties) which form the bottom line in terms of moral reasons for action. Any further restrictions on man's liberty (including special duties and obligations) are artificially created and therefore their origin and legitimacy have to be explained. Man is also taken to have certain rights of which he cannot later be rightly denied - natural inalienable rights.

As previously indicated, opinions differ as to whether the notion of inalienable rights sits happily within a liberal framework which stresses the importance of voluntarism and of individual (negative) liberty. Allowing for their existence means that autonomous individuals find themselves barred from certain choices even with respect to self-regarding actions. Effectively the framework ensures that consent is made redundant in certain important areas of life.

Naturally these liberal assumptions are open to criticism. Concerning the first, that man is naturally free, some might wish to question the degree to which it is possible to make accurate statements about man in his natural state.¹¹⁷ Nevertheless, this aside it is at least possible to interpret the assumption that man is naturally free as a value-free statement of fact. However, the assumption that this freedom is necessarily a good thing is profoundly ideological, more so because of the way in which freedom is usually defined in this context.

Freedom/liberty is a positive 'buzz word' in all ideologies, and it is not therefore surprising that man's original liberty is presented as 'a good thing'. However, one cannot deduce from this that all restrictions of that liberty are necessarily a 'bad thing', nor can one make simple assumptions about what such liberty entails. As stated in the classic liberal model the laws of nature ensure that we do not start from a position of complete licence, and there is the possibility at least that further restrictions might also be justifiable.

However, the liberal democratic model also assumes that up to a certain point, more freedom is better than less. One has to ensure that movements away from the acceptable starting point of equal natural liberty are similarly

¹¹⁷ Such objections will be dealt with in more detail in Chapter 2.

acceptable. If x is good, attempts to diminish A's enjoyment of x can only be justified

1. in the interests of promoting other goods for A,
2. if A's enjoyment of x substantially threatens B's enjoyment of x, or B's enjoyment of other substantial goods, or,
3. if it can be shown that beyond a certain point x fails to be good.

Consent is introduced in an attempt to ensure that each individual is amenable to the restrictions placed upon his or her natural liberty. If the strict definition introduced above is utilised consent will be given to a restriction only if any of 1, 2, and 3 can be shown to hold.

Within a social context competing freedoms can produce negative results for some or maybe even all. Individuals will therefore be able to accept rationally that - at a certain level at least - their freedom must be restricted. However, interesting and ideological questions then arise about which it may not be as easy to gain agreement. For example what can be taken to compete with liberty as a good on equal terms? At what point does individual liberty stop being a good thing? To what extent can individuals be expected to sacrifice some of their liberty in the interests of others? To what extent can an individual be required to sacrifice his or her liberty in the interests

of goods that they do not initially prize more highly?
Indeed what does one mean by liberty?

Some of these questions are subsidiary to the current enquiry, however the final one concerning the actual meaning of liberty is of great importance. According to MacCallum ¹¹⁸, all meaningful statements concerning freedom take the following form:

Freedom of A from B to do or be C.

In the interpretation most commonly employed within a liberal framework A, the agent, is most simply individual man as governed by his desires etc., Bs are external (less often internal) obstacles placed in the way of the agent doing as he desires, and C is an end state that the agent wishes to achieve - usually something as straightforward as being happy.

Within a political context it might be read as thus: Agent A's (a citizen's) freedom depends on his being unhindered by obstacles B (Taxes, laws, paternalistic interference) placed by government in the path of C (living life in the way he wishes).

¹¹⁸ G. MacCallum, 'Negative and Positive Freedom', *Philosophical Review*, LXXVI, 1967.

A man will judge himself free to the extent to which the government allows him to look after himself - which includes making his own mistakes - and seeks to govern his behaviour only to an extent which he accepts as reasonable and beneficial. Restrictions which seek to enforce fundamental moral oughts are non-controversial and non-negotiable, beyond that restrictions have to be justified and accepted. If one interprets freedom in this way, then there is a very obvious and important place for consent.

It is of course possible to interpret this triadic relationship from another perspective and come up with what has been called a positive notion of liberty.¹¹⁹ By this interpretation, A the agent is not simply a man subject to his desires, but a free autonomous man governed by reason. The image of a divided self is often invoked and the free agent (A) is the one governed by 'his rational or real self'. The obstacles (B) to his freedom could in fact be products of the type of negative freedom discussed above. Finally, the end state to be achieved is not necessarily what the agent desires, but rather has more to do with achieving states of rationality and virtue - how one ought to be. As such, freedom will not be as naturally opposed to law, obligation and duty as the negative libertarians assume. Indeed freedom in this positive sense may be

¹¹⁹ I. Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty*, Oxford, Oxford University Press, 1969.

enhanced by restrictions upon negative liberty. Furthermore, the role for individual consent may be severely restricted given that individuals may not be in a position to understand how best to promote their liberty. There is even the possibility of forcing people to be free.

As mentioned above, if one adopts a negative interpretation of liberty, laws and obligations necessarily limit individual freedom, so where they exist it must be the case that one or more of the reasons stated above can be offered in justification. Furthermore, the individualism inherent in the liberal model dictates that it is not enough that the citizens be told that such reasons exist. Rather, individuals must give a clear sign that they acknowledge the need for the restrictions and wish them to exist.

Voluntarism is therefore a necessary component of the liberal position, bringing together freedom and commitment. For an individual's freedom to be restricted it must be shown to be done for reasons that he is willing to accept. This is achieved by stressing the voluntarist nature of individual obligations and commitments, whereby any restrictions and obstacles to his liberty which take this form are consistent with the overall freedom of the individual.

Government as a significant source of constraint upon individual freedom must be voluntarily instituted by the

people, and the form and remit of that government must be consistent with man's fundamental liberties. The state is an instrument for serving the interests of its citizens, and for as long as it remains so, then its citizens are obligated to obey its laws. If the state neglects or deliberately ignores its duties, or misinterprets its role in relation to its citizens, then the binding nature of its citizen's obligations to it may be called into question. Judgements as to whether or not this is the case rest with the citizens.

Sovereigns are no longer accepted as ruling by divine right or natural order, and political rule is seen as an artificial imposition upon the lives of previously free men. It must be willed by those men to be acceptable, and the form and extent of government must be clearly demarcated to make it legitimate. Indeed, at least one contemporary theorist has chosen to characterise the entire body of liberal social contract theory in terms of the relationship between will and legitimacy.¹²⁰

Given this basic model it is easy to see how consent fits the bill. Consent is the 'clear sign' that must be given when individual freedom is restricted, and the process of consent must protect the individual from possible injury by those who require such restrictions, ie. the government.

¹²⁰ Cf. P. Riley, *Will and Political Legitimacy*, Boston, Cambridge Mass., Harvard University Press, 1982.

It also sets the tone for the relationship between citizen and state whereby the citizen consciously consents to the rule of the sovereign body, instead of simply obeying or acquiescing. By making rule dependent on consent, the government is forced to recognise its citizenry as autonomous individuals.

A paradigm case of consent in a liberal political framework would be profoundly individualistic and would attempt to reconcile individual freedom and political rule. Unlike earlier theories of political obligation, a theory based on consent would logically lead to a contractual arrangement between ruler and ruled, with duties and obligations on both sides being clearly stated. A greater emphasis on legitimacy and accountability is also assumed, and frequently though not necessarily, the preferred model of government would be a representative form of democracy. That is one which ensures a continuing, although not necessarily direct role for the individual citizen in the process of government. Plamenatz concludes that:

'...it may be true that government with the consent of the governed is the best form humanly possible.'¹²¹

¹²¹ Plamenatz, op cit., p.24.

Conclusion

In short the conclusions of this chapter can be presented thus:

Despite a traditional assumption of similitude there are important distinctions to be made between statements of obligation, duty-statements, and statements concerning what we ought to do morally. Basically the concepts are defined here in terms of the contexts within which they are most appropriately employed, the extent to which they place moral constraints upon individual agents, and the manner in which they are created.

In terms of a moral hierarchy what we ought to do is the trump card, and imposes a stronger requirement or constraint upon action than either obligations or duties (unless you speak of moral duties). This is because a decision concerning what one ought to do signals conclusive reasons for acting in the manner proposed, whereas obligations and positional/legal duties provide only *prima facie* reasons for doing X rather than Y. In establishing what we ought to do we make reference to duties and obligations, but it is possible that they will be overridden by other moral demands.

Having discussed obligation in general terms we looked at political obligation and found that ordinary usage of the

term political obligation differs rather alarmingly from the paradigm case. Whilst it was argued that forms of obligation are different only because of the contexts within which they arise, in practice political obligations fail to meet many of the defining features of the ideal type model. In some respects political obligations are more like positional duties attached to citizenship.

One way of attempting to rectify the situation is to employ the concept of consent. Consent is most usually utilised with reference to obligations, such that we become obligated to do X because we have consented to do so. This relationship is not unproblematic. First one can question the analogy between promising and consenting which is so often utilised, and even if this is taken to hold one can ask why it is assumed that promises create obligations. Furthermore, it was argued that even if we construct an adequate definition of consent, the moral scope of the concept is necessarily restricted, as it cannot in itself ensure that what we consent to do is the same as what we ought to do. The content of what we consent to, and our motives for consenting can both mean that from an 'all things considered' moral point of view we ought not to do that which we have consented to do.

There are still further limitations upon the concept's usefulness if one accepts certain of the presuppositions about the liberal democratic model within which it most

comfortably fits. For example, it is possible that certain individual human rights are, or should be, considered inalienable. If this is so, being politically obligated cannot entail consenting to give them up. So, in some areas of political discourse consent will be irrelevant.

Even if we can explain how and to what extent a person has political obligations on the basis of their consent, we still have to show whether these obligations are significant in a moral sense. If consent is interpreted in the way in which it is presented here it is at least possible that it will be given or withheld on the basis of a rational evaluation of what ought (prudentially and morally) to happen. However, it is also possible that consent will be so bound up with the individual's selfish will that prudential considerations of what it is best for the individual to do will override moral considerations of what the individual ought to do. For this reason there have to be motives offered for consenting to do what is right as opposed to what is merely advantageous. If such motives can be found politics and ethics will be joined together.

It has been suggested here that the most appropriate ideological context for consent is a liberal democratic model which emphasises individualism, voluntarism and individual negative liberty. In such a system the place for consent is clear, and the infrastructure within which

it can operate most effectively is obviously present. However, it is also worth asking whether consent can operate in systems which lack some of the defining features of this model, and even more interestingly perhaps, whether a different type of model removes or at least diminishes the role of consent. In other words we need to enquire whether the value of consent is contextually determined.

In the following chapters the definitions offered here will be used as a standard against which to judge the ways in which Hobbes and Locke employed the same concepts. Both thinkers are assumed to be members, indeed founders, of the tradition within which consent is most conspicuously embraced. It remains to be seen whether consent is a central support to the systems they construct, or whether the limitations of the concept and the nature of the systems constructed combine to make consent far less important than commonly assumed.

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Chapter Two

Hobbesian Man, The State of Nature and Consent.

Given the definition of consent outlined in the previous chapter questions immediately arise concerning Hobbes's social contract theory. Some of the doubts concern his particular version the theory, others become obvious when one tries to accommodate the covenant within his overall philosophical framework.

We are forced to enquire whether, given Hobbes's account of human nature and his explanation of how men behave in the state of nature, it is feasible to assume that they shall, as autonomous agents, freely and willingly choose to make a covenant. Also, given that Hobbes is committed to a deterministic perspective, it must be established whether a meaningful notion of consent can exist without a commitment to the idea of freedom of will.

These problems fall broadly under two headings-

(A) those concerning the likelihood of the contract being made, and kept, at the initial stage of leaving the state of nature.

(B) those concerning the moral status of the agreement and its effectiveness as a political mechanism.

~~This chapter~~ is an attempt to address questions of the ~~first~~ sort, and as such offers a detailed study of ~~Hobbes's~~ account of man in his natural state, and his conditions of existence prior to the formation of the commonwealth.

~~widely~~

~~Several~~ commentators have expressed doubts about the possibility of a covenant arising out of the pre-political state Hobbes describes.¹ If men are as antisocial, proud and warlike as Hobbes suggests the argument runs, then the idea of them coming together to make a contract is far-fetched. Conversely, if we accept that such a covenant has been made, then the question arises as to whether or not pre-political men actually were as Hobbes described them. Neither of these conclusions are inevitable. It is possible to assume instead that:

~~now~~

(1) men were (or could have been) at some point of the nature Hobbes describes, and living in the way his state of nature account suggests, and

(2) that men would reach the point where they were willing, and able, to form a covenant and establish political society.

¹ Cf. Michael Oakeshott, 'Introduction' to *Leviathan*, Oxford, Blackwell, 1947: T.H. Green, *Lectures on the Principles of Political Obligation*, London, Longmans, 1941: George Sabine 'Thomas Hobbes' Ch.XXIII in his *A History of Political Theory*, New York and London, Henry Holt & Co., 1937.

the key to this interpretation lies in a rigorous and accurate reading of Hobbes's account of man and his social **setting** prior to the formation of the commonwealth. In *Leviathan* this is found in his account of the "condition of **nature**", in *Philosophical Rudiments* he adopts the more **widely** used term "state of nature", which for simplicity's **sake** will be used here.

The state of nature - Introductory remarks

Before investigating Hobbes's particular version of the **state** of nature something has to be said about the concept **in general**, and also about the way in which such accounts **should** be read. In its purest form a state of nature **account** should be no more than a collecting point for the **raw materials** of political argument, the principles upon **which** a philosopher's later theorising will be based. The **account** should be seen as a literary device for assembling **facts** that could just as easily have been presented in list **form** under such headings as - 'the nature of man', 'the **original** moral position' or 'social behaviour outside **political** society'. There is no need to prove - or even **maintain** - that such a state ever existed, but only that **given** the facts as they are taken to be, such a scenario **could** have arisen, and might still do so.

If the state of nature is to be seen as an hypothetical tool, as this last statement suggests, the question then arises as to the purpose of such description. Given that the account need not be presenting historical reality, and cannot therefore claim to be satisfying our curiosity about our forbearers, or facilitating any desire to 'learn from the past', how do we then use the information provided?

The clue lies in understanding the state of nature as both a descriptive and prescriptive device. When a philosopher relates how things are, or might have been in a state of nature, he is implicitly providing the basis for his account of how he thinks things ought to be in political society.

Political society is generally understood as an artificial construct which can either enhance or subdue what is natural. By providing a picture of what is natural the state of nature informs the philosopher of what he must achieve through artificial means. A philosopher's views on man's nature, man's original moral position and man's natural sociability will feed into his prescriptions for political society. If he chooses to equate what is natural with what is good, then he may well see his task as limited to creating a system which will preserve or enhance man's natural condition. If he sees in the natural man what is bad, he must construct an artificial reality which will

avoid the possibilities revealed by his account of ~~the~~
~~state of nature.~~

The desire to persuade as well as to prove is an integral characteristic of political philosophy, and ~~many~~ philosophers have seen in the concept of a state of nature a powerful persuasive tool. Yet, once a significant persuasive angle is built in to such an account there is a danger that the descriptive element will be overshadowed, or obscured. When discussing Hobbes's use of a state of nature device the complexities of the enterprise become obvious, as does the propensity for conflict between ~~the~~ quite different aims.

The pages in *Leviathan* where Hobbes gives his account of the state of Nature contain some of the most evocative language and persistent imagery of political philosophy. Every undergraduate learns at least this - that (according to Mr. Hobbes) if left in his natural state, "the life of man is solitary, poor, nasty, brutish, and short".² Initial reactions to the text are emotive, and the less discerning reader might not think to ask too many questions concerning the first causes and principles from which ~~the~~ account springs. Hobbes however is concerned precisely

² *Leviathan* Ch. 13 p.186. Unless otherwise stated all references to *Leviathan* refer to the edition edited by C. B. Macpherson, Harmondsworth, Pelican, 1968.

with causes³ and a close reading of these pages reveal far more than a dispassionate list of factual characteristics.

One is instead treated to a detailed picture of a way of life, a terrifying existence characterised by war and deprivation, and underlying this picture one should be able to discover its causes.

As stated above, a state of nature is rarely used simply to describe, a prescriptive aspect is invariably built into the account, such that one can argue 'because of conditions A, B, and C, the policy or form of government required is X, Y, or Z. This may be acceptable so long as the philosopher's commitment to any one or all of X, Y, and Z does not override his desire to give an accurate picture of A, B, and C. Similarly, the normative nature of such recommendations should be borne in mind. Rarely if ever can it be demonstrated that conditions A, B and C necessarily require solutions X, Y and Z. In fact, given the same factual evidence, another commentator may well offer a completely different prescription.

It has been suggested that Hobbes uses the state of nature to support and promote his governmental proposals, without necessarily being able to justify those proposals in terms of the scientifically factual information offered in that

³ cf. M. Oakeshott 'Introduction to Leviathan' (1937) in his *Hobbes on Civil Association*, Oxford, Blackwell, 1975, p.23.

account.⁴ The state of nature account is then, if not **constructed**, at least tailored to complement his preferred **political** recommendations. In other words, because of a **preceding** commitment to political recommendations X, Y, and Z, he presents man's natural condition in terms of A, B, and C. This is a serious accusation from which Hobbes **cannot** fully escape, but it will be shown that rather than **cynically** employing the state of nature to support his **preferred** form of government, Hobbes attempted, but failed to **combine** two distinct though interrelated purposes within **the body of the text.**

On the one hand, Hobbes used the state of nature to help **identify** and analyse the causes of the formation - and **ultimately** the breakdown - of political society. This **being** the most obvious purpose of such an account. On the **other** hand 'its status was that of an ever-present **possibility** inherent in any organised political society, a **ubiquitous** threat which, like some macabre companion **accompanied** society in every stage of its journey.' One **night**, for convenience sake, label these two uses of the **state** of nature as the **scientific** and the **political** **purposes.** The question arises as to whether the **approaches**, and perhaps more importantly the difference in

⁴ Such views are propounded by those writers cited in Footnote 1 of this Chapter as well as by others such as C.B. Macpherson, *The Political Theory of Possessive Individualism*, Oxford, Oxford University Press, 1962 and L. Strauss *The Political Philosophy of Hobbes: Its Basis and Genesis*, Chicago, Chicago University Press, 1963.

style, required to fulfil these two purposes are compatible. In order to fairly assess Hobbes's argument at a scientific level, one must first strip away the stylistic elements of the more political account. Similarly, the possibility that certain implicit features of the scientific account might become obscured in the interests of the text operating as a political tract cannot be discounted.

beginning

There is no denying that as a political tract, *Leviathan* was created with the purpose of persuading through the demonstration of truths ie. through scientific method. The danger lies in the possibility that the need or desire to persuade, might have resulted in the selective demonstration of particular truths, and the suppression of others. To enable an accurate reading of the state of nature, and to justify the political recommendations made, one must search out all the facts, and their logical consequences, which will necessitate getting behind the eloquent veneer of the text. *Leviathan* has an obvious and discoverable normative/persuasive purpose as a treatise opposing anarchy and enthusiastically supporting undivided monarchical rule. It will be suggested that in pursuing this purpose Hobbes willingly sacrifices clarity and coherence in terms of what should, in the context of his own philosophy, be a more important purpose, that is demonstrating the logical necessity of a social contract, and the inevitability of its emergence.

Indeed, it is unclear whether Hobbes's undoubted mastery of the English language, and his talent for the rhetoric of politics does more to highlight or to obscure the principles upon which his political theory is based. For his social contract to succeed he must offer an account of man's nature and pre-social state which makes the emergence of the covenant a feasible and morally significant proposition. Similarly he must provide at least the beginnings of a pre-social moral framework which enables the creation of obligations which are both binding, and understood as such. For the *Leviathan* to succeed as a political tract, the state of nature account must exist as a dark spectre, a warning to those who, for whatever reason, doubt Hobbes's message.

Given the suggestion that the state of nature operates at least two levels - as a scientific and as a political account - it would be advisable to eliminate, or at least identify, any other possible levels of discourse existing within the text.

As suggested above, Hobbes himself would expect *Leviathan* to be read as a work of philosophy in it's strictest sense, that is as a scientific manuscript. However, as has already been mentioned, the tone of the work is not that of

his more obviously scientific efforts such as the *Elements of Philosophy*.⁵

As A.E. Taylor points out,

The *Leviathan* is far the most readable and amusing of his works, and it was written in a time of revolution and unsettlement as a persuasive to cessation from fruitless civil strife. For its immediate purpose, as an exhortation to peace, it was right and proper that the author should develop the contention that peace is the real interest of his fellow-countrymen as persuasively as he could; it is not surprising, therefore, that it attains dimensions in his book as to give the impression that it is all or really all, that he has to say.⁶

Taylor's comments suggest a way in which history and the text are, or could be, intertwined. Even if Hobbes was not concerned in relating historical reality, there are those who would argue that his text is unavoidably the product of some such reality, in this case 17th century England. Taylor goes as far as calling the work 'a popular *Streitschrift*' to be contrasted with the 'more calmly argued statements of the same doctrine'⁷ contained in the *Elements or De Cive*. For this reason Taylor prefers to use *De Cive* as the basis for his commentary on Hobbes's work, the

⁵ *The Elements of Philosophy*, (1656), The English Works of Thomas Hobbes, Vol 1, ed W. Molesworth, London, MDCCXXXIX. Hereafter volumes from the Molesworth edition will be identified in terms of English Works and volume number.

⁶ A.E. Taylor, 'The Ethical Doctrine of Hobbes' *Philosophy* Vol. 8, 1938, p 406 also in K. Brown (ed), *Hobbes Studies*, Oxford, Blackwell, 1965.

⁷ *Ibid.*

suggestion being that certain texts owe less to the historical urgencies of the age than others, or perhaps that certain ages are in themselves more conducive to the production of purely philosophical as opposed to political works.

of course, for those who uphold the maxim 'for every text a context' no text can be read accurately or profitably without reference to the historical context within which it was created. Context denotes not only the strictly historical - that is the age during which the text emerged - but also the tradition, or debate of which it forms a part. As well as looking back to the influences working upon the author prior to and during the writing and publication of the text, a complete analysis would involve looking at the subsequent influence exerted by the text. If the writer is both 'philosopher and pamphleteer'⁸, and the text both treatise and tract, the reader must be both historian and philosophical commentator.

To quote Quentin Skinner on the need for a strong historical framework,

"...where such a framework is lacking the classic text itself may be 'understood' by philosophers in ways that are historically absurd, the aim has been to show

⁸ I borrow this term from Professor Maurice Cranston, who applied it to the writers of the French Enlightenment in his work entitled *Philosophers and Pamphleteers: Political Theorists of the French Enlightenment*, Oxford, Oxford University Press, 1986.

that the historian's task of understanding climates of opinion is not disconnected from the philosopher's attempts to interpret texts. It is still for the historian to point out that even the philosopher's most plausible interpretations must still be tested, and might even have to be abandoned, in the light of historical evidence.⁹

whilst there is a great deal to be learnt from the form of scholarship advocated by such figures as Skinner, Pocock and Dunn,¹⁰ their methods shall not be followed in this thesis. To deny the importance of historical context would be foolhardy, but to deny completely the possibility of studying a self contained philosophical text is similarly rash. One consequence of adopting their approach would be to deny to Hobbes the timelessness he strived to achieve.¹¹ Having made reference to contextual evidence in order to determine, as far as possible an author's intentions when writing a text and his position within any particular

⁹ Q. Skinner 'The Ideological Context of Hobbes's Thought', *Historical Journal* 9, 1966 pp. 286-317. A later version of the paper appeared as 'The Context of Hobbes's Theory of Political Obligation' in *Hobbes and Rousseau: A Collection of Critical Essays*, M. Cranston and R. Peters (eds.), New York, Anchor-Doubleday, 1972.

¹⁰ Often referred to as the Cambridge School these historians of philosophy have published widely on both Hobbes and Locke, always stressing the importance of historical context to an accurate reading of the text. See as examples Q. Skinner 'Hobbes' Leviathan' *The Historical Journal* 8, 1964; J.G.A. Pocock 'Time, History and Eschatology in the Thought of Thomas Hobbes' in *The Diversity of History*, J. H. Elliot and H. G. Koenigsberger (eds.), London, Routledge Kegan Paul, 1970; and J. Dunn, *Political Obligation in its Historical Context*, Cambridge, Cambridge University Press, 1980.

¹¹ Cf. C.C.S. Farsides 'Hobbes en Grand-Bretagne' *Archivs de Philosophie, Bulletin Hobbes* I, Paris, Avril-juin 1988, pp.233-239.

tradition of argument, it must be possible to focus in on the text, and judge its merits solely in terms of the criteria set by the writer's own philosophical framework.

One can identify with Howard Warrender, author of one of the most influential works of Hobbes scholarship of the past decades, who claimed to have "a very limited purpose: to examine theoretical structure and the way in which various concepts Hobbes employed fitted together in terms of their inner logic and cohesion."¹² The word "limited" is not to be read as an apology or admission of a greater purpose ignored, as he wrote in the same article,

the classic texts in political philosophy are more than tracts of their time. However much they are involved with and illuminate the author's immediate context, they continue to be studied for what insight they offer in new and changing situations. To consign them to their contemporary milieu with whatever honours, is to bury them. Hobbes more than most has preserved his relevance and justified his own claim to be regarded as writing for all time.¹³

Whilst the political focus of the work is inevitably determined by the author's perception of his contemporary milieu, a political theory built upon sound philosophical foundations should be worthy of study as a theory, not as an historical relic. The *Leviathan* is a work of philosophy and science, as well as a political tract, and it has to be

¹² H. Warrender, 'Political Theory and Historiography: A Reply to Professor Skinner on Hobbes', *The Historical Journal*, 22, 4, 1979, p. 940.

¹³ Ibid. p. 939.

considered good or bad at all levels. Ultimately, its success as a 'text for all time' depends on the interrelation of all these elements, but most importantly on its inner coherence as a philosophical system. It is in these terms that the work shall be judged here.

So far it has been claimed that *Leviathan* is an attempt at a philosophical or scientific presentation of an overtly political theory. The author's intention was to employ the methodology of science in the service of politics. However, one soon discovers that the unsuitability of this form of discourse for the political task at hand led to the blurring of that methodology at certain points, and, less acceptably, to the concealment of some of the conclusions thrown up by the scientific method. The reason for this lies with the distinction to be made between proof and persuasion, and the author's desire to be both philosopher and polemicist.

The first thing to stress about Thomas Hobbes's account of the state of nature is that in common with other such accounts, it need not be tested for historical accuracy. Indeed it need not be seen as 'historical' in any real sense. Robert Nozick prefers that a state of nature be defined as a 'fundamental potential explanation', ¹⁴ maintaining that:

¹⁴ R. Nozick, *Anarchy, State and Utopia*, Oxford, Basil Blackwell 1974, p.8.

"A theory of a State of Nature that begins with fundamental general descriptions of morally permissible and impermissible actions, and of deeply based reasons why some people violate these moral constraints, and goes on to describe how a state would arise from that State of Nature will serve our explanatory purposes, even if no actual state ever arose that way."¹⁵

Some of Hobbes's contemporaries nonetheless chose to attack his account of men in their natural state on the grounds that it was 'bad history'. Bishop Bramhall said of **Hobbes's** state of nature

There never was any such time when man was without govourners and laws...there might be sometimes a root of such Barbarous, Theevish, Brigants in some rocks or desarts or odd corners of the world, but it was an abuse and a degeneration from the nature of man, who is a political creature.¹⁶

Hobbes was in fact anxious to stress that his account was not historical, and felt he could easily dismiss attacks based on the argument of historical inaccuracy. Yet, he is also careful to state of the conditions he describes in **Leviathan** that, ' I believe it was never generally so all over the world, but there are many places where they live so now.'¹⁷ Whilst he does not wish to rely on historical evidence or proof, he has to maintain that such a state was and is logically possible, and in order to support this

¹⁵ Ibid. p. 7.

¹⁶ Bishop J. Bramhall, *A Defence of True Liberty from Antecedent and Extrinsical Necessity*, (1655) published by Garland, New York, 1977, references here relate to T. Hobbes, *The Questions Concerning Liberty, Necessity and Chance*, English Works Vol V, p 107.

¹⁷ *Leviathan*, Ch.13, p.187.

claim he maintains that comparable states did exist in his own age.

In the *Elements of Law* Hobbes explains that history has a limited role in the area of ethics and politics because it is concerned only with "experience" which can "concludeth nothing universally".¹⁸ Science on the other hand, is the "knowledge of the truth of propositions",¹⁹ thereby capable of establishing universal conclusions. Given the profoundly political purpose behind *Leviathan*, the promise of universalisability is a valuable asset.

For he that hath seen by what courses and degrees, a flourishing State hath first come into civil warre, and then to ruine; upon the sights of the ruines of any other State, will guesse, the like warre, and the like courses have been there also. But this conjecture has the same incertainty almost with the conjecture of the Future; both being grounded onely upon experience.²⁰

By the time Hobbes writes *Leviathan*, his preference for the lessons of philosophy (often used interchangeably with science, although strictly separate disciplines) over those of history, both in terms of reliability and universalisability, is obvious. He asserts:

¹⁸ T. Hobbes, *The Elements of Law, Natural and Politic*, (1640) F. Tonnies (ed.) London, Simkin, Marshall & Co., MDCCCLXXXIX Part 1, Ch.6, pp.25-26.

¹⁹ Ibid.

²⁰ *Leviathan*, Ch.3, p.98.

When for the doing of anything there be Infallible rules, (as in Engines, and Edifices, the rules of Geometry,) all the experience of the world cannot equal his Counsell, that has learnt, or found out the rule.²¹

Essentially, Hobbes's views on the role of history and the historian move towards the position held by contemporary philosopher and historian Michael Oakeshott. In describing the 'historical past' Oakeshott speaks of

...a complicated world, without unity of feeling or clear outline: in it events have no overall pattern or purpose, lead nowhere, point to no favoured condition of the world, and support no practical conclusions. It is a world composed of contingencies and in which contingencies are intelligible, not because they have been resolved, but on account of the circumstantial relations which have been established between them; the historians concern is not with causes but with occasions.²²

Hobbes, unlike Oakeshott's historian, was dedicated to the pursuit of causes, and history's role was to provide 'occasions' which could illuminate and enliven an account built upon ahistorical scientific foundations. It is probably safest to concur with the commentator who suggests that Hobbes's account has

'an ambivalent relationship with the time-dimension of history'.²³

²¹ *Leviathan*, Ch. 25, p.308.

²² M. Oakeshott, 'The Activity of Being an Historian' in *Rationalism and Politics*, London, Methuen, 1962, p. 166.

²³ T. Sorrel, *Hobbes*, London, Routledge and Kegan Paul, 1986, p.4.

Hobbes wanted to offer a 'timeless model built on the causes and consequences of political breakdown. It's meaning remain[ing] eternally contemporary and urgent'.²⁴ For this reason his state of nature account had to be situated outside history, but in order to convince his audience of its possible existence, history was occasionally called forward as witness. History stands on the side lines, to offer help when the persuasive power of science is felt to be lacking. At a scientific level a formal proof is sufficient; for political purposes empirical evidence is sometimes desirable.

RECORDED

It can of course be argued that it is pointless to remove a discussion of man from an historical context in the way suggested. Just as Skinner's coterie would demand that the text be read as the product of a particular historical era, a Marxist might demand that the facts offered in a state of nature account be understood as facts specific to a particular society and pattern of production.²⁵

One might agree that the state of nature account is useless because it assumes in an abstract fashion precisely what must be proven with reference to historical facts. The

²⁴ S. Wolin, *Politics and Vision*, Boston, Little, Brown & Co., 1960, p.264.

²⁵ This line has most famously been pursued by Macpherson who places both Hobbes' and Locke's accounts of the state of nature within a very particular form of economic and social structure - the possessive market society. cf. C. B. Macpherson op. cit. Part II (iv) pp.53-61.

check-list of factual evidence which makes up the pre-political state has, a Marxist would claim, to be understood as the product of some historical epoch. More shall be said concerning this point of view during the discussion of human nature.

As remarked by Taylor, establishing Hobbes's avowed preference for the lessons of science over history does not clear the way for a reading of the *Leviathan* as a purely scientific work. It is immediately obvious to the reader that the prose of *Leviathan* has little in common with the often dry discourse of science. Indeed, it has been claimed that its literary qualities are such as to make it comparable to many of the most esteemed works in English literature.

Given this assessment, one must address the extent to which Hobbes employed literary techniques in the presentation of his argument. In his earlier works, notably *The Elements of Law* (1640), Hobbes discredits eloquence and persuasive speech, and distinguishes clearly between the power to persuade and the power to demonstrate the truth.²⁶ In *De Cive*, he allows that eloquence might serve to demonstrate the truth, this being the art of "logic", but still warns against its use for persuasive purposes, which is

²⁶ *Elements of Law* Pt. 2, ch. 8, sections 12-14, pp. 175-8 esp. p. 177.

"rhetoric".²⁷ In *Leviathan* however, he is far more hopeful that eloquence might be put to good, that is non-seditious and possibly scientific, use. Whilst still acknowledging a conflict between reason and eloquence, he now allows that it might be resolved, at least in the service of morals and politics.

In all deliberations, and in all pleadings the faculty of solid reasoning is necessary,....and yet if there not be powerful eloquence, which procureth attention and consent, the effect of reason will be little.²⁸

and,

reason and eloquence, though not in the natural sciences, yet in the moral, may stand very well together.²⁹

Aristotle claimed that poetry is of graver import than history since its statements are of the nature of universals, whereas those of history are singulars. If Hobbes were to accept this analysis there would presumably be a possibility of employing poetic form in the presentation of scientific fact. An enterprise implicitly recommended by Sir Phillip Sidney in his work *A Defence of Poetry*, where he claims the philosophers method of teaching is deficient because it 'bestoweth but a wordish

²⁷ *De Cive*, (1642), English Works Vol.II, Ch.12, xii pp.161-2.

²⁸ *Leviathan*, A Review and Conclusion, p.717.

²⁹ *Ibid.*, p.718.

scription, which doth neither strike, pierce, nor possess
the sight of the soul so much as that other doth.'³⁰

Leviathan Hobbes gives the purpose of Poetry as magnifying and vilifying etc.³¹, and warns that although good poetry 'both Judgement and Fancy are required: but] the fancy must be more eminent; because they {poems} please for the Extravagance.³² Within Hobbes's account of man in his natural state, the images evoked do much to strike, pierce, [and] possess the sight of the soul', the question is whether they do so by means of excessive fancy.

First Hobbes is confident of the persuasive power of the poetic form he is still less than convinced of the compatibility of poetic and scientific treatments of the same subject.

But the subject of a Poeme is the manners of men, not naturall causes; manners presented not dictated; and manners feyned (as the name of Posey importes) not found in men. They that give entrance to Fictions writ in Prose, erre not so much, but they erre. For Poesy requireth delightfulness, not onely of fiction, but of stile; in which if prose contend with Verse it is with disadvantage and (as it were) on foot against the strength and winges of Pegasus.³³

³⁰ P. Sidney, 'A Defence of Poetry' (1579-80), two editions of the work appeared posthumously in 1595; the preferred version is that published by Ponsonby bearing the title *The Defence of Poesie*. In the work Sidney attempts to demonstrate the superiority of poetry over either history or philosophy as a means of teaching virtue.

³¹ *Leviathan* p.149.

³² *Leviathan* Ch.8, p.136.

³³ *ibid.*

Furthermore, there are dangers inherent in presenting the state of nature in poetic form, as to attain a magnified image, one generally has to forgo the benefits of a complete image. This is particularly dangerous because, as Hobbes himself admits, 'Eloquence is power because it is seeming Prudence'³⁴, and thus the persuasive power of an eloquent account will be considerable.

It will be suggested that Hobbes's state of nature is just this - a magnified but incomplete image, particularly in terms of the account of human nature offered therein. In order to 'magnify and vilify' certain features of man's nature and his consequent predicament, Hobbes overlooked others less crucial to the story he wished to tell, but vital to a complete and faithful account of man's natural condition.

Drawing these strands together, and acknowledging the different levels of discourse present, one cannot fail to appreciate the complexity of Hobbes's state of nature. It demands to be read as a moment in (or outside) time, frozen, magnified, and presented in poetic form, yet claiming to be based on scientifically verifiable truths. If it is to operate successfully as both a scientific and political tool, Hobbes's account must be 'poetic' in more senses than one. At a political level his account must

³⁴ *Leviathan*, Ch.10, p.151.

create an image which is capable of moving the reader in the way that only good poetry can. For it to operate at a scientific level Hobbes must demonstrate that given another setting, another time, another place, certain crucial features of the account would remain unchanged, thus requiring the universality Aristotle ascribes to poetry. At least some of the information, and all the principles presented must be of the nature of universal truths. On the first count the account of the State of nature given in *Leviathan* is an undoubted success, on the second count its success is more questionable.

The preceding discussion suggests that one must guard against confusions arising out of the presentation of the state of nature in two distinct guises - that of a factual/scientific account of first principles, and that of a rhetorical/persuasive device. In the service of the first aim Hobbes employs the tools of science, geometry and mechanics. In the interests of the second he occasionally relies on history, poetry, and more often, rhetoric. An awareness of this duality can only serve to help the reader discover the logical conclusions of Hobbes's theorising, always allowing for the possibility that these will not coincide with the intended political message of the work. Having issued this warning it remains only to offer a reading of the account which, as far as possible unravels the two strands whilst remaining true to what Hobbes actually wrote, as opposed to what one would have wished

him to write. It will be argued that the way to ensure a faithful reading of the text is to follow through the scientific reasoning from first principles, always allowing for the fact that certain avenues might become obscured in the interests of the political mechanics of the text.

Theories of human nature.

The theoretical purpose of the state of nature is deceptively straightforward. It must be used to show:

1. man's basic nature, as determined by biology and psychology, as opposed to society or history. And,
2. the way in which men deprived of government will interact with one another, given their nature.

Once this data has been supplied, a third step would be to show how 1 and 2 necessitate

3. a particular origin and form of government - this being the element of the enquiry most relevant to the present discussion.

However, this apparently simple process of fact gathering and recommendation raises a number of important and complex issues.

First, what is actually meant by human nature, what facts and characteristics come together to form such a concept, and how valid is it to speak in terms of human nature as opposed to individual behaviour ?

Secondly, how are the facts about human nature to be discovered?

Thirdly, what further theorising is one entitled to derive from such an account?

The first and third points must be discussed first in general terms, the second point will be dealt with through specific reference to Hobbes's analysis.

The concept of human nature is a difficult one, the first problem being one of definition. When writing about Hobbes, Gregory S. Kavka states that a theory of human nature should 'pick out those features that are unalterably possessed by (nearly) all human beings and are together possessed by them alone.'³⁵

This understanding of the concept has the advantage of embracing a broad range of outlooks on the subject. One might choose to identify any number of 'features', and build up a detailed picture of man's basic nature, or on

³⁵ G. Kavka, *Hobbesian Moral and Political Theory*, Princeton, Princeton University Press, 1986, p.29.

the other hand one might identify only a very limited number of features as shared by all men, and reject the consequently limited knowledge of man's 'nature' as useless, or nearly so. However, before adopting Kavka's definition more needs to be said concerning the type of features which should be allowed to count, and the idea that they should be 'unalterably possessed'.

Jean Hampton introduces a useful scheme when she distinguishes those human properties which are either 'intrinsic', 'functional' or 'interactive'.³⁶ Intrinsic qualities she describes as those possessed by an object irrespective of its relations to a larger whole. Functional properties are more or less role-determined, and relate to one's position as part of a larger whole, whilst interactive properties are those which develop over time as a result of one's interaction with external objects.

If this is a fair representation of Hampton's distinctions, it appears that properties of a functional type are of no initial interest to someone seeking to define human nature. Interactive properties are of some concern, as long as it can be shown that they are distinct from functional properties, and not the product of a specific form of interaction, as opposed to human interaction per se. What are of most interest as a starting point are intrinsic

³⁶ J. Hampton, *Hobbes and the Social Contract*, Cambridge, Cambridge University Press, 1986, p. 96.

~~properties~~ - basic human characteristics, capacities and ~~desires~~ that are born with us. Agreement must be reached on a set of intrinsic properties so that one can go on to investigate interactive properties, and the extent to which ~~any of~~ these are 'natural'. Such properties must be shown to be shared by all (normal) human beings so that they can be distinguished from individual characteristics.

~~Having~~ established a list of intrinsic properties one then ~~has to~~ decide which, if any, are significant determinants of human nature. Under Kavka's original definition, the list of universal unalterable properties could be endless, featuring such irrelevancies as 'it is in man's nature to have two legs and no feathers'. As one contemporary writer puts it

There is - and this is a key point - an important distinction to be made between statements that happen to refer to human beings and those that articulate a theory of human nature. These do not necessarily coincide.³⁷

Hence there is a need to attach importance or significance to certain characteristics. So while it is an important fact about human beings that their average body temperature is 98.4 F, it is not an aspect of human nature.

There is of course a danger that people's understanding of which are, and which are not, important features of human

³⁷ C. Berry, *Human Nature*, London, Macmillan, 1986, p.37.

~~nature~~ will differ to the extent that they will be unable to work with one another's definitions. To the ~~sociobiologist~~ a chromosome count (which is the example ~~Berry~~ chooses) is important because there is a vital connection between human genes and human actions and institutions. For a devout Catholic the reality of original sin holds a significance never to be afforded to ~~mere~~ biological facts. Each may choose to dismiss as irrelevant, factual evidence the other considers significant.

Concerning the type of fact one would wish to establish, Christopher Berry identifies four main areas of dispute and argument concerning human nature.³⁸ To be of use a theory of human nature needs to address the following issues:

1. The extent to which man is a solitary or communitarian being.
2. The extent to which man is a political or apolitical being.
3. The extent to which a man is a free rational or determined rational being.
4. The extent to which a man is a perfectible or imperfectible being.

resumably therefore the features relevant to an account of ~~human~~ nature would be the features which help determine any of these characteristics. Suffice to say this does little to clarify the issue, and arguments will continue to arise

³⁸ Ibid., p.1.

ever what is and what is not a significant feature of human nature.

The question of unalterability is no less difficult. It is no doubt wise to question whether certain characteristics one considers 'natural' are in fact products of socialisation, that is a socially specific form of human interaction. Rousseau was not the last to criticise Hobbes for failing to strip away social features in his search for natural man, the question is whether or not it is possible (leaving aside at present the question of whether it is profitable) to do so? Even if one does succeed in isolating features which have apparently proved impervious to changes in social environment, one might still have to accept the possibility of a radical change in social life not yet experienced - or at least not yet recorded - which would render even these features susceptible to change.

To give an example, consider the assumption of utopian socialists and anarchists that man is benevolent to a degree considered unrealistic and even unnatural by their critics. It might be the case that certain characteristics we take to be unalterable appear so simply because the social arrangements capable of altering them have not yet existed in a pure form. Thus, man's 'natural' selfishness, competitiveness etc., might prove to be perfectly alterable under a new, and as yet untried system. This would mean that they no longer counted as features of human nature,

but were instead products of particular forms of social system.

If one remains true to the demand for unalterability one might be reduced to explaining human nature simply in terms of certain fundamental motives determining human behaviour, for example pain avoiding/pleasure seeking. Even if you believe that all men share the basic instincts which motivate them you leave the way open for infinitely alterable forms of outward behaviour and character.

This is the starting point for the most basic utilitarian theories of ethics and politics. Bentham held that human nature is tied to two twin thrones, pleasure and pain, and that all human action is reducible to the desire to pursue one and avoid the other.³⁹ However observation of such human action need not necessarily imply adherence to Bentham's assumptions. One might choose to point to one form of outward behaviour common to all men, but acknowledge the possibility of it arising from a variety of motives, so, for example, one might decide that men are naturally sociable without identifying one common motive for this.

The requirement of unalterability acts as a severe restriction upon the list of features one can justifiably

³⁹ J. Bentham, *Introduction to the Principles of Morals and Legislation* (1789) (ed.) W. Harrison, with A Fragment on Government, Oxford, 1948.

~~include~~ within an account of human nature. Ultimately one ~~may be~~ forced to agree with Marx, who was unwilling to ~~compile~~ a list of features common to all men. As far as he ~~was willing~~ to commit himself to a concept of human nature, he ~~stressed~~ that it was social in origin and kind; 'the real nature of man is the totality of social relations'⁴⁰, similarly 'it is not the consciousness of men that determines their being, but on the contrary, their social being that determines their consciousness.'⁴¹

Beyond certain biological similarities the only shared characteristic he seems to acknowledge in humans, outside any particular historical context, is the fact that they ~~are active~~, by which he means that they produce their means of subsistence. In the *Early Writings* he states that man is 'equipped with natural powers, with vital powers, he is an active natural being; these powers exist in him as dispositions and capacities or drives.'⁴² By speaking in this way of potentialities and capacities, the Marxist avoids speaking in terms of immutable givens (thus allowing a dynamic role to the forces of production), and similarly avoids a commitment to wholesale relativism. From here he goes on to say that the proper (as in morally right?) life

⁴⁰ K. Marx: *Selected Writings in Sociology & Social Philosophy* translated by T. Bottomore & edited by T. Bottomore & M. Rubel, Harmondsworth, Penguin, London 1963, p.83.

⁴¹ Ibid. p.67.

⁴² K. Marx *Early Writings* (1893/4) trans. G. Benton Harmondsworth, Penguin, 1975.

for man is one of productive activity, and from here it is easy to trace the beginnings of his theory of alienation, and the prescriptions that follow on from it. So although for the most part Marx rejects a full blown abstract theory of human nature, even he places what he sees as an exclusively human and natural characteristic at an important position in his theory.

From here on we shall adopt Kavka's definition of human nature aware of the issues raised.

An account of human nature is a list of significant features shared by all normal human beings, these features are essentially unalterable and together they determine how men will interact with one another.

Knowledge of human nature helps answer the fundamental questions raised by Berry and quoted above. So far the purpose of such an account has been presented as purely a descriptive one, but this is seldom the case.

As Berry states, reaching a decision on any of these questions has practical and overtly political consequences as 'a conception of human nature is inseparable from a conception of what constitutes human life and activity' and 'an account of human nature is intrinsic to moral and

political argument'.⁴³ Having established a set of characteristics, one can work negatively: that is, identify those systems which are not conducive to human nature, or are simply unworkable, given your theory. Or, one can use the information positively, and determine which is the 'good life' - that is the life most conducive to the desirable elements of man's nature.

However, to accept the possibility of such exercises is to invoke a long running dispute over facts and values, and the question of whether it is advisable, or indeed possible, to derive an "ought" from an "is". Even if we are right about human nature does it necessarily mean that our concept of political society is necessarily the only alternative? It is apparent that Hobbes wishes to uphold such an entailment. The question remains as to whether he is entitled to do so.

Berry is adamant that in the case of human nature 'the facts descriptively are so and so and that these facts prescriptively are significant or normatively authoritative for comprehending human conduct'.⁴⁴ In other words the facts about human nature are inextricably linked with the decisions we make about human conduct. In certain circumstances they unavoidably determine what we do, in

⁴³ Berry, op cit., p.31.

⁴⁴ Ibid., p.37.

others they provide us with the basis for deciding what we **ought** to do.

The concept of human nature provides a criterion for acting or not acting in the world. This means that the conceptual context within which the facts of human nature are identified is oriented towards practice. Such facts establish a context within which it is possible to identify what is appropriate for humans to do...this factual establishment of what is appropriate is thus also the establishment of a context of normative significance. However, there is here just one context. It is not a question of having the facts of human nature on one side and the values or norms on the other, but rather that the facts and values are best understood as dual elements, like the warp and weft of fabric, that constitute a conceptual whole. The concept of human nature is, therefore, a whole that enjoys a duality; it is at once descriptive and prescriptive.⁴⁵

This demands that we say something further about our understanding of the features of human nature. For each **fact** that is established, one has to establish whether or **not** this is regarded as a positive feature by those who **display** it. This is a very different exercise to deciding **from** a position outside the contextual framework whether or **not** specific features should be seen as positive or **negative**. Once again there is significant room for **disagreement**. It is quite possible that men will **acknowledge** a shared characteristic of human nature but be **unable** to agree whether it is a desirable trait or not. Such disagreements often lay at the very root of political **or** ideological difference, and are seldom resolved.

⁴⁵ Ibid., p.36.

In Berry's terms the political purpose of a human nature account is identical in structure to the scientific formulation of the state of nature offered above.

1. Men share a basic nature.
2. If left ungoverned, men will behave in certain manner.
3. Therefore, men need a certain form of government,

In a coherent theory (2) must be a logical consequence of (1), and (1) and (2) must be shown to necessitate (3). Indeed Berry goes further and states that (3) is a necessary part of true (1) and (2). For Hobbes's account to work he must show that the facts and characteristics he offers under (1) and (2) are, to borrow Berry's analogy, of the same cloth as the recommendations he makes under (3). To be scientifically valid the argument must flow smoothly from (1) to (3) through (2).

Having discussed, albeit briefly, the nature of the facts about human nature that need to be uncovered and the usefulness of such facts, a further question arises as to how to discover the facts about human nature. To describe human nature is to describe a set of characteristics common to all 'normal' human beings, by virtue of their status as such, yet, these characteristics need not be observable in every instance, although their existence must be provable in some real sense. Moreover, the widespread existence of a property is not sufficient to suggest it is natural, as

no one wishes to dispute the fact that certain significant features of human behaviour are societal in origin.

If one is prepared to accept that socialisation is capable of altering man's behaviour if not his fundamental nature, empirical observation can only be offered as corroborating evidence, not as the basis for knowledge. To ensure that features identified are innate as opposed to products of particular social systems, some way must be found of stating how man is in his most basic form, and any features which are shown to be products of human interrelations must be shown to be non-specific with respect to such things as culture, ideology and religion. Stories of the state of nature are attempts to present a vision of such non-specific social relations, but as has already been suggested, such attempts are not without difficulties.

Hobbes appreciated many of the issues raised here, and sought to protect himself from those who had different ideas concerning what is intrinsic, unalterable and significant, by demonstrating as opposed to purely describing human nature. By explaining the causes of human characteristics and behaviour he sought to separate his account from historical record or personal experience, and prove these properties to be unalterable in the full sense of the word. He sought to prove that to be human entailed having certain clearly defined properties, some of which are important/significant in the sense adopted here. This

is not to say that natural characteristics cannot be tempered or held in check, they can, but the underlying causes of these characteristics can never be considered to be altered. Just as Kant argued against looking for morality by looking at the world, Hobbes cannot find human nature solely through observing the present, or studying the past. Introspection may teach certain lessons, but again its results are not universalisable.

In order to discover what count as immutable facts about human nature man must be entirely stripped back to his most basic form, and the characteristics evident at this stage demonstrated. Even more importantly one must seek to understand the causes of these characteristics. The laws of physics are the true starting point for this enquiry as they will explain the nature of causation. From there one can go on to establish the laws to which human beings are subject, and thus one will not have to choose or decide which of the characteristics men display are intrinsic, this will be demonstrated scientifically. In order to do this he embraces the methodology of the new science.

Hobbes's State of Nature - A First Reading.

Hobbes asks that the *Leviathan* be read within the context of the new science, but contemporary critics are divided as to how useful or possibly misleading this advice is.

Debates still rage concerning the possibility of carrying scientific or geometric methods over into social or political analysis. And given what is now known of the failings and inadequacies of basic Euclidian geometry, Hobbes's enterprise would certainly not be repeated by a contemporary philosopher. As a philosophy of science his theory was at best confused, but as an attempt to systemise politics his work stands at the start of a tradition that has since achieved at least some of the goals he set himself.

However, criticisms of this type should not be confused with those which upbraid Hobbes for failing to achieve a task he did not in fact attempt. Many commentators have in the past spent considerable intellectual energy either defending or refuting the idea that Hobbes set out to present a unified science, such that the findings of physics could be, and should be, directly carried over into the political realm. It is more productive however to adopt the attitude of one recent commentator who states, that 'although he (Hobbes) acknowledged the connections between natural philosophy and politics, it was not on account of these links that politics was supposed to be a science. He thought politics had an independent claim to be a science, indeed a better claim to be a science than physics'.⁴⁶ It is on the basis of this independent claim that Hobbes feels

⁴⁶ Sorrel, op cit., p.4.

confident in applying the methodology of science to the political sphere.

It is easy to find evidence of Hobbes's desire to use the new approaches of science :

1. He attempted to adopt a scientific methodology such that his conclusions were based on carefully defined terms and demonstrable on the basis of these.

2. He attempted to apply Galileo's compositive resolutive method within the framework of his political philosophy .

3. He placed his conception of motion at the centre of a materialist theory.

That having been said, opinions differ concerning both the extent to which he attempted any of these tasks, and his success or failure in doing so. It will be argued here, however, that an adequate reading of Hobbes's state of nature must take account of his commitment to scientific method, as well as his interest in conveying a profoundly political message.

Hobbes's antipathy towards scolasticism is well known. He regretted and fought against the dominance of the scholastic philosophers in the universities, accusing them of two major methodological failings.

1. An over reliance on appeals to earlier authorities, instead of employing reasoned argument from firmly established first principles.
2. A lack of clarity and definitional consistency of terms central to their philosophical arguments.

Given the nature of his criticism, and his dislike of the conclusions the schoolmen continued to reach on the basis of such theorising, it is not surprising that scientific deductive reasoning appealed to him.

It is not without good cause that later generations of political scientists have seen in Hobbes the birth of their discipline.⁴⁷ Hobbes felt the new science and particularly geometry, offered him the clarity, definition and structure which philosophy presently lacked, yet could acquire. His discovery of Euclidian geometry is famously and appealingly recorded by Aubrey.⁴⁸ We learn that Hobbes 'fell in love' with the discipline after falling upon an open copy of the *Euclid*, and reading in it the proof of a proposition he at first took to be false and impossible. The methodological implications of this were immense, and the political significance no less so. Geometry offered him a method which could not only discover the truth, but could

⁴⁷ Cf. D.D. Raphael, *Hobbes; Morals and Politics*, London, Allen Unwin, 1977, p.1.

⁴⁸ J. Aubrey, *Brief Lives*, (ed) O.L. Dick, London, Secker & Warburg, 1958

demonstrate truths by which one was convinced, and possibly force the assent of those who were originally unwilling to accept your claims. In Chapter Four of *Leviathan* he states:

Seeing then that truth consisteth in the right ordering of names in our affirmations, a man that seeketh precise truth, had need to remember what everyname he uses stands for; and to place it accordingly; or else he will find himself entangled in words, as a bird in lime twigs; the more he struggles the more belimed.⁴⁹

Given the nature of the 'truths' about political society that Hobbes wishes to present to an audience he expected to be hostile, Galileo's method promises to be a useful tool if, once transported into the social sciences, it can achieve the same success.

Even those who criticise Hobbes's other scientific leanings seem happy with the way in which he has embraced Galileo's composite resolutive method. The principle is simple and its adoption obvious from page one of *Leviathan*. To understand a body, one must break it down into its constituent parts, explain those parts, reassemble them, and thereby explain the whole.

This method is clearly reflected in the structure of the text. The entity which has to be explained is the Commonwealth, the full title of the work being *Leviathan*,

⁴⁹ *Leviathan* Ch.4, p.105.

The Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civill. The work opens with an account of **Man**, the first few chapters explaining the workings of the human body, and then progressing to the nature of man singular. The state of nature is a stage in the reconstruction, during which men are brought together, but deprived of a Sovereign; only with his appearance and the emergence of the commonwealth is the process complete. By explaining the commonwealth's most basic constituent part, man, placing that man in an incomplete or inadequate form of society, and then moving him into the commonwealth, Hobbes aims to explain the 'matter, forme, and power' of the political society best suited to man. Similarly, by showing man in his most basic form, he aims to show how any other form of political organisation would necessarily be doomed to failure and ultimate dissolution.

This particular approach to the explanation of social and political institutions has its modern day equivalent in the theory of methodological individualism as propounded by writers such as Karl Popper, Freidrich Hayek, and J.W.N. Watkins.⁵⁰ The latter provided what has become a definitive statement of the methodological approach their theory implies:

⁵⁰ K. Popper *The Open Society and Its Enemies* & *The Poverty of Historicism*; A. von Hayek *The Counter Revolution of Science*, Glencoe Ill., The Free Press, 1965; J.W.N. Watkins 'Ideal Types and Historical Explanation' in *Readings in the Philosophy of Science*, ed. H. Feigl & M. Brodbeck, New York, Appleton-Century-Crofts Inc., 1953

According to this principle, the ultimate constituents of the social world are individual people who act more or less appropriately in the light of their dispositions and understandings of their situation. Every complex social situation or event is the result of a particular configuration of individuals, their dispositions, situations, beliefs, and physical resources and environment.⁵¹

The similarities with Hobbes are obvious, the state of nature, as just another social (albeit pre-political) institution has to be explained in terms of the individuals that comprise it. We are compelled to explain, in detailed terms, individual human behaviour.⁵²

The Scientific Explanation of Human Nature

Hobbes's adoption of a resolute composite approach determines the starting point of *Leviathan*, and his attachment to mechanics determines the way in which that starting point is analysed. Part One of *Leviathan* is entitled *Of Man*, Chapter One, "Of Sense". Here he explains how men come to understand the world through the

⁵¹ J.W.N. Watkins 'Historical Explanation in the Social Sciences' in P. Gardiner ed *Theories of History*, Illinois, The Free Press, 1959

⁵² Sorrel claims that in his civil philosophy as opposed to his philosophy in general Hobbes rejects the method of 'dissolution and explanation' in favour of a method of 'dissolution and innovation'. He states 'Very little that Hobbes actually does in civil society conforms to the pattern of decomposing things in thought and putting them back together again. Instead, things as experienced are dissolved in thought, and something new is constituted out of the residue of dissolution, something not as yet experienced...' Sorrel, op cit. p.21.

use of their sensory organs, and goes on to suggest how this understanding determines man's psychological make-up, and ultimately his social relations.

It soon becomes apparent that for Hobbes man in his most basic form is no more and no less than matter in motion, and that his basic nature is determined by the laws of motion. Having decided on the importance of definition and first principles in philosophy, Hobbes as a monist had to decide to give one term primary importance - he chose motion. A new view of motion was central to the intellectual revolution of the 17th century, and Hobbes was fascinated - perhaps even obsessed - with the subject, as is evidenced by the inclusion of a discussion of motion in all his major works. Rather like the sociology student who discovers Marx for the first time, no area of his life could remain untouched by the experience.

It is easy to identify with Hobbes's enthusiasm to some extent at least. Motion was not of course a novel subject for debate, but for many years the Aristotelian model had reigned supreme. Certain aspects of the theory had been in question since the 14th century, but no alternative had yet been considered strong enough to replace the model as a whole. However, by 1683 a fatal blow had been struck at the Achilles' heel of Aristotle's theory. Galileo played Paris to Aristotle's Achilles, and his chosen weapon was mathematics. Convinced 'that the book of nature was

ten in mathematical signs', Galileo transported the problem of motion into the world of geometry.

like Descartes who accepted Galileo's theory, but chose to restrict its role to that of a useful methodology, Hobbes came to see motion as comprising the whole of reality. In his opinion Galileo had provided the basis for an entire cosmology.

believing that motion holds the key to nature, Hobbes is in fact as close to Aristotle as he was to Galileo, for it was the former who claimed that knowledge of the nature of movement was the 'gate of natural philosophy'.⁵³ However, in terms of what they took to be the nature of movement Hobbes owed very little to his Ancient predecessor. In Aristotelian physics the very existence of motion requires explanation, to Galileo and later Hobbes motion is a given, and only its changes are problematic.

Aristotle presented movement as finite, a case of from X to Y, with every change having a definite beginning and end, with the end or *telos* being an irreducible cause of change. Motion is teleological, and as such is a form of fulfilment. It can be interpreted as a tension between

⁵³ Aristotle *Physics* 3. 1. 200b

a starting point and a goal, with the latter giving its name to the particular process of change.⁵⁴

this understanding led Aristotle to equate inertia with rest. Movement terminates itself by achieving its telos and completing the actualization process. A physical object therefore, comes to rest when it reaches its proper place, and rest can be seen as an impetus to movement, with objects continuing to move only under the application of external force ie. the final goal. All motion requires agency, and only constant force can result in constant motion.

Hobbes's theory is strikingly different. In the Aristotelian tradition the distinction between movement and rest is central, for Hobbes it is the distinction between motion and acceleration which holds most allure. He sees motion as 'infinite, endless and aimless'⁵⁵, and abandons the notion of potentiality or fulfilment completely. The demise of the telos is clearly illustrated by Hobbes's account of causation.

⁵⁴ 'It is the goal rather than the starting point which gives its name to the particular process of change.' Aristotle *Physics* 5. 1. 225a

⁵⁵ T. Spragens, *The Politics of Motion: The World of Thomas Hobbes*, Kentucky, University Press of Kentucky, 1973, p.63.

'Universal things have all one cause which is motion...and motion cannot be understood to have any cause besides motion.⁵⁶

He offers the example of heat generated by a fire passing through the objects around it, a similar instance being the fan at the football match, pushing the supporter in front of him and so on until there is a great surge forward. Cause leads to effect and thence to further effect, and both are reducible to something in process which must be motion. For Hobbes it is the heat passing through the object, the football fan pushing his neighbour or a billiard cue hitting the ball which is decisive, one does not profit from thinking in terms of a final resting place on the football pitch, or billiard pocket.

There can be no cause of motion except in a body contiguous and moved. For let there be any two bodies which are not contiguous and betwixt which the intermediate space is empty or filled with another body which is at rest; I say it shall always be at rest. For if it shall be moved the cause of that motion will be the same external body and therefore between it and that external body there can be nothing but empty space then whatsoever the disposition be of that external body, or of the patient itself, yet if it be supposed to be now at rest, we may conceive it will continue 'til it be touched by some other body.⁵⁷

Hobbes believes that the only cause of mutation or change in a body will be the motion of a neighbouring moving body. If any body contained within itself the complete power to

⁵⁶ *Elements of Philosophy*, English Works Vol.I pp. 69-0.

⁵⁷ *Ibid.*, p.124.

~~move~~ it would always be in motion; as this is not generally apparent, the cause (as every cause must have an effect) must be external. Agency is therefore a feature of Hobbes's account, but it is reduced to the sum of external forces exerted by bodies 'contiguous and moved'.

Not content with abandoning the Aristotelian equation of rest with inertia, Hobbes goes on to deny that there is such a thing as rest, instead there are motions and counter motions. He sees no impetus in rest, and therefore removes from it any ontological significance. Hobbes's world is essentially 'rest-less', movement reigns throughout reality and is the basic principle of the universe.

It should not be surprising therefore when Hobbes transports his theory of motion into the field of biological, psychological and ultimately social analysis. However, commentators remain unhappy with the shift, and it is important to assess not only how successful Hobbes is in his attempts, but also how useful it is to his larger political enterprise. Specifically in this context the question arises as to whether mechanistic analysis helps us to construct an accurate picture of human nature. I shall begin by assuming an adherence to the methodology outlined above, and then question to what extent Hobbes remains true to it.

Assuming a monistic approach, and a belief that everything in the world is subject to a mechanistic interpretation, Hobbes has to offer such an explanation of man. He was fortunate that in 1628 Harvey had made significant discoveries concerning the circulation of the blood and the principle of internal movement.⁵⁸ The human body seemed ripe for explanation in mechanistic terms, the circulatory system could be regarded as a mechanical system, and from here one could logically identify the mechanism of circulation with life itself. Life becomes a form of internal movement of matter: specifically the movement of blood and oxygen through the veins and arteries. The origin of life is the heart, which acts as a pump for the blood, and life itself becomes 'but a motion of limbs'. To extend the analogy, if the universe is restless, the natural state for man to be in is in motion, and this motion will continue until blocked by counter motion. Life will continue until death, death is not seen as a final resting place but rather as an end of motion, and as such a bad thing.

Humans (and other animals) are however different in an important respect from inanimate objects. Although a stone will continue to roll down a hill until blocked by a boulder, or halted by a change in the gradient, it is

⁵⁸. In the Epistle Dedicatory to the *Elements of Philosophy* Hobbes credits Harvey with the discovery of 'the science of man's body', English Works Vol. I, p. viii. For a discussion of Hobbes' regard for Harvey. Cf. Spragens, *op cit.*, p.13.

difficult to say that it intends to do so. A human being on the other hand will understand the value of staying in, and indeed accelerating motion, and this will have important psychological consequences. Every body (animate or inanimate) will stay in motion until impeded, the human body will attempt to avoid impediments and at the same time fear their appearance.

This difference may be explained by the fact that man will realise that life is the necessary prerequisite for all further (earthly) goods, and that death is the necessary cessation thereof, and will therefore be motivated to do that which is also biologically determined. The natural human instinct to avoid death will be accompanied by a real fear of that state. Furthermore, man's concerns will not be simply with the immediate avoidance of death, but also with future security, and 'commodious living'.

Continuall success in obtaining those things which a man from time to time desireth, that is to say continuall prospering, is that men call Felicity; I mean the Felicity of this life. For there is no such thing as perpetuall Tranquillity of mind, while we live here; because life it selfe is but motion, and can never be without Desire, nor without Feare, no more than without Sense.⁵⁹

Although the teleological elements of an Aristotelian theory cannot be rehabilitated into Hobbes's account, it does appear that the desire to stay in motion will operate

⁵⁹ Leviathan Ch.6, pp.129-30.

in a similar motivating fashion to the desire to reach a final resting point. If man is biologically programmed to stay alive at all costs, he will be further programmed to secure the means to that end.

The most fundamental, indisputable and unalterable fact concerning human nature is easily established, yet its importance cannot be overemphasised. Man as a form of matter in motion will stay in motion until halted by external forces. Furthermore men will desire to stay in motion, and an aversion to death will be an intrinsic and unalterable feature shared by all (normal) human beings.

The question then arises as to whether further features may be built upon this basic assumption.

If life is simply a form of motion, then everything man does in life must be - and is - explicable in terms of motion. According to Hobbes, every form of human action is explicable in terms of one of two forms of motion - vital or voluntary.⁶⁰ Vital motion concerns the very basics of life, and is analogous with the functions a machine performs the minute it is turned on - breathing, eating, sleeping etc. It is easy to accommodate this basic form of motion within a simple materialistic framework. The other form of motion is immediately more complex 'as to go, to

⁶⁰ The term 'vital motion' is first introduced in the *Elements of Law*, Part One, Ch 7, section 1 and is developed in *De Homine*, Chapters 1, 2-4, 11, & 15 see also *Leviathan*, Ch.6, p.118.

speak, to move any of our limbs in such a manner as is **first** fancied in our brains'.⁶¹ This distinction is very important, but if both forms of motion are to fit into the mechanistic framework, they must both be explicable within the terms of the theory.

vital motions continue for as long as we live, although **with** our medical knowledge we need not agree with Hobbes **that** they will be uninterrupted. Voluntary motion on the **other** hand 'needs the help of imagination',⁶² and it is by **studying** this form of motion that we will be able to **identify** further features of man's nature beyond the fact **of** his aversion to death.

If Hobbes is to be consistent he must argue that the **beginnings** of such voluntary motions lie in our sensory **perceptions**. As he explains on the very first page of *Leviathan*, things external to a person radiate motion **which**,

...presseth the organ proper to each Sense, either immediately, as in the Tast and Touch; or mediately, as in Seeing, Hearing and Smelling: which by pressure, by the mediation of Nerves, and other strings and membranes of the body, continued inwards to the Brain and Heart, causeth there a resistance, or counter pressure or endeavour of the heart, to deliver itself: which endeavour because outward, seemeth to be some matter without. And this seeming or fancy is that which men call sense...⁶³

⁶¹ *Leviathan*, *ibid.*

⁶² *Ibid.*

⁶³ *Leviathan*, Ch.1, p.85.

He defines sense as 'nothing else but original fancy, caused (as I have said) by the pressure, that is by the motion, of external things upon our eyes, ears and other organs thereunto ordained.'⁶⁴

Explained in this way, it appears that voluntary motions are simply caused by the motion of external bodies, but as previously mentioned there is an extra dimension to voluntary motion, such that:

going, speaking, and the like voluntary motions, depend always upon the precedent thought of whither, which way and what; it is evident that the Imagination is the first internall beginning of all voluntary motion.⁶⁵

He goes on to say

These small beginnings of Motion within the body of Man, before they appear in walking, speaking, striking, and other visible actions, are commonly called ENDEAVOUR.⁶⁶

If the endeavour is directed towards an external object it is called a desire or appetite, if it is away from it an aversion. Men are born with certain appetites and aversions, but others develop alongside experience, thus there is an opportunity to adopt Hampton's distinctions between intrinsic and interactive properties.

⁶⁴ *Leviathan*, Ch.1, p.86.

⁶⁵ *Leviathan*, Ch.6, p.118.

⁶⁶ *Leviathan*, Ch.6, p.119.

The language of mechanics has to this point been successfully carried through, but it must go on to explain not only the origin of those appetites we are born with, but also those which we develop as life progresses. Furthermore, it must explain our endeavours not only in terms of our physical movement towards and away from tangible external objects, but also in terms of our attraction to particular states of mind and well being.

As in sense that which is really within us, is (as I have said before) onely motion, caused by the action of external objects, but in appearance; to the Sight, Light and Colour: to the ear sound ; to the Nostrill, Odour &c: so, when the action of the same object is continued from the Eyes, Eares, and other organs to the Heart; the reall effect there is nothing but Motion, or Endeavour; which consisteth in Appetite, or Aversion, to ,or from the object moving. But the apparence, or sense of that motion, is that we either call Delight or Trouble of Mind.⁶⁷

Here we come across a distinction between appearance and reality, and Hobbes's acknowledgement of this distinction is fatal to the survival of a mechanistic analysis in its pure form. Hobbes has introduced a distinction between the way in which things really are and the way in which we perceive them. For example, when we come across a pig, which feels rough, looks unappealing, and smells foul, all we are experiencing is motions of the type described above, however we do not understand our experience in this way, nor do we interpret our reaction to the pig as being the

⁶⁷ Leviathan, Ch.6, p.121.

sult of internal motions based upon our sensory perceptions.

This dichotomy between reality and appearance forces Hobbes to abandon to a large degree the discourse of motion, once he has established it at the root of the analysis. For the text to operate persuasively he must adopt the language of appearance, as opposed to the drier and somewhat alien discourse of reality. However, the reader should not forget the fact that it is there at the root, even if, as Hobbes believes, ordinary people will fail to acknowledge it.

The reality of any encounter consists in a process of bodily motions. As McNeilly explains, perception, thought and desire are physical motions, this is what they really are, but not necessarily how they appear to us.⁶⁸ Given this distinction we have a choice between two levels of discourse, that which deals with reality, ie. a discourse in the language of physical existence, matter and motion, or a discourse of appearance, which is always reducible to the first type of discourse. From the point in *Leviathan* where he begins to discuss the nature of human endeavour Hobbes abandons the language of reality and uses that of appearance, a short cut that threatens the purity of the mechanistic explanation he has offered up to that point.

⁶⁸ F.S. McNeilly, *The Anatomy of Leviathan*, London, Macmillan, 1968.

his analysis progresses Hobbes necessarily loses interest in the question of endeavours stimulated by ~~present~~ external objects, thus, the mechanistic image of endeavour as a physical movement towards or away from that ~~ject~~ loses its force. Instead he interprets endeavour as implying the concept of some state of a person, such that, unchecked, it will result in an overt action towards or ~~ay~~ from some preconceived objective'. ⁶⁹ Hobbes is ultimately forced to abandon his purely physical interpretation of endeavour precisely because of the nature of the endeavours that concern him as a political scientist. As opposed to the physical scientist's interest in endeavours towards or away from physical objects, the social scientist has to investigate the way in which our endeavours result from thought of a possible action.

As said, one need not concur with McNeilly's assessment that 'the best thing one can do with Hobbes's mechanistic materialism is to dismiss it from mind as quickly as Hobbes dismisses it from his argument'. ⁷⁰ Elements of mechanism remain to important effect, and the implications of his mechanistic foundations cannot be discounted.

In order to construct a theory of human nature which goes beyond the fact that man has an innate desire to stay alive, we have to ask whether any further features are

⁶⁹ Ibid., p.106.

⁷⁰ Ibid.

shared by (normal) men on a more or less constant basis. We also have to ask whether any objects of endeavour are consistently pursued by men qua men. It will be argued here that a relatively short list of features can be established, and the picture one can form on the basis of this list is open to more than one interpretation. The first identifiable feature is man's insatiability.

Insatiability

Hobbes is certain that man's appetites will be insatiable, as 'to have no desire is to be Dead'⁷¹, and as soon as one desire is satisfied it will be replaced by another.

Nor can a man any more live, whose Desires are at an end, than he, whose Senses and Imaginations are at a stand. Felicity is a continuall progresse of the desire, from one object to another; the attaining of the former, being still but the way to the later. The cause whereof is, That the object of mans desire, is not to enjoy once onely, and for one instant of time; but to assure for ever, the way of his future desire. And therefore the voluntary actions, and inclinations of all men, tend not only to the procuring, but also to the assuring of a contented life; and differ onely in the way: which ariseth from diversity of the passions, in divers men; and partly from the difference of the knowledge, or opinion each one has of the causes, which produce the effect desired.⁷²

Men do not simply desire to stay alive, rather they wish to feel secure in that end and therefore desire a life

⁷¹ *Leviathan*, Ch.8., p. 139.

⁷² *Leviathan*, Ch. 11, pp. 160-161.

characterised by felicity⁷³ and satisfaction. In Chapter Six of *Leviathan*, Hobbes states that

This motion which is called Appetite, and for the apperance of it Delight, and Pleasure, SEEMETH TO BE, a corroboration of Vitall motion, and a help thereunto; and therefore such things as causeth Delight, were not improperly called jucunda, (a Juvando,) from helping or fortifying; and the contrary molesta, Offensive, from hindering, and troubling the motion vitall.⁷⁴

As already discussed, the ordinary man is more inclined to think in terms of appearances; in this case it will involve his understanding a link between those things for which he has an appetite, and pleasure. He may feel drawn towards something because it causes him pleasure, but, more properly he should understand his desires as relating to the 'corroboration of vitall motion; and pleasure as something he experiences because of this effect.'⁷⁵

The distinction between appearance and reality is significant in a further sense, given the observable fact that men often desire things which threaten their self-preservation or well-being. If someone chooses to do

⁷³ Defined in *Leviathan*, Ch.6, p.130, as 'continuall successse in obtaining those things which a man from time to time desireth'.

⁷⁴ *Leviathan*, Ch. 6, pp. 121-122.

⁷⁵ In this he is very similar to Locke who argues that pleasure is a consequence of doing what is right rather than a reason for doing it.

something detrimental to his or her self-preservation, in Hobbes's terms it must be argued either,

1. the person is mad and has been caused by 'mechanical malfunction' to abandon the desire for self preservation, or,
2. the individual is mistaken concerning the effect a proposed action will have on his self preservation.

Instances of the second type raise a number of interesting issues. Misunderstandings may arise for a variety of reasons - false information being a prime example. As mentioned above, Hobbes's anti-scolasticism was in part due to the dangers he saw in individuals accepting false doctrines on authority.⁷⁶ If individuals are given false information - unintentionally or otherwise - which they do not test in a scientific manner, they may unknowingly act against their own self-interest. Responsibility therefore lies with those in positions of influence to deal in the truth, and those happy to receive doctrines from others to test their truth value. Hobbes is most insistent on this point confident in the assumption that his own theories will pass the test, it remains to be seen whether his confidence was well founded.

⁷⁶ There are many warnings in *Leviathan*, including the observation that 'it is evident, that whatsoever we believe, upon no other reason, than what is drawn from authority of men onely, and their writings; whether they be sent from god or not, is faith in men onely. Ch.8, p.134.

However, due to the unreliability of the senses instances of the second type will not be uncommon, even where the truth is rigorously sought. This raises some interesting possibilities. If men can go against their interests due to the unreliability of their own thought processes, it would appear that the way is left open for a Rousseauian idea of forcing men to be free, by forcing them to pursue the course of action that is genuinely in their interest, as opposed to apparently so.

[if something sounds good a man will choose it and if evil will shun it. It is the following of ones hopes and fears that constitute the nature of election.] So that a man may both choose this and cannot but choose this. And consequently choosing and necessity are joined together.⁷⁷

Even when men are not mistaken as to the correct manner in which to pursue their self interested desire to stay alive there is room for diversity. It is undeniable that man's appetites and aversions are determined by his status as matter in motion, and his necessary and unavoidable desire to stay in motion. But, as Hobbes stresses this shared motivation is not enough to tell us how each individual will interpret the means to that end. Although Hobbes is willing to assert objectively and categorically that men will seek to stay alive, or conversely, avoid death, he is less willing than one might assume to build further objective statements into his account. Having laid this

⁷⁷ *The Questions Concerning Liberty, Necessity and Chance*, p.75, section in parentheses is paraphrased.

objective foundation to his theory of human nature, his account becomes far more committed to a subjectivist view. Because it is in the nature of matter to be constantly in motion, man as a form of matter in motion will be subject to constantly changing desires alongside the constant and unchanging desire to stay alive.

In Hobbes's view to call something 'good' is to say nothing more than that one has an appetite for it, similarly to label something as bad is to state that one has an aversion to it.⁷⁸ As has been established, these in turn mean little more than 'conducive to' and 'detrimental to' vital motion. What now has to be established is whether this subjectivism will result in men pursuing an infinite amount of routes to their shared goal, or whether the apparent subjectivism of Hobbes's ethics might still allow some sort of consensus and uniformity in the way men behave.

Egoism

All that can be said so far is that all men will seek to satisfy their present desires, and will attempt to secure the enjoyment of future desires. This has been taken by some commentators to provide the basis for a thorough going

⁷⁸ As such his meta-ethics might be assumed to precede that of the twentieth century emotivists such as C.L. Stevenson, *Ethics and Language*, New Haven, Yale University Press, 1944.

ism, but one must not attempt to say more on this score in Hobbes's theory actually allows.⁷⁹

ism in its simplest form may be described as 'systematic selfishness'. In more sophisticated terms, it can be seen the placing of self interest at the basis of a moral theory.

Egoism holds that each individual's reasons for acting, and possible motivations, must arise from his own interests and desires, however, those interests may be defined. The interests of one person can on this view motivate another or provide him with a reason only if they are connected with some sentiment of his like sympathy, pity or benevolence.⁸⁰

argue that no causal/mechanistic explanation of human behaviour can bring forth an account of psychological ism, precisely because it renders useless the concept of motive. More commonly however, commentators seem willing present - and usually condemn - Hobbes as a roughgoing egoist. Before this dispute can be decided must present a more thorough definition of the psychological egoism of which Hobbes is accused.

⁷⁹ For an excellent discussion of the debate concerning Hobbes and psychological egoism see Kavka, *op cit.*, Section 2, pp. 35-44.

⁸⁰ T. Nagel, *The Possibility of Altruism*, Oxford, Clarendon Press, 1970, p.84.

Hampton identifies three forms of psychological egoism:

PE1: the position that all of my actions are caused by my desires.

PE2: the position that all of my actions are caused by my desires and that they are in pursuit of a self-regarding object of desire.

PE3: the position that all of my actions are caused by my desires and that my desires are produced in me by a "self-interested" bodily mechanism.⁸¹

Hobbes's account of the will leaves one in no doubt that Hobbesian man is a psychological egoist in sense PE1, but this in itself is fairly uncontroversial. What we have is the basic Humean position which excludes the possibility of explaining actions purely in relation to belief requiring instead an accompanying desire. Hampton is unwilling to accuse Hobbes of egoism type PE2 and although one might consider her interpretation generous, it is possible to accept that PE3 is at least a more appropriate version in respect of Hobbes. Hobbes does allow in Leviathan for the possibility of other-regarding actions,⁸² but he never abandons the claim that any desires I have are caused by a self-interested biological mechanism.

⁸¹ Hampton, op cit., p.23.

⁸² However, as Kavka points out his definitions of terms such as 'pity' and 'free' gift are always couched in egoistic terms. Kavka op cit., pp.46-47.

In line with the points raised above,⁸³ Hampton says of Hobbes,

He never characterizes pleasure as something we desire; instead he presents it as an experience we are biologically programmed to pursue and which the attainment of certain desires will cause. Hence the biological pursuit of pleasures is for Hobbes part of the causal story explaining why we have desires for certain objects, but is not itself a desire.⁸⁴

So, even if one calls Hobbes an egoist in this sense, one merely confirms what has been established on the basis of a mechanistic explanation of man. All desires will stem from the biologically determined desire to avoid death, and those which successfully promote this fundamental desire will in turn promote pleasure.

Far more interesting perhaps are the claims that Hobbes makes concerning man's natural equality.

Equality

Hobbes states that all men are naturally equal, and this statement has both moral and practical force. He believes that the desire to remain alive, which is common to all normal men, is a great equaliser. This is because, in the

⁸³ Cf. p.154 above.

⁸⁴ Hampton, op cit., p.23.

last resort, all men (and women) have an equal chance of success in defending themselves when their life is threatened. In terms of actual equality amongst men it could be said that this is a negative account of equality. Because each individual is, in the last resort, able to defend their life from attack - be it by brain or brawn - no single individual is sufficiently superior to naturally become master over another. In other words, rather than stating that all men are all equal in real terms, he seems to be saying that they are not sufficiently unequal for this to be significant. This is not to rule out the possibility of one man becoming master of another, in fact Hobbes allows for this possibility in the state of nature, specifically in terms of the relations between men and women.⁸⁵ The point is that the relationship will have to be artificial - that is, based on a consenting agreement between the two parties. This is of course an extremely important point in terms of explaining Hobbes's preference for the social contract model.

By allowing that all men share the basic desire to stay alive, Hobbes also allows for more substantial forms of equality to develop. Just as all men desire the same end, all men will desire the means to that end. Hobbes not only acknowledges this as fact but elevates it to a moral issue

⁸⁵ Cf. Hobbes, *De Corpore Politico*, Ch.III, p.149-50 also R.W.K. Hinton, 'Husbands, Fathers and Conquerors', *Political Studies*, XVI, 1, 1968; C. Pateman, *The Sexual Contract*, Oxford, Polity Press, 1988, Ch.3.

by giving men what he calls a natural right to do whatever they consider necessary for their self preservation.

The Right of Nature, which Writers commonly call *Jus Naturale* is the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing anything, which in his own Judgement and Reason, he shall conceive to be the aptest means thereunto.⁸⁶

The effect of this equal right to self preservation and the means thereto, has generally been taken to be disastrous. Although the subjectivism inherent in Hobbes's theory will prevent all men desiring the same things, or even the same man desiring the same things over time, there will be a basic coincidence of wants, which, combined with a natural scarcity of the means to satisfy those wants, will result in conflict. Hobbes further states that man's appreciation of his basic equality with others will give him hope of acquiring what he desires, and thus he will be encouraged to face up to conflict if and when it arises, and will see a potential benefit in competing with others for those things he feels are essential to his well-being - that is the things for which he has an appetite. Thus the competitiveness so unquestioningly attributed to Hobbesian man is not pursued for its own sake, rather it is the product of equality combined with perceived scarcity. However, there is one thing which Hobbes believes all men

⁸⁶ *Leviathan*, Ch.14, p.189.

will desire as a means to self preservation and this is power.

POWER

Hobbes believes that men not only share a desire for power, but that life can be characterised as a constant pursuit of power. He defines the power of an individual as 'his present means, to obtain some future apparent good'.⁸⁷ As such it is an essentially contentless concept, although he offers numerous examples of different forms it may take. Power may be understood in the traditional sense of a natural faculty of mind or body, or it may be 'Instrumentall' by which Hobbes means an ability to persuade others to harness their natural powers to you. This explains the full title of the chapter in *Leviathan* devoted to the subject of power which is 'Of Power [Worth, Dignity, Honour and Worthiness]'.

Power is not, Hobbes tells us, desired for its own sake, nor to ensure 'more intensive delight', but because 'he (man) cannot assure the power and means to live well, which he hath present without the acquisition of more'.⁸⁸ It is in the nature of power to be inflationary/cumulative. 'Like the motion of heavy bodies, which the further they go make

⁸⁷ *Leviathan*, Ch.10, p.150.

⁸⁸ *Leviathan*, Ch.11, p.161.

still more haste'⁸⁹, the desire for power increases over time. This argument bears striking similarities to anachronistic Cold War rhetoric in defence of the continued stock piling of nuclear weapons, such that the only way to protect what we had, it was argued, was to acquire ever more weaponry.

Hobbes's notorious statement 'I put for a generall inclination of all mankind, a perpetuall and restlesse desire of Power after power, that ceaseth only in death',⁹⁰ has often caused alarm, not least because it is usually presented on a plate with other Hobbesian cliches of an alarmist variety. However, it deserves more detached consideration.

If power is simply a means to ensure future felicity, it is left to each individual to add content to the notion of power, and acquire it in the way he or she feels most appropriate. The distinction Hobbes introduces between instrumentall and natural power is relevant here, and allows for the introduction of the more contemporary distinction between power and authority. Whilst some men will ensure their survival and happiness by sheer personal strength or intellectual ability, winning every battle of wit or muscle, others will ensure their own safety by

⁸⁹ *Leviathan*, Ch. 10, p. 150.

⁹⁰ *Leviathan*, Ch.11, p.161.

somehow convincing other men to use their power on their behalf.

What quality whatsoever maketh a man beloved, or feared of many; or the reputation of such quality, is power: because it is the means to have the assistance and service of many.⁹¹

Similarly, 'to have servants is to have power; to have friends, is power: for they are strengths united'.⁹² As previously stated Hobbes allows for the emergence of the master-servant relationship within the state of nature, and from his account of power it would seem that he allows for the possibility of men co-operating, and combining different sorts of power. In fact it is essential that they do so because 'there is no man who can hope by his own strength or wit, to defend himself from destruction, without the help of confederates'.⁹³ Such co-operation is of course an alien concept within the state of nature most commentators attribute to Hobbes, but a closer reading of the text reveals that it is not ruled out.

It would be useful at this stage to draw together the features of human nature so far established, and then move

⁹¹ *Leviathan*, Ch.10, p.151.

⁹² *Leviathan*, Ch.10, p.150.

⁹³ *Leviathan*, Ch.15, p.204. This would appear at first to contradict Hobbes's earlier statements which make man's fundamental equality rest upon each individual's equal ability to 'save themselves from destruction', unless of course one reads it as an equal inability to do so unaided.

on to see how man in a state of nature behaves on the basis of the nature attributed to him. The features identified so far are

1. A biologically/mechanistically determined drive to stay alive and secure a felicitous existence, combined with a valuing of life and a desire to avoid death.
2. An insatiability of desires including the desire for power.
3. An egoistic psychology.
4. A fundamental equality.

On the basis of these assumptions, the state of nature has traditionally been read in the following way. Hobbes opens his chapter 'Of the Naturall Condition of Mankind, as Concerning their Felicity and Misery' with his statement of the overall equality of man. Although, as stated above, man's desires will not be exactly the same as those of his neighbour, there will be a certain coincidence of wants, particularly concerning those things men understand as being beneficial to their vital motion ie. personal security, wealth, felicity, and the means to such ends.

It will appear to each individual that he has a reasonable chance of securing his desired ends, and this equality of hope, when combined with a scarcity of the commodities necessary to commodious living, will lead men to become enemies in the pursuit of broadly common ends. Competition

and diffidence emerge, and the popular picture of Hobbes's state of nature follows closely behind.

everyone wants the best for himself, and he therefore comes into conflict with his neighbours, who not only share similar objectives, but also have similar ideas about how to achieve them. It seems unavoidable that at some stage at least the state of nature will be as unpleasant as this scenario suggests. As suspicion and insecurity grow, defence will become a preemptive strike, and the "warre of every man with every man" will be a terrifying reality.

As suggested at the beginning of the chapter, this reading magnifies the horrors of the state of nature whilst, it will be argued, ignoring the evolutionary account of human nature that necessarily follows on from Hobbes's basic psychology. Given our definition, Hobbes's theory of human nature must assemble a collection of characteristics which are together exclusive to humans, however it will be shown that the single faculty which proves most beneficial to man is one he shares with 'Brute Beasts'. As stated above, man will not by virtue of Hobbes's theory live in a vacuum. even in the state of nature he will confront sufficient external objects to stimulate his sensory perceptions. Man will be in touch with both animate and inanimate objects and on the basis of his encounters will build up a body of experience. This experience will allow all men to develop

certain interactive properties⁹⁴ which will enrich the basic theory of human nature offered above.

It is important to remember that man as a form of matter in motion is subject to constant change in common with any other form of matter. The most interesting changes in this context are psychological. Two particular mental activities are exclusive to man, the search for causes of observed facts, and the pursuit of consequences of possible courses of action, of which the latter is called curiosity. Combining these activities provides the ability to judge differences and similarities, to learn from experience and to adjust responses accordingly.

Eventually, through his contact with the outside world, man builds up a reservoir of experience. He will begin to link particular memories and phantasms, however simple, and work out for example that clouds mean rain to come, whilst rain bans clouds past. This correlation is the very essence of prudence, the consideration of which is crucial to an accurate interpretation of man in his natural state.

⁹⁴ Cf. p. 135 above.

prudence

prudence is not a faculty we are born with, but one that necessarily develops as a result of life experiences.

Every man acquires prudence and, says Hobbes, as his attaining it depends on his experiences each man will generally attain an equal degree of prudence.⁹⁵ Any significant difference will be qualitative as opposed to quantitative and therefore less threatening to the overall equality of men in their natural state.⁹⁶

Hobbes states:

When the thoughts of a man that has a design in hand, running over a multitude of things, observes how they conduce to that design; or what design they may conduce unto; if his observations be such as are not easie or usuall this wit is called Prudence; and dependeth on much experience and memory of like things and their consequences theretofore.⁹⁷

...this wit of his is called PRUDENCE....In which there is not so much difference of Men as there is in their Fancies and Judgements; Because the experience of men equall in age, is not so much unequall, as to the quantity; but lyes in different occasions, every one having his private designes. To govern well a family, and a Kingdome are not different degrees of Prudence, but different sorts of business...⁹⁸

⁹⁵ *Leviathan*, Ch.8, p.138.

⁹⁶ *Ibid.*

⁹⁷ *Leviathan*, Ch.8, pp.137-8.

⁹⁸ *Ibid.*

There are of course difficulties with this account of prudence. It is strange to think that qualitative differences will be less important than quantitative differences, and it is also strange to assume that at the end of their lives the hermit, the soldier, the magistrate and the travelling minstrel will have acquired the same amount of prudence, as their experience of life will doubtless be different in quantitative as well as qualitative terms. One can only assume that Hobbes once again employs what I have called a negative theory of equality, such that the differences or inequalities are not great enough to be significant. Furthermore, men who have lived an equally long time will, up to that point, have displayed equal prudence in respect to the all important question of self-preservation.

However, one has to realise that prudential reckoning is not a scientific activity, as its discoveries are not universal or certain, neither is it philosophical. Hobbes carefully distinguishes it from reason.

...it appears that reason is not a sense, and memory, borne with us; nor gotten by experience onely; as Prudence is; but attained by industry; first in apt imposing of names; and secondly by getting a good and orderly method in proceeding from the Elements which are Names, to assertions made by connexion of one of them to another; and so to syllogisms, which are the connexions of one assertion to another, till we come to knowledge of all the consequences of names appertaining to the subject in hand; and that is it, men call SCIENCE. And whereas Sense and Memory are but knowledge of fact, which is a thing past and

irrevocable; Science is the knowledge of consequences and dependence of one fact upon another.⁹⁹

'Reason is the pace, Encrease of Science, the way; and the benefit of man-kind, the end'¹⁰⁰ but given that the state of nature is one in which there is no science, the faculty we have to rely on is prudence.

But yet they that have no science, are in a better, and nobler condition with their natural Prudence; than men that by mis-reasoning, or by trusting them that reason wrong, fall upon false and absurd general rules.¹⁰¹

What we need to discover is how reliable it will prove in guiding men's actions towards desirable ends.

Given the certain existence of at least a degree of prudence in every man we have to ask what effect this will have on our assumptions about his behaviour in the state of nature. It would appear for a start that we can say something specific about the manner in which human behaviour will be subject to change. As experience grows man's behaviour will be tempered by prudence - especially because, Hobbes says, bad experiences are the best teachers.

⁹⁹ *Leviathan*, Ch.5, p.115.

¹⁰⁰ *Leviathan*, Ch.6, p.116.

¹⁰¹ *Ibid.*

Three basic features of man's nature accelerate the development of prudence in the state of nature, these are **curiosity**, insatiable appetite, and suffering.

Curiosity, as mentioned above is a faculty which distinguishes man from animals, and is defined as the desire to know how and why. It is a desire to know causes, and a delight in the generation of knowledge. Curiosity enhances prudence because it causes men to become involved in more experiences, to widen their horizons, and thereby to discover more antecedents and precedents. The curious man will be forever following new paths, attempting new ventures, but as Hobbes informs us, many avenues of enquiry will be closed because,

...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;¹⁰²

It seems probable therefore, that when man exercises his natural curiosity, he will direct it towards what he considers 'worst of all', that is he will enquire as to the causes of the terrible situation within which he exists. In one way at least the state of war will be constructive, in that -

¹⁰² *Leviathan*, Ch.13, p.186.

Anxiety for the future time disposeth men to enquire into the causes of things; because the knowledge of them maketh men better able to order the present to their best advantage.¹⁰³

As previously discussed, man's insatiable appetite is commonly seen as one of the most negative features of Hobbes's account of human nature, and a primary cause of the war like situation where it exists. However, if one adheres to Hobbes's own logic, and his strict use of definition, one has to accept that man's appetite will also contribute to the development of prudence.

Man's insatiability, which manifests itself in a constant pursuit of felicity, leads him to chase one object of desire after another. The adventures involved in doing so will be numerous, particularly as he will for the most part be competing for scarce resources, with men of more or less equal ability. As prudence grows alongside experience, the activity will be valuable, as long as it does not result in death.

Furthermore, appetites and desires also contribute to the development of wit and intelligence, although here Hobbes abandons the equality he assumes elsewhere.

The causes of this difference in wits, are in the Passions: and the differences in the Passions

¹⁰³ Leviathan, Ch.11, p. 167.

proceedeth partly from the different constitution of the body and partly from different education.¹⁰⁴

The passions which contribute most to differences of wit are desires for power, riches, knowledge and honour, which says Hobbes can be reduced to a desire for power.

Therefore,

A man who has no great passion for any of these things; but is as a man terms it indifferent, though he may be so far a good man as to be free from giving offence; yet he cannot possibly have either a great fancy or much judgement. For the thoughts are to the desires as scouts, and spies, to post abroad, and find the way to things desired.¹⁰⁵

A man without desires is a colourless specimen, shallow and witless with little to recommend him. 'For as to have no desire is to be dead; so to have weak passions is dulness.'¹⁰⁶ Desires alone give coherence to mental discourse, and help men to make better use of past experience. In the pursuit of their desires men become more prudent, and, if they have it in them, (as education as such is irrelevant in this context), more intelligent.

Finally, one has to consider the role of suffering. Consistent with the general theory of matter in motion, which states that once in motion a body will remain so

¹⁰⁴ *Leviathan*, Ch.8, pp. 138-9.

¹⁰⁵ *Leviathan*, Ch.8, p. 139.

¹⁰⁶ *Ibid.*

until hindered and eventually stopped, the internal motions caused by contact with an external body will continue until stopped. As man's major concern is the maintenance of vital motion, he will pay particular attention to those experiences which harm or threaten him. It is generally assumed that the classic response to attack will be counter attack, or indeed pre-emptive strike, but there is also the option of avoidance. The question is whether men will come to recognise this option.

Hobbes allows that men will attempt to link antecedents and consequences, and thereby establish what or who threatens his life, and nowhere discounts the possibility of avoidance as an appropriate response. There is nothing to say that some men, if not all, will learn slowly, and probably painfully what spells danger, and will then attempt to avert it rather than meet it head on.

If man's prudential powers develop in the manner Hobbes describes, then his suffering will have an educative effect. He will not tolerate continual suffering and he will attempt (successfully or not) to alter his activities in order to avoid suffering and ensure a felicitous existence. Life per se is the basic means to all ends, a life without suffering is an end as well as a means. Prudence allows each individual to determine as far as possible the best way for him to promote that end, but all individuals will come to recognise certain things as

necessary prerequisites - most obviously peace and security.

Hobbes State of Nature - A Second Reading.

By combining these intrinsic and interactive features of human nature a new evolutionary account of human existence emerges, which in turn permits a re-reading of man's existence in the state of nature, particularly in the period immediately prior to the formation of the commonwealth. Referring back to Berry's account of what a theory of human nature should be able to do, he wanted to be able to answer four basic questions.

1. Are men solitary or communitarian?
2. Are men political or apolitical?
3. Are men free rational or determined rational?
4. Are men perfectible or imperfectible?

What has been said so far clearly has important implications for at least the fourth question, and also bears on the others. Men will change during there time in the state of nature, and the experiences of one generation will not be entirely lost on the next. Never a completely solitary being men will realise the benefits of some communal activity, they will speculate as to the merits of political rule, their prudence will compensate in part for

their lack of reason, in short they are perfectible even before the institution of government.

To illustrate more clearly how this will alter our standard reading of man's existence within the state of nature we need only consider the effect these developments have on the way in which different individuals seek to acquire power.

As men become more experienced it would be unrealistic to assume that they would remain convinced by the overall equality ascribed to them. This equality is largely formal, and is only put to the test in life threatening circumstances. Instead men will begin to recognise inequalities and some will be forced to investigate ways of acquiring power which do not necessarily depend solely upon individual strength or intelligence. Some will realise that their route to survival lies with allying themselves to those who are naturally powerful, others will use their charm, intelligence, and worthiness to attract such individuals towards them. However, it would be wrong to read on from here and resolve all conflict within the state of nature. This process will necessarily be limited, and the natural arena for its existence would appear to be the family.

Just as obedience to the laws of nature is conditional upon the existence of sufficient security, contracts of power

will only take place where individuals can be sure of the benefits that will emerge from them. Whilst the occasional alliance of strangers might be possible, say in the face of some natural disaster, co-operation will usually be confined to situations in which men are tied together by something more than necessity. The question then arises as to whether Hobbes allows for the possibility of such relationships. What he has to say about family suggests that he does, although he could be accused of deliberately obscuring the fact.

Hobbes wrote in *De Cive*:

...to man by nature, or as man, that is, as soon as he is born, solitude is an enemy; for infants have need of others to help them live, and those of riper years to help them live well.¹⁰⁷

During his long debate with Bramhall, he conceded that 'it is very likely that since the creation there never was a time when man was without society.'¹⁰⁸ And in Chapter Seventeen of *Leviathan* he explicitly states, that families existed in the pre-political state.¹⁰⁹ In fact he equates familial and political rule saying "Cities and Kingdoms are

¹⁰⁷ *De Cive*, Ch. I, sect. 2. Hobbes makes this a statement in the footnote to this section in which he discusses the common claim "that man is a creature born fit for society".

¹⁰⁸ *Liberty, Necessity and Chance*, English Works Vol. V, ed. W. Molesworth, London, John Bohn, MDCCXXXIX, pp.183-4.

¹⁰⁹ *Leviathan*, Ch.17, p.228.

but Greater Families' and again, 'A Great family is a kingdom and a little kingdom a family'¹¹⁰

However, breaking sharply with the patriarchalism of his day, Hobbes insisted that paternal power was not derived from fatherhood as such, because no status among men is natural, subordination being due rather to convention and individual consent. Furthermore, if sovereignty was seen as a matter of procreation a mother would have as much right to sovereignty over her child as a father. In fact, her claim would be stronger as there is no mistaking who gave birth to a child, whereas identifying the father is less clear cut. However, his views on the inadvisability of divided power meant he had to adopt a principle upon which to decide between parents.

The power of the mother, Hobbes argued, is a reward for preserving the lives of her children when she had the opportunity and the right to destroy them. So, in the state of nature

if the mother shall think fit to abandon or expose her child to death, whatsoever man or woman shall find the child so exposed shall have the same right which the mother had before; and for this reason, namely for the power not of generating, but preserving.'¹¹¹

¹¹⁰ Cf. *Leviathan*, Ch.17, p.224, also Ch.20, p.257.

¹¹¹ *De Cive* Ch IX, Section IV, See also *Leviathan* Ch.20, p.254.

this passage from *De Cive* is supported in *Leviathan*, where Hobbes states that paternal authority "is not so derived from the Generation as if therefore the Parent had dominion over his child because he begat him; but from the child's consent, either express or by sufficient arguments declared"¹¹²

Although it is the mother who originally possesses dominion over the child, if she is subject to the father the child is also in the father's power. There is nothing natural to state that this must be so, but in practice it will be the case because 'for the most part commonwealths have been erected by the Fathers, not by the Mothers of Families.'¹¹³ As Carol Pateman has argued the social contract is predicated by a sexual contract which firmly places women under the control of men.¹¹⁴

The father not only has dominion over the child, but also over the child's children, and those childrens' children, 'For he that hath dominion over the person of a man hath dominion over all that is his; without which dominion were but a title without effect'.¹¹⁵

¹¹² *Leviathan*, Ch.20 p.253.

¹¹³ *Ibid.*

¹¹⁴ C. Pateman, *op cit.*, pp.339-77.

¹¹⁵ *Leviathan*, Ch.20, p. 255.

It would appear therefore that within a family a power structure evolves, a parent nurtures its child, because although in the short run it might make all their existences more precarious, in the long run the child will ally its power with the parent, as will future generations, and the power of the family unit will increase as required. The father will only retain power for as long as his natural or instrumental power is sufficient to offer his kinsfolk protection from the power of other families. However, as prudence increases with age and experience, the heads of families will be peculiarly well-suited to this task. Similarly they will understand more acutely than their children the dangers of the state of nature, and it is they who will begin to look for a way to avoid the state of war which is still a possibility between families.

And so a very different picture of the state of nature begins to emerge, as the result of a re-reading of Hobbes's account of human nature. The only features of human nature that Hobbes can claim to be unchanging within the confines of his theory are the desire to avoid death, the insatiability of appetites, the consequent desire for power, and a very basic form of equality. It is a mistake to build upon this basis a static vision of man's nature and the situation it will result in. The features Hobbes stresses are, if we are to be generous, the result of observation and introspection, if we are to be cynical, they are features required by his political ideology.

Given the inevitable development of prudence - an interactive human property - man's conception of the way to acquire power will change. The fierce individualism of the early state of nature will be tempered, and things will develop gradually towards the point at which the heads of families will be in a position to form the social contract. They will desire to do so not only because they will be aware of their insecurity with respect to other family units, but also because the limited security they have enjoyed teaches them the advantages of living in a settled state, developing their voluntary motions as opposed to simply ensuring the continuance of vital motion.

By accepting an evolutionary account of man's psychology - and such an account is available to Hobbes - it can be shown that man's motive for leaving the state of nature goes beyond a fear of death. As in any situation avoidance of death is the fundamental motive for action, but men will also see the pleasure attached to doing so. Life within the family offers a valuable glimpse of 'commodious living', and the knowledge of pleasures to be gained by remaining safe spurs men into action. As men develop prudence they will begin to understand the benefits attached to peaceful relations between individuals and groups. They will gain this insight through their membership of families, which under the prudential guidance of the patriarch will seek to protect the lives of their members and ensure them felicity. Within the family

opportunities will arise for individuals to contract with one another, and as Hobbes states simple contracts of exchange will occur prior to the commonwealth being erected. Thus, men will rehearse the moral actions required by the consenting processes.

As time goes by the state of nature will become one in which the state of war is a vivid possibility as opposed to an ever-present reality. Men will learn the advantages of peace and security through experience, and will come to value the type of life these make possible.

Conclusion

The purpose of this chapter was to show that men in a Hobbesian state of nature can reach a point at which they are willing and able to form a contract. This conclusion is only feasible if one can show that the account of human nature Hobbes is committed to on the basis of his mechanistic first principles is not necessarily that which we read at surface level in *Leviathan*.

Man cannot abandon the desire for self-preservation which is natural in the full sense of the word, nor can he fail to pursue those things he considers necessary to his survival. He can however change his conceptions of what is necessary, and thereby modify his actions. Similarly he

may come to see as equally important those things which are necessary to his well-being as opposed to his simple survival.

This more sympathetic interpretation leads towards the conclusion that the account of the state of nature given in *Leviathan* is ultimately a tool of rhetoric as opposed to demonstration. The political proposals Hobbes goes on to make require the presence of a dark spectre in the past because the scientific method fails on its own to convince men of the political 'truths' he propounds. To provide that spectre Hobbes freezes a moment in the evolution of man's character and presents it as human nature. If he had presented the evolutionary account outlined above, he would have overcome criticisms concerning the unlikelihood of the social contract, but he would also have called into question the need for, and the justification of, the 'absolute and arbitrary ruler'. In the end the achievement of his political goals requires his disloyalty to a scientific method which failed to throw up the results he required. In the following chapter of this thesis the implications of this fact will be investigated further.

Chapter Three

Hobbes, Determinism, and Consent

A well-respected commentator, Patrick Riley, has recently focused his attention upon the theory of volition underpinning Hobbes's consent-based structure, and claims to have found it lacking.¹ Specifically he feels that the voluntarism implied by Hobbes's frequent use of consent is not supported by a clear enough commitment to a notion of freedom of the will. One would expect, Riley writes, that Hobbes would 'develop a theory of will as a moral faculty whose free choice gives rise to authority and obligation.'² Instead, Hobbes is committed to - and insistent in - his defence of a deterministic understanding of volition.

In this chapter I wish to examine Hobbes's determinism and assess whether or not it should be taken to detract from his consent-based explanation of obligation. Two categories of question arise.

1. Those concerned with determinism in general, and its compatibility or incompatibility with the concept of free will and / or any form of voluntarist theory of political obligation.

¹ P. Riley 'Will and Legitimacy in the Philosophy of Hobbes: Is he a Consent theorist?' *Political Studies*, Vol XXI No.4, pp. 500 -522 . Riley develops his argument further in *Will and Political Legitimacy*, Cambridge Mass., Harvard University Press, 1982, pp. 23-60

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2. Those concerned with Hobbes's particular version of both determinism and consent.

Questions of the first type are notoriously difficult and it might be considered unwise, or at least unhelpful to stray too far into the metaphysics of freedom. As one philosopher has said in a passage unintentionally poignant in an Hobbesian context:

Most people- 99 per cent and more, no doubt- have always been too busy staying alive and fending for themselves in difficult circumstances to have any time or taste for the question of free will. Political freedom, for many of them, has been a major concern, but metaphysical freedom has just not been worth worrying about.³

It remains to be seen whether a fully developed concept of free will is a necessary component of a consent-based theory, but it does appear that the question is at least "worth worrying about", in this context. In a consent-based theory of political obligation, the metaphysical and political aspects of freedom are closely linked. To be politically free, the individual must have given his consent to the government, which rules his actions through the laws it makes. It is part of the concept of consent utilised here that this consent be freely given. The question then arises as to whether this

³ D. Dennett, *Elbow Room*, Oxford, Oxford University Press, Oxford, p.5.

consent necessitates a prior form of freedom, that is freedom of the will.

Many would argue that an act of consent, as defined in the introductory chapter, must entail ideas of voluntariness, choice and control over one's actions, and that these are the very features of human action which are displaced by a deterministic explanation. If, as the determinist maintains, my actions are caused in some tangible way by earlier events or states of mind which were themselves caused, how can I be said to be obligated on the basis of those actions, which were not chosen by me in any real sense, and indeed which I could not have avoided doing?

There are a number of ways of dealing with the issues surrounding determinism in the present context:

1. To deny the existence of determinism, and show how Hobbes was mistaken in his loyalty to such a system.
2. To underplay the importance of determinism in Hobbes's theory.
3. To evaluate the fears concerning determinism and assess Hobbes's particular version of the theory on the basis of the conclusions reached concerning determinism more generally.

Given that Hobbes was committed to a deterministic framework by virtue of both his mechanism and his theology, neither the first or the second option appear appropriate. The first option has already been pursued at great length by Bishop Bramhall of Derry, and although he raised many

useful criticisms of Hobbes's theory, he did not succeed in shaking Hobbes's confidence in or commitment to a deterministic model.⁴ To deny the importance of determinism would entail a rewriting as opposed to reinterpretation of Hobbes's work, and such an exercise would not be appropriate within the bounds of this enquiry. Which leaves only the third, and probably the most difficult option.

It is obvious that many of the concerns people express about determinism are acutely relevant to voluntarist theories. Without control, without responsibility, and without the real option of choice the consent mechanism is robbed of the moral infrastructure within which it has traditionally operated. If he is to permit the survival of his contract theory, Hobbes must show that his theory of determinism allows us to counter the critic's fear that these features will be absent from a deterministic framework. Furthermore, he must show that his peculiar brand of determinism can support a definition of consent appropriate to such a theory.

The ultimate aim in this chapter is to present an interpretation of Hobbes's determinism which allows for a politically and morally significant notion of consent. The

⁴ Cf. Bishop J. Bramhall *A Defence of True Liberty from Antecedent and Extrinsicall Necessity and Liberty, Necessity and Chance*, Volume V English Works of Thomas Hobbes ed. W. Molesworth, London, John Bohn, MDCCCXLI.

deterministic elements of Hobbes's theory are essential to the logic of his system as a whole, and must not be abandoned. If consent cannot be accommodated within such a framework, Hobbes's theory is seriously flawed.

It will in fact be argued that Hobbes's theory allows for an adequate concept of consent to emerge, and that the nature of the determinism he proposes could serve to complement, rather than threaten, a contractual account of obligation.

The way forward lies in a thorough investigation of Hobbes's persistent claim that liberty and necessity are compatible. First, however, we must look at determinism in more general terms, as it is popularly perceived and criticised.

Deterministic Bogeymen

Some of the problems that arise over understanding determinism can be cleared up by ensuring that it is not confused with the quite separate doctrines of fatalism and predestination. Indeed these theories must be seen as the products of fundamentally different ages and outlooks.

Fatalism is a rather mystical and superstitious view that at certain checkpoints in our lives, we will necessarily find ourselves in particular circumstances (the circumstances "fate" has decreed) no matter what

the intervening vagaries of our personal trajectories.⁵

Fatalism says that my morrows are determined no matter how I struggle. This is of course superstition. Determinism says that my morrow is determined by my struggle.⁶

Whilst definitions of fatalism tend to stress the superstitious and mystical, determinism at least claims to be scientific. Fatalism presents the individual as swept along by a predestined and unavoidable sequence of events, whilst determinism - in its softer forms at least - gives the individual a more positive, albeit determined, role.

Definitions of determinism vary but most share certain core characteristics. In the present context, determinism will be taken to be that doctrine which states that the human will is not free, because willing like any other physical event, is caused by the sum of all prior events. This definition is chosen because it stresses the materialism inherent in most deterministic accounts, and immediately invokes the vocabulary shared by the Hobbesian version of determinism to be considered later.

Accepting a deterministic framework has immediate implications for understanding human action at both a macro

⁵ Dennett, *op cit.*, p.104.

⁶ R. E. Hobart 'Free Will as involving Determinism and Inconceivable without it' *Mind*, Vol XLIII No. 169, 1934, reprinted in B. Beroofsky (ed.) *Free Will and Determinism*, New York, Harper and Row, 1966. p.82.

and micro level. Some of which are particularly relevant to political philosophy. Critics of determinism consider these implications unwelcome, and although their worries vary in type, they tend to assume a similar list of negative features attaching to any deterministic framework. At present we shall consider only those criticisms which appear to have a special bearing within the present enquiry. For example, the assumption that causally determined events are necessarily predictable.

If human action is subject to causal explanations, it is possible that is will also be predictable, as it will be law-governed and ultimately understandable as such. This fact affords real opportunities for understanding the behaviour of individuals and societies in a way that is unavailable to the non-determinist. However, it must be said that in a world which usually welcomes the opportunity to explain phenomena in scientific terms, there is often a significant degree of intuitive resistance to interpreting human behaviour in this way.

Many see predictability as a negative and even dangerous trait. At an individual level it detracts from the sense of diversity and individuality ascribed to the human being, and at a macro level it offers possibilities for manipulation and control.

Contract-based theories of political obligation are a defining feature of a profoundly individualistic tradition, hence the particular importance of assessing the impact of a deterministic approach upon our interpretation of the individual. Critics believe that the determinist's model immediately disarms those who wish to stress the diversity and individuality of the human agent. An individual whose behaviour is predictable is also, they claim unoriginal and uninteresting. Thus, in a world of causally determined beings, uniformity would be inevitable, and originality would be impossible.

However, this negative interpretation can be attacked on a number of points. In the first place determinism does not always lay itself bare, and many of the causes contributing to human nature and action will remain either obscured, or entirely inaccessible. The extent to which causal factors can be identified and in turn used to construct predictive forecasts will vary immensely, and a certain mystery is almost sure to remain, especially at the individual level. Having said this, the determinist would always stress that the fact we do not understand or know the nature of antecedent necessary causes is not in itself proof that they do not exist. Rather, it will be the case that not all causal links will be searched for, and some of those we do seek out will never be found. Due to the vast number of variables involved, individual human action is

unlikely to be entirely predictable, and the individual human being will remain capable of surprising us.

As to the accusation of uniformity, there is no good reason to believe that a world which can be explained in terms of scientifically verifiable relationships between cause and effect is necessarily one in which all human beings end up the same. This will become clear as we discuss the position of the human agent within the causal chain.

Finally, we should appreciate that where it does exist, predictability is not always a negative trait. Qualities such as trustworthiness, reliability, and steadfastness, which we attribute to individuals on the basis of our reliable predictions that they will behave in a certain manner in given situations are generally seen as positive qualities. Indeed much of moral education is geared towards ensuring a certain predictability of response when faced with moral decisions, and much of social interaction can only proceed on the basis of assumptions about how individuals and groups respond to stimuli.

Despite these reassurances a modern, and distinctly political worry, develops ~~on~~ from concerns about predictability at an individual level, and centres on the power determinism can afford to those who do come to understand the way in which individual acts, and even more importantly, group behaviour is determined. Psychologists,

politicians, and sociologists assume a basic determinism in their explanations and predictions of human behaviour, and in turn may use what they learn about causal factors to modify that behaviour. The fear is that 'success in explaining and predicting can never be divorced from success in manipulating and controlling'.⁷ Whilst the psychoanalyst might use her understanding of causal relationships to liberate a patient from psychosis or hysteria, the ideologue may well have more sinister aims. The combination of a deterministic understanding of human nature, and a teleological approach to human development is often seen as particularly worrying. To coin the old adage, all power corrupts and absolute power corrupts absolutely. To fully understand the causes of fundamental human behaviour is to hold something akin to such absolute power.

These very general yet nonetheless pervasive fears which people harbour, provide a backdrop for the more specific criticisms we shall go on to explore. Those who attempt to dismiss determinism may well do so because they believe that it is incompatible with the ideological framework within which they choose to operate. Hobbes was prepared to go to great lengths to show that determinism was compatible with Christian belief, and obviously saw no reason to assume that it was not also compatible with a political system grounded upon a social contract. It is

⁷ A. MacIntyre, 'Determinism', *Mind* 66, 1957, p.29.

this second hypothesis which shall be tested here, not forgetting earlier discussions concerning the ideological nature of social contract.

To return to Riley's particular complaint against Hobbes, his doubts stem from the incompatibility which he sees between determinism and voluntarism. To take this point further we must identify the hall-marks of a voluntary act, and ask whether similar characteristics can ever be ascribed to acts which are known to be causally determined.

The definition of consent offered in the first chapter contains certain key words, some of which do not figure highly within a deterministic discourse, but which might none-the-less be included without incongruity.

Consent was defined as:

an intentional grant of permission given freely by an autonomous rational agent, on the basis of full and accurate information.⁸

Later in this chapter it shall be shown that there are no good reasons to assume that a determined act cannot also be intentional, rational, and informed. This is not to say that it will necessarily be any of these, all we need to refute is the claim that it can be none of them. Our

⁸ Cf. p. 71 above.

immediate attention however will focus on the issues of freedom and autonomy.

Although definitions of autonomy have been shown to vary, an assumption is made that an autonomous being is one who is in control of his actions, responsible for his choices and answerable for the effect he has on the world. Such an assumption seems particularly important within the context of a social contract where the individual will be bound by certain obligations because he, as an autonomous free agent has agreed to be so.

The missing key words that are implicitly contained within this description of an autonomous being, yet initially appear absent from deterministic discourse are control, choice, and responsibility. In order to make determinism compatible with voluntarism these words must be rehabilitated, yet critics of determinism such as MacIntyre go to great lengths to exclude them.

The discovery of causal explanations for our actions, preferences, and decisions shows that we could not have done other than we have done, that responsibility is an illusion and the moral life as traditionally conceived a charade. It makes praise and blame irrelevant, except in so far as we discover them to be causally effective, and while the moral judgements of agents might therefore retain some point, those of spectators and critics would be pointless.⁹

⁹ MacIntyre op cit., p.29.

On this interpretation, if I accept determinism as a fact, I must ask myself:

1. Can I still claim to have control over my own actions?
2. Have I been able to choose my actions if I have to admit that I could not have acted differently?
3. Can I be responsible for my actions?
4. Are my actions in any meaningful sense free?

By raising questions such as these we severely shake the moral foundations which underpin the consent based model. If I answer these questions in the negative the rational, autonomous agent is said to no longer exist, and the moral infrastructure necessary to make sense of consenting/promising and obligation has disappeared. The critic of determinism has no doubt that I will be forced to these conclusions. It is therefore necessary before referring specifically to Hobbes's account of causation to do some preliminary work examining and hopefully dismantling these traditionally held fears concerning determinism. If these fears cannot be entirely disposed of, we will have to ask whether the infrastructure we end up with can do the same work as the structure which traditionally supports a voluntarist theory.

As has already been stated, the question Hobbes addresses most directly is the last which concerns the compatibility of freedom and necessity. For this reason we shall

concentrate on the first three questions, and return to the fourth when we come to consider Hobbes's own theory of determinism in detail.

Individual Control in a Deterministic World

The imagery of determinism as presented by its critics, is often that of prisons, hypnosis, and puppet shows. Irrespective of what he or she might believe, if determinism is true the individual is no better than a puppet, a prisoner, or the victim of a showbiz hypnotist. In the worst of all possible worlds, the individual will be painfully aware of this fact, and the result will be resignation and apathy. To be any of these things mentioned above, is to lack control over one's actions in some significant sense, and critics would state that such lack is characteristic of anything subject to causal explanation.

One is in fact entirely controlled by external forces, locked into a life story that was written at the dawn of creation, like a puppet that was destined to play Punch and Judy even before its wooden face was carved and painted.¹⁰

In such a situation, it is argued, any feelings one might have of being in control are mere illusions, and what

¹⁰ Dennett, op cit., p.50-51.

happens is simply part of an enormous causal chain which began millions of years before one's birth. The point of taking the causal chain back 'to the dawn of creation' is to exclude, with as much certainty as possible, the idea that I might have some control over the causes in question. In fact what it does is deny the individual what Nozick calls 'originatory control', that is the ability to 'initiate a new causal chain that was not already in progress'¹¹. Instead I am a tiny link in a chain that stretches back millions of years before my birth and which may stretch even further, into my future and beyond.

However, if the denial of individual control largely depends upon adopting the 'dawn of creation' view of the causal chain, it would seem to depend upon adopting a perspective on the world which is divorced from ordinary understanding. In many respects we accept the way we act here and now has been affected by events which occurred in the past, or at a distance from us in the present. We often speak in a convenient shorthand which excludes unnecessary reference to causal factors and concentrates on making an event easily understandable within our present environment. As Nozick points out:

Even if I build, install, and set a thermostat, controlling it and controlling its controlling the temperature in my house, still, it does control the temperature in the house (No one has ever announced

¹¹ R. Nozick, *Philosophical Explanations*, Oxford, Oxford University Press, 1981, p.315.

that because determinism is true thermostats do not control temperature.)¹²

The point is really this, I created and set the thermostat, but from there on it determines when the heating comes on and goes off. The fact that it has some control is evidenced by the fact that if it goes wrong and malfunctions the heating will not come on at the temperature I chose. I made the causal chain pass through the thermostat, thus giving it some control over events from here on.

Human beings have a similar position within the causal chain. While he accepts that determinism denies the individual originatory control (that is other causal factors determine the point at which the causal chain passes through them) Nozick is prepared to search for other forms of control consistent with a causal explanation. He states 'the origin of the cause does not originate with her, but the fact that it causes her to act does.'¹³ The first step towards realising the possibility of self control is to take a realistic view of one's position within a deterministic universe.

We know perfectly well that causation can be entirely inscrutable- utterly lost in a tangled web of coincidence- and still be causation. What caused this

¹² Ibid.

¹³ Ibid.

grain of sand to be right where it is on the beach? Something did- or rather billions of things over billions of years did. We ignore cases like this. But if the grain of sand is part of a footprint on the beach we focus in on one cause- the cause of its being depressed from the position it would otherwise presumably be in. When we think of cases of causation we almost invariably think of cases where the relationships are laid bare, where the actuality or at least the practicality of control by an agent is manifest. After all we speak of "the" cause of an event or phenomenon.....These are "good clear cases of causation". We tend to forget the equally good cases of causation that are virtually indescribable and utterly uncontrollable by us.¹⁴

Even if we live in a universe where everything could eventually be explained in terms of cause and effect, we only concern ourselves with those causal chains we have a chance of understanding, and those we understand as acting upon us, passing through us, or affecting our immediate environment. Even then we speak in terms of single causes, such as the foot pressing on the sand, rather than lengthy and complex chains. Thus we render the point at which we lock into the chain manageable, and afford ourselves the possibility of understanding it.

It is at least possible that we shall gain something valuable from learning more about the causal chain of which our future actions form a part. Even though we are locked into a causal chain, that chain has only so far determined our present, because we are now part of the chain we have some chance of helping to determine our future.

¹⁴ Dennett, op cit., p.60.

Although we are powerless to influence the causes which have had their effect before our existence, we can in some sense determine which causes are effective from now on. Suffice to say at the present moment, the way to understand the causal chain is not as running over us, picking us up and dropping us arbitrarily, but rather as running through us, such that the existence of causes is not under our control, but the fact that they cause us to act is.

Dennett's account often appears to equate control with knowledge of causes, which is particularly interesting given the importance of knowledge and information within the definition of consent used here.¹⁵ Just as knowledge of causes may afford power to others, self knowledge, in the sense of knowledge concerning what causes me to act, is empowering, and possibly even liberating. If I come to understand my position within the causal chain, and gain knowledge of the causes acting upon me I will not, to borrow Dennett's phrase, 'be at their mercy'. As previously stated I will not necessarily need to understand the chain of causation in its entirety, instead I must concentrate on local causes and the way in which the causal chain passes through me. If I can come to understand the process of cause and effect as it relates directly to me and my actions, then I will perhaps be able to exercise some control over it.

¹⁵ Ibid., p.65.

Although more will be said on this subject below, we must at this stage acknowledge the accusation that what we are actually describing is a *feeling* of 'being in control' as opposed to real control. The indeterminist would argue that just as I, rather than the thermostat in Nozick's example, really control the heating in my house, in a determined universe my actions are controlled by antecedent causes which I may or may not understand. All that knowledge of causes can do is to reconcile me to the causal ancestry of my actions. Knowing what has caused me to do something will not necessarily confirm that I am in control of my actions, in fact it might have the opposite effect. It will only be possible to meet this accusation as a fuller picture of the agent emerges.

Responsibility

One reason for the non-determinist's preoccupation with control, is that ^{they} ~~they~~ see it as being inextricably linked to the concept of responsibility. If I am not in control of my actions then I cannot really be said to be responsible for them, and responsibility is important to our account for a number of reasons.

Responsibility is a valuable social concept which forms an ⁱⁿ⁻ ~~in-~~ integral component of all moral systems. It is variously defined, but common to most accounts is the idea of being

the primary cause and being accountable. This immediately alerts us to a double meaning - I am (causally) responsible for something if I made it happen, but (morally) responsible, that is accountable, only if I did so in a particular way. Being responsible involves acknowledging the causal efficacy of your actions, and ensuring that as far as possible you remain in control of what you do.

To say of an individual that he either 'refuses to take responsibility' or 'cannot cope with responsibility' is to criticise him quite severely. There is seen to be little merit in carelessness (in the sense of being unconcerned about the consequences of your actions), especially as very few acts are purely self-regarding, and what we do is almost certain to have an effect on others.

However, our approval of responsibility is taken to go further than this, such that we as individuals have a positive desire to take responsibility for who we are and what we do. We see the notion of responsibility as contributing to our feelings of self worth and individual value. If we are not responsible, then this has implications for our claim to the status of autonomous, rational individuals. Such status is a necessary prerequisite to participation in the contract process outlined here, and more generally defines us as a full member of the human species. The social contract model seeks to make individuals responsible for fulfilling the

obligations they acquire on the basis of their consent, it is important, therefore, to show that an individual can be properly assumed responsible for his actions (particularly his choices) within a causally determined framework.

Critics of determinism would stress that responsibility is based on agency, and then claim that a deterministic account cannot accommodate a sufficiently full notion of agency. To be held responsible one must be shown to be something more than 'a mere thread in the fabric of causation.'¹⁶ One must be seen in some real sense as a 'self-chooser'¹⁷, and given that determinism excludes the possibility of being an originator, some other way must be found of accomplishing this. We shall begin by exploring the relationship between control and responsibility.

If I were to knock over a vase whilst sleep walking, the owner may regret what has happened, and mourn the loss of a valuable possession. I was causally responsible for this loss, but to blame me in any real sense would achieve no useful purpose. Moral blame requires more than causal responsibility, it requires intentionality, or at least negligence. I had no control over my actions, I did not intend to do it, and I could not have prevented it from happening by acting differently. On the other hand, if I drink too much and thereby lose control of my actions, I

¹⁶ Ibid., p.75.

¹⁷ Nozick, op cit., pp.352-362.

can be taken to be responsible in a fuller sense. In the latter case, even though I lack control, I am culpable for that lack, I could have acted differently and avoided it happening, and therefore I am morally as well as causally responsible. I did not intend to break the vase but I did intend to get drunk, and I have to accept the consequences of that choice.

The critic of determinism would hold that these examples do not differ in any important respect. In his view no one whose actions are truly determined is ever 'in control' in a meaningful sense, and therefore never fully responsible for their actions. Whether or not a person drinks too much or remains sober is itself determined, and therefore the individual lacks control at a higher level in both cases.

Perhaps the important issue is not control, but rather choice. As I have said, if I walk in my sleep there is no way of saying I chose to break the vase (unless I stretch a point and say by choosing to sleep I put myself at risk of sleepwalking). However, if I deliberately get drunk I at least choose to put myself in a condition that might lead to me breaking the vase. Although both examples are different in kind to one in which I choose directly to break the vase, the second at least contains some element of choice, and this is significant. The question remains as to whether the determinist is entitled to speak in any meaningful way about choice.

The issue of choice is central to many discussions of determinism. Nozick defines indeterminism precisely in terms of individual choice, and interprets free will as the ability to choose which causes will influence you. What we need to know is whether this degree of choice might also be possible within a deterministic framework. If I can and do make such choices, I might be held responsible for what happens, even if I did not originate the situation which makes the choices necessary. So although it was determined that I arrive in a position where I choose between being drunk and being sober, I need to know whether I choose in some meaningful sense what to do.

It would appear that without a concept of free choice, our chances of establishing an acceptable account of individual responsibility are finally thwarted. To deny the possibility of free choice is to close the gap between causation and compulsion, and the only way to ensure that determinism is compatible with some form of individual responsibility, is to permit these terms to be treated as distinguishable.

On the surface, the chances of achieving this aim might appear slight. To be morally responsible for something we have to have chosen to do it, and this is taken to imply that we could have done something else instead. Yet, however sophisticated a role we give the individual within our causally determined structure, the critic would always

be able to say that in a certain situation it was never open to that individual to act differently.

This is often considered to be the Achilles' heel of the determinists' theory, and as such must be seriously addressed. Basically, it has to be shown that the fact that one could not have acted differently does not, in itself, rule out the possibility that a choice was made.

The Deterministic Chooser

If we wish to investigate Nozick's claim that the agent has some form of choice over whether or not a cause is effective upon him, and the earlier claim that the individual can exercise some form of control over his actions, we will profit greatly by examining the concept of the (causally determined) agent further.

It has already been stated that the story of human causation is rather different to that of other beings or objects. Rather than being swept along in the causal flow human action forms part of the causal chain and that chain runs through the human agent, effecting him and being effected by him. If a ball hits another ball what happens next is in part determined by the nature of the two balls - their size, heaviness, bounciness etc.. If a causal chain passes through a human individual its future course will

similarly be effected by the characteristics of the individual, but the range of relevant characteristics is much more sophisticated. The human is not simply a physical being, he also has a mental life, and by passing through the human being the causal chain will be effected by his physical and mental functions. An individual presents within a determined universe a 'self' which is a physical, mental, and some might add, spiritual creation.

As individuals we have a strong image of 'self'. It is through that self that we see our actions emanating, and it is to that self that our plans and projects relate. The individualistic moral tradition within which social contract theory sits most happily celebrates the image, and emphasises individual integrity, moral perfection of the self, and self determination.

However, the extent to which we accept that the nature of the self is determined by causes outside the self may well differ, and these differences may have accompanying effects. If an individual believes that his basic character/self has been caused largely by external circumstances acting as causes, he may not feel inclined to take full responsibility for his actions. Whilst such an individual would possibly accept that he has control over what acts upon him as a cause, he may feel that he had no control over, or part in creating who or what he is ie. the self that is doing the choosing. In such a case

knowledge of (or belief about) causes could work to erode the agent's sense of individual responsibility. On the other hand, an individual could think that they got to be the person (self) they are despite the external causes that could have made them somebody very different. In this case the indeterminist feels that something needs explaining which falls outside a deterministic framework.

According to the indeterminist even if a person's character is affected by external circumstances, inherited traits, socialisation, etc., the existence of some freedom to respond to those circumstances is evidenced by all those individuals who do not follow the path predicted for them on the basis of these facts. To claim that one's self has been formed entirely by causes outside the self, over which that self has no control, is unacceptable. We form ourselves by responding to our external and internal experiences, and by choosing which of them we shall allow to be causally effective. The self evolves precisely through the choices it makes and it is free to evolve in whatever way it chooses.

To this the determinist would answer, that yes individuals differ, (it is determinism's critics who impute to them a vision of human uniformity and predictability), but what makes them differ is predetermined, be it through their genes or however you choose to explain it. Even before society and its jumble of causes set to work, there is a

basic self, the nature of which is determined, probably by biology. Man has an individual character (and a unique genetic make up) which may or may not be altered by his environment, but at its most basic level his fundamental starting point is something he inherits in the same way as the colour of his eyes, or the set of his jaw. The self which eventually emerges has to be seen as a development on from the embryonic self which provides the starting point.

We recognise the one essential fact that the nature precedes the act, and that the nature is simply a "given" fact in the world (not originally created by the agent himself...)¹⁸

It seems indisputable that the self as a sophisticated rational moral agent begins as a basic mental and physical being, definable in terms of its inherited biological profile and basic instincts. This is the given predetermined kernel from which the full person grows. But this is the personal equivalent of the 'back to the dawn of creation' view of determinism, and acknowledging this fact does not entail denying any responsibility for the later self that one becomes. Just as concentrating on local causes facilitates our understanding of a causally determined universe, studying causes more local and immediate than our ancestry and upbringing often help us to understand how we have become the person we are, and why we act in the ways we do.

¹⁸ Hobart, *op cit.*, p. 21.

We accept that,

Each particular act of mine is determined from outside itself, i.e., by a cause, a prior event. But not from outside me. I, the possessor of the power, am not in my acts passively played upon by causes outside me, but am enacting my own wishes in virtue of a chain of causation within me.¹⁹

The buck has to stop somewhere, and in simple terms I have to accept that 'I' am the cause of *my* acts. I did not create myself, because my self is in part determined by what I am at my most basic level. But I am unique, my basic self, which I share with others bought forth an individual who has experienced life in a way no other individual has shared. The situations I find myself in have been determined partly by me, and partly by causes external to me. My present is always determined and unavoidable. My future is similarly determined, but I, as in my self, am an important determining factor of it. My character, my desires and my abilities will be causally effective. If I as an individual was not involved in the present, the future would be different. The fact that who I am now is determined cannot rob me of the belief that it is important that I, rather than someone else, have ultimate responsibility for my destiny. The story of causation sometimes concentrates its activity on me and works through me. What it does, what I do makes a difference, and sometimes it makes the difference I intend.

¹⁹ Ibid., p. 14.

We seem to be saying that it remains important that I am the cause of an event or action, even if I suspect that the 'I' concerned is not of my own making. The indeterminist would be unhappy with this conclusion so it needs to be investigated further.

We often have to acknowledge that 'If I had not done X, Y would not have happened.' If I had not walked in my sleep the vase would not have been broken. This is of course true, but it only explains responsibility in the non-moral sense of having caused Y to happen. Nonetheless, I will still regret that it was I who walked in my sleep, and I who caused the vase to be broken. The fact that the causal chain passed through me in such a peculiar way, and caused this to happen, is reason for regret even when I had no control over my actions.

Similarly I may have cause to regret acts which I accept as my own, and which I acknowledge as emanating from my real self, even if I deny responsibility for creating that self.

I could now argue that if I discovered that I had broken a vase while sleep walking there would be no point in blaming me or punishing me because I was 'not myself when I did it.' I would acknowledge that whilst awake I am careful and considerate, and would never intentionally harm my friend's property. It is highly likely that a drunken friend would employ the same defence, and indeed she may

not have 'been herself' when drunk. The difference is that we believe that she had control over whether she 'was herself' or not. We might in fact believe that it was precisely in character for her to get drunk and hang the consequences. It is because of who she is that she made the choice which led to the loss of control which allows us to blame her. She was her self when she made that choice, and her drunk drunken self is simply a particular presentation of herself.

The importance of the distinction between these two cases becomes clearer if we ask why we want to know who caused Y to happen. It soon becomes apparent that we often seek to identify who is causally responsible in order to make a further judgement. Being responsible entails accepting the consequences that attach to your actions, in particular praise or blame.

If I wake up and find my vase broken and I know that three people have been in the house I will try and find out who was responsible for it happening. Then I will seek to establish whether or not they were responsible in a sense which entitles me to blame them morally, and perhaps demand reparation. If someone is causally responsible (in that they made it happen) and morally responsible (in that they were in control of it, and intended and chose that it should happen, or could have foreseen that it might happen) we can condemn or congratulate them accordingly.

It would, we know, be pointless to punish the sleepwalker unless we felt we could thereby effect her future actions, and this may require us to redefine our action as something other than punishment. Retributive ground for punishment do not exist because she is not responsible in a moral sense for the wrong that has been committed (however guilty she might nonetheless feel). The drunken friend however may be punished, in order to deter her from again placing herself in a position in which she lacks control, and to pay her back for her irresponsible behaviour. But what if the drunken friend claims it was not her fault that she was drunk, or the friend who simply refuses to take responsibility for any of her actions, because, she tells you, we all live in a predetermined universe.

This is the indeterminist's nightmare and it has to be confronted. It is in fact possible to employ praise and blame without depending upon the notion of responsibility. One way to do so is to blur the distinction between an agent and his acts, and adopt a broadly utilitarian ethical approach as discussed above. If one is concerned with outcomes and consequences then it is the nature of the act rather than the motivations or causal determinants of the agent that deserve attention. Individuals will be praised or blamed according to how far their actions (and our response) promote or reduce total utility. Why and how they came to act will be of importance only in so far as they determine the efficacy of punishment. A deterministic

explanation would not prove dangerous to the ethical framework, in fact it would facilitate it. Indeed a standard criticism levelled at utilitarian theories of punishment is that the desire to prevent crime (and thereby increase utility) sometimes overrides the desire to punish those responsible for the crime (especially if you allow for the possibility of 'punishing' the innocent for deterrent purposes).

By this approach we could choose to punish those acts which are seen as socially harmful, or individually corruptive, in order to deter, reform, or simply condemn. If we punish the agent because of the nature of the act we may be able to prevent its reoccurrence and change the nature of the individual agent who originally performed it. If we excuse the act on the grounds that the individual's actions were causally determined, and therefore the individual was not to blame for her actions, neither act nor character will be dealt with, and the chance for reform is lost. Therefore we may choose to distinguish primarily not between acts which were causally determined and those which were not, but between acts which are morally acceptable and those which are not. The primary goal being reform and rehabilitation as opposed to retribution.

However, if one is convinced that acts for which an individual can be held morally responsible are in some important respect different from those for which they are

merely causally responsible some more work needs to be done. Rather than punishing an agent because of certain acts, irrespective of the causal origin of those acts, we might want to distinguish between acts precisely in terms of how they have come about.

It was stated above that when I act I am 'enacting my own wishes in virtue of a chain of causation within me.' To say that my wishes or desires are caused by my own fundamental nature is not particularly controversial, but within the context of determinism it is often seen to be so. This is partly due to the assumption that a causal explanation of individual behaviour is necessarily non-rational, and that the 'causes' operating have little - if anything - to do with me as a rational self-conscious being. Just as people worry about being puppets or zombies, so they do not want to see themselves as governed by their bodily secretions, genes and hormones, as the biological thrust of many determinist accounts suggests. However, this need not be the case, it is possible to accommodate a rationalisation process within a deterministic framework. Next we must ask *how* the agent is causally determined to act, which moves us on to the second question raised above.

The Decision-making Process

One way in which to understand decision making within a deterministic framework is to identify the segment of the causal chain over which the individual has control as the deliberative process preceding a choice or action.

The stream of causation runs through my deliberations and decisions, and, if it did not run as it does run, the event would be different.²⁰

In deliberating we concentrate on the immediate questions of cause and effect, and were we to be called to justify our actions, it would be to these we would refer. When we deliberate we seek to understand and control the causal factors which most directly effect us, and we invariably direct our efforts towards a particular end. The deliberative process is causally effective because it determines the course the causal chain will take having passed through the individual deliberating. It will be argued here that what we take to be "the" cause of any particular action can only be understood by examining the process of deliberation preceding that action in the light of what we know, or can safely infer, about the person deliberating.

Having asserted the importance of deliberation in this account, one is forced to respond to the indeterminists'

²⁰ Ibid., p.16.

insistence that it is impossible for a determinist to deliberate in the generally accepted sense of the term. Giving voice to an indeterminist view he does not in fact share, Dennett comments:

It seems that we can conclude that if determinism is true, then any belief we ever have about there being more than one possible future for us is false. If determinism is true, then only the actual is possible: whatever did happen was the only thing that could have happened, and what will happen was the only thing that could have happened, and what will happen will be the sole possibility the future ever held in store for us. But then since deliberation surely presupposes there are multiple possibilities to be decided amongst, determinism and deliberation are incompatible.²¹

Dennett is quite content with all these assertions except the last; there is no reason why a determinist cannot deliberate, nor any reason why one should accept that there is no place in the vocabulary of deliberation for, 'terms such as appreciation and appraisal and weighing of pros and cons [which certainly] do not express any causal relation.' The non-determinists' reluctance to allow the determinist to deliberate is understandable, but certain of their arguments seem to rest on a deliberate misunderstanding of what determinism entails in this respect.

Now if a man believes concerning some of the actions he is going to perform, that there already exist conditions causally sufficient for his performing them, the conditions which therefore render them inevitable, then he cannot deliberate whether or not to perform them. If, accordingly he believes this to be true of all the actions he ever performs then he

²¹ Dennett, *op cit.*, p.102.

cannot consistently with that belief deliberate about any of them.²²

Such a statement contains certain assumptions about determinism and the determinist deliberator that need not hold, indeed will not hold if the deliberator understands his position in the causal chain in the way it is presented here. There is no reason to assume that because something is determined it is necessarily inevitable at a point prior to the deliberative process having been completed. To do so is to deny the deliberator any role in the causal universe, which would be closer to fatalism than determinism. An agent can understand his actions as determined, whilst at the same time accepting that he also has a role in causing them to happen. Something only becomes inevitable when all the possible contributory antecedent causes have had their effect, and before an individual participant has deliberated this cannot be said to be the case.

As Chauncy Downes points out, who is to know in any one case that the causally sufficient conditions for an action existed prior to deliberation. Could they not appear prior to the action but not necessarily prior to the deliberative process?²³ In fact is it not advisable to consider the

²² R. Taylor, *Action and Purpose*, Prentice Hall, New Jersey, 1966, p.182.

²³ C. Downes, 'Can a determinist deliberate?', *Mind*, LXXVIII, 1969.

very function of deliberation as serving to make one aware of precisely those factors which, together with background conditions, should determine which actions to take. By deliberating, one attempts to ensure that one's given (in the sense of causally determined) appetites and desires are effectively pursued.

Deliberation is (rather) an activity the very point of which is to bring to light factors and aspects of the situation and of myself, the awareness of which will be "causally sufficient" for my action. It is so to speak the product of deliberation that is efficacious not the process.²⁴

For example, if I am playing a game of chess and make a bad move, but not a very obviously bad move, I can probably predict whether, given time to deliberate, my opponent will take advantage of the resulting opening. I could probably predict that if he did not take the time to deliberate he would miss the chance, but if he took the trouble to do so he would realise his advantage, and go on to win. What is important is whether or not he becomes aware of his powerful position, and this in turn depends on his deliberating. Whether or not he does so is causally determined. Nonetheless, his awareness of that opening is a causally sufficient factor for his winning the game and although it exists before the action of winning, it was not in evidence prior to his deliberation. Returning to the earlier question of control, he remains in control of his

²⁴ Ibid., p.127.

game for as long as he is capable of deliberating effectively over his moves.

One advantage of calling an act deliberate, in the sense of intentional and fully considered, is the accompanying possibility that it is also rational in some objectively defined sense. However, for an indeterminist, the fact that an action has been causally determined, is often enough to exclude it from being deliberate in this way.

Behaviour is rational..... if, and only if, it can be influenced, or inhibited by the advocacy of some logically relevant consideration. But this means that if a man's behaviour is rational it cannot be determined by the state of his glands or any other antecedent causal factor. For if giving a man more or better information, or suggesting a new argument to him is both necessary and sufficient condition for, as we say, changing his mind, then we exclude, for this occasion at least, the possibility of other sufficient conditions...Thus to show that behaviour is rational is enough to show that it is not causally determined in the sense of being the effect of a set of sufficient conditions operating independently of the agent's deliberation or possibility of deliberation. So the discoveries of the physiologist and psychologist may independently increase our knowledge of why men behave irrationally but they could never show that rational behaviour in this sense was causally determined.²⁵

As has already been stated, there is no good reason to consider only the causal factors 'operating independently of the agent's deliberation'. Because we are concerned with the actions of human beings we must consider whether arguments or information can be properly interpreted as

²⁵ MacIntyre, op cit., p.34 (my emphasis).

causal factors, alongside more obvious determinants. The indeterminist wishes to say that the presentation of an argument cannot affect a causal chain, what is decisive is whether or not the individual accepts the argument; however, many determinists refuse to accept this view.

Presentations of arguments have all sorts of effects on the causal milieu: they set air waves in motion, cause ear drums to vibrate, and have hard to identify but important effects deep in the brain of the audience. So although the presentation of the argument may have no detectable effect on the trajectory of a cannonball, or closer to home, on one's autonomic nervous system, one's perceptual system is designed to be sensitive to the sorts of transmissions of energy that must occur for an argument to be communicated.²⁶

This thoroughly mechanistic vocabulary, although it is appropriate in this context, is not necessary to the determinist's argument. Man is a machine/system specifically designed to be affected by the input of information.

...so the discovery in such a system of a causal chain culminating in a bit of behaviour does not at all licence the inference 'since the behaviour was caused we could not have argued him out of it', for a prior attempt to argue him out of it would have altered the causal ancestry of the behaviour, perhaps effectively.²⁷

²⁶ D.Dennett, 'Mechanism and Responsibility' in T. Honderich (ed.), *Essays on Freedom of Action*, London, Routledge & Kegan Paul, 1973, p.174.

²⁷ Ibid.

The interesting question is how does the information have its effect? In his attempt to reconcile determinism and deliberation R.G. Collingwood concentrates on the meaning of the word "cause".²⁸ He offers three meanings, the first of which most adequately coincides with Hobbes's. This 'historical sense' of the word reconciles freedom and deliberation on the one hand, and universal causation on the other; and states that what is caused is the 'free and deliberate act of a conscious and responsible agent' and causing him to do it actually means offering him a motive to do it.²⁹

Collingwood explains that if an action is deliberate it is caused by the result of deliberation. This deliberation is in turn linked to external factors such as goals, circumstances, opportunities and the agent's own disposition and character.

'the conditions determining an action, together with an agent's information, his character, dispositions, and goals are not so much factors causing the deliberative process as reasons that make up the fairly methodical activity of deliberating and the decisive consideration terminating that activity.'³⁰

To give someone a reason for or against performing an action, or to provide a motive for him to act or refrain,

²⁸ R.G Collingwood, *An Essay on Metaphysics*, Oxford, Oxford University Press, 1940.

²⁹ Ibid., p. 285.

³⁰ Ibid.

is to cause him to decide how to behave. This is particularly true in the case of a person whom one knows well enough to discern which arguments/reasons/motives will prove effective - or on a more general level, if one has a concept of human nature which enables such assessment. If this is so then persuasion may be seen as a form of causation, with the reasons given, and not the individual's actual choice as the effective causal factor. In a determinist framework, reasons are weighted prior to the deliberative process, and by deliberating the individual simply becomes aware of the relative weighting of competing reasons. This is an important difference which explains why any particular process of deliberation can only ever present the same answer in a given situation.

According to Dennett, the determinist need not worry about the curious desire in some people that it should turn out to be true of anyone's acts that if exactly the same physical state of affairs should obtain again, some other act would come forth.³¹ This may be true, but the indeterminists' reluctance to conflate the physical and mental may in part explain their 'curious desire' in this context. It is however possible to discuss the operation of reasons within a causal universe without relying on an overtly mechanistic framework.

³¹ Dennett, *op cit.*, Ch.6, particularly pgs. 133, 138.

For the determinist circumstances and prior causal effects determine which reasons will prove effective in the sense of motivating or causing the agent to act, and so long as circumstances stay the same, the same action will result. A reason may be a reason without being a reason for me, but only then do I need to make a clear distinction between reasons and reasons/causes.

To sum up, a determinist as presented here acknowledges that the individual is in control to the extent that he can deliberate and make choices, and thereby effect the course of any causal chain which runs through him. By deliberating he ensures that the causal chain passes through him in a significant manner and allows it to latch on to his personal desires, plans and ambitions. The deliberative process is sometimes presented as a pause in the causal chain, but really it is a productive period. The fact that an agent ultimately chooses to do X rather than Y is causally determined, because the agent's basic self and his fundamental goals and desires are determined, and the same choice will always arise in identical cases. The individual is responsible for the actions that follow on from his deliberation because he caused them to happen, and because they were the product of a self for which he is responsible. To hold him morally responsible further requires that he intended the outcome, or should have foreseen it. However, if the individual is incapable of deliberation then we will not consider him to be in

control, and will hesitate in holding him responsible in the same manner. At present the account has many loopholes which we shall attempt to fill by looking at the specific version of deterministic decision-making offered by Hobbes.

Hobbes's determinism

Although Hobbes's lengthiest treatment of free will and determinism occurs in the work *Questions Concerning Liberty Necessity and Chance*, his fundamental statement on the matter is taken to appear in Chapter VI of *Leviathan*, where he defines the will in the following terms.

In deliberation the last appetite or aversion immediately adhering to the action, or to the omission thereof is that we call the will; the act, not the faculty of willing. And beasts that have deliberation must necessarily also have will. The definition of the will given commonly by the schools, that it is a rational appetite, is not good. For if it were there could be no voluntary act against reason. For a voluntary act is that which precedeth from the will, and no other. But if instead of a rational appetite, we shall say an appetite resulting from a precedent deliberation then the definition is the same that I have given here. Will therefore is the last appetite in deliberating.³²

This definition introduces the fundamental characteristics of Hobbes's account of volition.

³² *Leviathan* Ch.6, p.127. This definition is entirely in keeping with that offered in *Elements of Philosophy*, p.409.

i. The will is simply an appetite, albeit the last appetite in a process of deliberation. As such it is clearly a species of motion, appetites and aversions being defined in Volume One of the *English Works* as 'motions of the heart'.³³ As a species of motion it is subject to a causal explanation, and must be interpreted within the mechanistic structure of Hobbes's work.

...where there is appetite, the entire cause of appetite hath preceded; and consequently, the act of appetite could not choose but follow, that is of necessity hath followed.³⁴

ii. The fact that the will is determined does not exclude, for Hobbes, the possibility of deliberation, indeed will is a special sub-class of appetite precisely because it follows deliberation.³⁵

iii. The will is not necessarily rational, although there is nothing to say that it will not on occasions coincide with reason.

If the will does not determine itself, and it cannot be chosen by the individual in which it occurs, some other explanation must be found of how it is caused. In the

³³ *English Works* Vol. 1, Part IV. 30., s15, p.526.

³⁴ *English Works*, Vol 1, Part IV. 25, s13, p.409.

³⁵ *Ibid.*

Elements of Law Hobbes defines a cause in the following way:

... the aggregate of all the accidents both of the agents how many soever they be, and of the patient, put together; which when they are all supposed to be present, it cannot be understood but that the effect is produced at the same instant; and if any one of them be wanting, it cannot be understood but that the effect is not produced.³⁶

and in *Liberty, Necessity and Chance* he states,

That which I say necessitateth and determineth every action is the sum of all those things which being now existent conduce and concur to the production of that action hereafter, whereof if any one thing were now wanting, the effect could not be produced. This concourse of causes, whereof every one is determined to be such as it is by a like concourse of former causes, may well be called (in respect they are all set and ordered by the eternal cause of all things, God Almighty) the decree of God.³⁷

At first, this very wide concept of a cause risks sounding like the 'back to the beginning of time' style explanations the indeterminist finds so damaging. Yet Hobbes soon focuses in on a particular point on the causal chain, that is the creation of human appetites, and the way in which these come to determine action through the deliberative process.

In *Leviathan* Hobbes offers the following definition of deliberation:

³⁶ *English Works*, Part II. 9. s3, pp. 121-22.

³⁷ *Liberty, Necessity and Chance*, *English Works*, Vol V, No.XI p. 105.

When in the mind of man, Appetites and Aversions, Hopes and Feares, concerning one and the same thing arise alternately: and divine good and evill consequences of the doing or omitting of the thing propounded, come successively into our thoughts: so that sometimes we have an appetite to it, sometimes an aversion from it: sometimes hope to be able to do it; sometimes despaire or feare to attempt it; the whole summe of Desires, Aversions, Hopes and Feares, continue 'til the thing be either done or thought impossible, is that we call Deliberation.³⁸

Commentators have differed in their interpretation of Hobbes's account of deliberation, and indeed this basic definition is open to a number of interpretations. Hobbes tells us that deliberation occurs when a succession of desires, appetites, aversions and fears enter a man's mind, and it ends when the thing being deliberated over is either dismissed as impossible or done. This account does not suggest, as some have assumed, that appetites and aversions randomly come to mind as if someone has pulled the handle on a one armed bandit, and then come to a stop at some combination thereof. Rather there appears to be a selection process, but, as Hobbes said, one should not impute to this process a purely rational character.

As discussed in the previous chapter, appetites and desires are based on our sensory perceptions of the world and as such cannot be assumed to always be rational in content. ~

J.D. is mistaken in thinking I maintain that the will follows always the last judgement of right reason,

³⁸ Leviathan Ch.6, pp.126-7.

truth is it follows the last opinion of the goodness or evilness of the object of opinion, true or false.³⁹

However, this does not exclude the possibility of there being a rationale to the deliberating process. It is worth keeping in mind that 'the absence of a presupposition of rationality is not the same as a presupposition of non-rationality.'⁴⁰

To explain, Hobbes is committed to a deterministic view of human will largely because of his mechanistic interpretation of human behaviour. As stated in the previous chapter, man as a form of matter in motion will by the laws of science, be primarily concerned with staying in motion, and therefore will have appetites for those things which appear to promote or enhance vital motion. Given that the information the individual is processing has been picked up by the senses, and these according to Hobbes are notoriously unreliable, he prefers to state that one is dealing with 'opinion', which may or may not coincide with fact. Men will on occasions have appetites that will be contrary to their long term survival, and explanations must be found for this.

The fact that someone has an aversion to something is what makes it bad, and it is the fact that someone has an

³⁹ *Liberty, Necessity & Chance*, English Works Vol. V, No. VII, p.76.

⁴⁰ D. Dennett, in T. Honderich, op cit., p.169.

appetite for something that makes it good. This is determined by nothing other than the perceived effect that action or thing would have on the individual's self preservation. Because,

these words of Good, Evill, and Contemptible, are ever used with relation to the person that useth them: There being nothing simply and absolutely so; nor any common Rule of Good and Evil, to be taken from the nature of objects themselves; but from the person of the man (where there is no Common-wealth) or, (in a Commonwealth,) from the Person that representeth it; or from an Arbitrator or Judge, whom men disagreeing shall by consent set up, and make his sentence the rule thereof.⁴¹

[if something sounds good a man will choose it and if evil he will shun it. It is the following of one's hopes and fears that constitute the nature of election]. So that a man may both choose this and cannot but choose this. And consequently choosing and necessity are joined together.⁴²

In this second passage Hobbes asserts a belief that he defends continually against Bramhall's repeated attacks; that is, the idea that in an important sense, necessity and freedom are compatible. It will be argued here, that if one can accept Hobbes's arguments for this compatibility, one can then go some way towards answering some of the more general questions raised about determinism in the previous section.

⁴¹ *Leviathan*, Ch.6, pp.120-1.

⁴² *Liberty Necessity & Chance English Works Vol V., No. VII*, p.75, section in parentheses paraphrased.

It is clear by now that Hobbes has no time for the standard relationship between freedom and will, that is the freedom of the undetermined will. He dismisses the idea at various times as 'absurd' and 'without meaning'⁴³, and attributes man's continued belief in such an absurdity to, as much as anything, an ignorance of causation.

A wooden top that is lashed by the boys, and runs about sometimes to one wall, sometimes to another, sometimes hitting men on the shins, if it were sensible of its own motion, would think it proceeded from its own will, unless it felt what lashed it. And is a man any wiser, when he runs to one place for a benefice, to another for a bargain, and troubles the world with writing errors and requiring answers, because he thinks he doth it without other cause than his own will and seeth not what are the lashings that cause his will.⁴⁴

The first sense of freedom Hobbes addresses with respect to the will is perfectly consistent with the negative freedom stressed throughout his work, and it essentially side steps the problems caused by determinism.

From the use of the word Freewill, no liberty can be inferred to the will, desire, or inclination, but the liberty of the man; which consisteth in this, that he finds no stop in doing what he has the will, desire, or inclination to doe.⁴⁵

⁴³ *Leviathan*, Ch.5, p.113.

⁴⁴ *Liberty, Necessity and Chance*, English Works, Vol. V, No. 3, p.55.

⁴⁵ *Leviathan* Ch. 21, p.262.

Although a man's will cannot be free in terms of having determined itself, a man is free to the extent to which he is allowed to act upon his will. He defines liberty as:

'the absence of Opposition; (by Opposition, I mean externall Impediments of motion;)⁴⁶

If the obstacle to our performing some action is internal, says Hobbes, the problem is not lack of liberty, but lack of power. Such that the man who cannot fly because he has no wings cannot bemoan his lack of liberty, but the man who cannot walk because someone has tied him to a post is quite right to consider himself unfree. This view is quite commonly linked with the classic negative interpretation of liberty discussed in the first chapter. However, Hobbes is wrong to rest the distinction simply on externality and internality, as we could argue for cases where a lack of negative freedom results from 'intrinsic qualities of the agent'.

For example, a paraplegic does not have the power to go to the cinema in the way that we do, but we also have to say that he is not free to go to the cinema if we have not made the aisles big enough for his wheelchair. The condition of the individual (his disability) is unalterable but the environment is alterable, he cannot be given the power to

⁴⁶ *Leviathan*, Ch.21, p.261. In *Liberty, Necessity and Chance* he defines liberty as 'the absence of all impediments to action that are not contained in the nature and in the intrinsically quality of the agent.' p.367.

go to the cinema but he can be given the freedom to do so if we help him.

Rather it would seem the distinction should be between those obstacles and interferences that have been caused by some outside agency or which could reasonably be removed by outside agencies, and those which are simply caused by the impersonal forces of nature. The distinction, if taken to extremes would then apply to the case of a tree falling across my path (which would simply prevent me from passing), as compared to a barbed wire fence being deliberately placed there (which would remove my freedom to pass). If however, the landowner refused to remove the tree it also becomes an issue of liberty as opposed to ability or power.

A free agent then, is he who 'can do if he will and forbear if he will'. 'Can do' could entail having both the power (in Hobbes's terms absence of internal impediments) and the liberty (absence of external obstacles), but Hobbes only takes the second to be relevant to questions of freedom, the former being a simple question of ability. In this context a free agent can do as he wills if he is able to overcome internal obstacles and external obstacles, and both may on occasion be issues of liberty as opposed to power. If an obstacle can reasonably be removed by other agents or institutions their unwillingness to do so may constitute an obstacle to the individual's freedom .

One of the major criticisms levelled against Hobbes's account of liberty is that he allows for too great a degree of compulsion to be compatible with freedom. As Von Leyden points out, in the case of external impediments, Hobbes makes liberty consistent with a sizeable degree of opposition or compulsion.⁴⁷

He explicitly states in Chapter 21 of *Leviathan*

Fear and liberty are consistent; as when a man throweth his goods into the sea for feare the ship should sink, he does it nevertheless willingly, and may refuse to do it if he will. ⁴⁸

Consider the example Hobbes offers of a man who, under threat of death, gives his money to a robber. Hobbes says he did so freely, because he did as he willed. The man himself would probably argue that he acted against his will, but to Hobbes such a statement is absurd. The fact that he gave the money to the robber shows that this is what he willed. He could have attempted to run away, tackle the gun man or call his bluff, but he didn't take advantage of what Von Leyden calls his 'right of defiance',⁴⁹ he instead capitulated to the demands. Given that he was able to carry out his wishes and hand over the

⁴⁷ W. Von Leyden *Hobbes and Locke: The Politics of Freedom and Obligation*, New York, St. Martin's Press, 1982.

⁴⁸ *Leviathan*, Ch. 21, p. 262.

⁴⁹ Von Leyden, op cit., p.37.

money, Hobbes would continue to interpret this as a free action.

The definition of consent utilised here demands that it be freely given in the sense of uncoerced, and as discussed in the first chapter, the context within which consent is requested does much to determine whether it can be freely given. If you are asked to make a decision with a gun at your head the context does not appear to be conducive to free choice. Even if you can justify your choice, and you admit that you could not have done otherwise, you may regret having to choose in the way you did. The fact that having made your decision you were allowed to enact it is only a very small comfort.

At present the Hobbesian account of freedom appears very weak, and examples such as this will continue to work against its acceptance. However, if we read this account of freedom in conjunction with the second form of freedom Hobbes presents, it does become stronger.

The second form of liberty Hobbes works with is the liberty one has prior to bringing the process of deliberation to an end. This is quite different from the freedom outlined above, which began with the action, and was the ability to do or forbear as one wills. This liberty exists prior to acting, indeed prior to willing, and most importantly it can be neither endangered nor lost, though it can be [✓] _✓

terminated by the individual himself. This makes its enjoyment more secure as compared to the previous form of freedom which is 'as to the body'⁵⁰ and can therefore be more, or less, or none quite independent of the individual's wishes.

Here Hobbes is speaking of freedom as deliberation. Whilst you continue to deliberate you remain free because you have not yet been determined to act in a particular way on the issue at hand.

...and that of voluntary agents is all one to say he is free and to say he hath not made an end of deliberation.⁵¹

This form of freedom is presented as a moment of indeterminacy in a determined universe. Until the process of deliberation is complete the causal factors relevant to the future have not yet been assembled and things could proceed in a number of different ways. By stopping to deliberate you instigate a pause in the causal chain at the point at which it flows through you. When you do finish deliberating and act you are still free if you have been able to act in the way that you willed on the basis of your deliberation.

⁵⁰ 'But when the words Free and Liberty, are applied to any thing but Bodies, they are abused;' *Leviathan*, Ch.21, p.262.

⁵¹ *Liberty, Necessity & Chance*, English Works, Vol. 5, No. 20, p 363.

This second form of freedom is at once more promising as it ~~alone~~ highlights the role of the individual agent in the causal ~~chain~~ ^{and yet}, (however ~~it is~~) not without difficulties. Most obviously one must question Hobbes's assumption that the deliberative process is impervious to outside constraint, and that individuals are assured of this form of freedom. As will be shown below freedom as deliberation can and does come under attack within Hobbes's account.

However, it is possible to utilise the deliberating process in formulating another variety of freedom. To do so we must refer once again to the idea of reasons acting as causes, and use it in an examination of Hobbes's claim that deliberate acts are in some special sense voluntary acts.

If Hobbes's account of deliberation can accommodate a meaningful degree of individual choice and agency his voluntarism will be much more firmly rooted. Not only will the definition of freedom as the ability to do as one wills immediately become more meaningful, but it will also allow for a third form of freedom to emerge - a positive notion of freedom as acting in conformity with one's nature and goals, or, as Nozick calls it, 'tracking bestness'.⁵²

To explain: If you are capable of effectively deliberating and evaluating the strength of competing appetites and desires, then you will always choose to act in the way that

⁵² Nozick, op cit., p.317.

is most likely to further your goals. So the reasons that speak as reasons to me will be the reasons which effectively cause me to do what is best for me. However, achieving this within the Hobbesian framework, is by no means a simple task.

In a recently published article Philip Pettit and Michael Smith present an argument which they might well be surprised to see employed in the present context.⁵³ However, their discussion throws some useful light on Hobbes's account of deliberation.

According to Pettit and Smith, human beings are both intentional and deliberative beings. By this they mean broadly

Where the intentional conception says that every action issues from a set of beliefs and desires that rationalize it, the deliberative conception holds that somewhere in the process leading to action there is normally the belief that the option chosen has a property which provides some justification for choosing it.⁵⁴

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The interesting component for our purposes is the deliberative one which

⁵³ P. Pettit and M. Smith 'Backgrounding Desire' *The Philosophical Review*, Vol. XCIX, No 4, October 1990.

⁵⁴ *Ibid.*, p.566.

always involves a thought of the kind " x-ing has the property of being F, or conduced to a state of affairs that is F, so I should do x." ⁵⁵

However, in order to understand the significance of this more has to be said concerning intentionality. Pettit and Smith explain that under the intentional conception of human beings:

...every action is causally explained by the beliefs and the desires of the agent: specifically by beliefs and desires which rationalize it, and which causally explain it in virtue of rationalizing it: which causally explain it in the "right" way. ⁵⁶

Hobbesian man is intentional in the sense that his actions are motivated by a desire to stay alive, a desire that is enforced upon him by his biological nature. The most basic desires he shares in common with all men, but his experience of them will differ from others. Furthermore, to borrow Pettit and Smith's vocabulary, these desires may not always be present in the foreground of the decision making process rather they will be backgrounding desires.

Man is also a deliberative being because, as Pettit and Smith explain:

...the human agent always chooses among options on the ground that the option preferred, or the state of affairs to which it is likely to lead, has some

⁵⁵ Ibid., p.567.

⁵⁶ Ibid., pp.565-6.

putatively desirable property: some property which by the agent's lights, make it a suitable action to choose; some property such that its presence entails, so the agent thinks, that the action is right or good or permissible or whatever.⁵⁷

Freedom, it could be argued, involves simultaneously fulfilling both the intentional and deliberative condition, such that you are able to do that which you have decided most effectively satisfies your fundamental desires. "X-ing has the property of promising to satisfy my desire for S, so I should do x,"⁵⁸ and I am free to the extent to which no one prevents me from doing x either through their action or unjustifiable inaction.

If this is what freedom entails it is not relevant that the desires in question are determined. It is however relevant to ask whether these desires are really conducive to the agent's well-being. To this Hobbes would answer that we only desire those things which we consider to be conducive to our self preservation. Even though we may be mistaken as to whether this is the case in fact, all our actions are backgrounded by the desire to stay alive which is a necessary prerequisite to all further goods. We are free in a negative sense if we are left to follow our own lights, we are free in a positive sense if our deliberations correctly cause us to satisfy this background desire. It remains to be seen if this is likely.

⁵⁷ Ibid., p.566.

⁵⁸ Ibid., p.567.

In *Elements of Law* Hobbes says:

As will to do is appetite, and will to omit fear, the causes of appetite and of fear are the causes also of our will. But the propounding of benefits and harms, that is to say, of rewards and punishments, is the cause of our appetites and of our fears, and therefore also of our wills.... and consequently our wills will follow our opinions, as our actions follow our wills.⁵⁹

In the simplest cases our appetites and aversions are caused by other bodies that we come into contact with in the outside world. However, it is not the object we are averse to, but rather the idea attached to it, for example, the harm we see it threatening. If we have no reason to believe that dogs bite we will not be afraid of them. If we are bitten once, we may become more cautious, if we are bitten on a number of different occasions, by a number of different dogs, we shall form the opinion that they are dangerous, and probably avoid them. The same could be said of our own behaviour, if I discover by experience that a certain activity is painful, I will probably label that thing bad and attempt to avoid doing it.

Some commentators disapprove of the way in which Hobbes is willing to see opinions and actual appetites as interchangeable. To do so, they say,

⁵⁹ *Elements of Law*, Part 1 , pp.47-8.

is to risk conflating causes with reasons, reactions with actions and above all - being determined with being persuaded.⁶⁰

According to Riley, having a reason for aversion - an adverse 'opinion' - is not the same as being determined by 'aversion' as a general psychological cause. Bramhall is also unhappy with Hobbes's view of reasons as causes, and sees the major difference being that reasons act as motives, which determine not naturally but morally.⁶¹ In line with objections outlined above they believe that if I give you a reason for or against something it is your decision whether or not to accept it as valid, therefore I cannot have caused you to act in the way you choose. The only way to succeed is through moral pressure, if I am right and you recognise it.

Much of their unhappiness stems from the broader issue of Hobbes's refusal to adopt a dualistic approach to the question of the will, and his belief that one need not distinguish between a physiological and a moral will. In a dualist approach much is made of the supposed difference between willing to blink your eyes, for example, and willing something morally significant, such as making a promise. In the former case the action is seen as more conducive to a mechanistic and therefore a deterministic

⁶⁰ Riley, *op cit.*, p.502.

⁶¹ *Liberty, Necessity & Chance*, p. 279.

explanation, in the latter case this form of explanation is thought to be impossible.

Specifically it is felt that the introduction of the idea of opinions formed on the basis of reasons being causally effective, takes mechanistic determinism beyond its logical scope. The non-determinist believes that when presented with an argument, we *choose* whether or not to accept it. Only by *allowing* it to influence us is extra weight given to the reason we see as persuasive. Thus we end up with Nozick's image of the self chooser.

Hobbes, on the other hand, believes that we only choose on the basis of that reason **because** it already has the weight of validity attached to it. The argument is in some senses circular. Although something is only good because we choose it, we only desire and therefore choose it because we think it is good in some way. *If* we see a situation properly, we will see the best choice available, if we don't we won't. Either way the choice we do make is determined, and would be made again whenever identical circumstances arose. This is the case because what is there for us to see, and how we see it is determined by antecedent causes.

It is worth noting at this point that Hobbes may not be the thorough going moral subjectivist he appears to be at face value. There is in fact room within his theory for a

two-tier meta-ethical framework. As previously discussed men within the state of nature label actions, events and objects as good or bad in terms of their opinion of how these things aid or hinder their self preservation. These opinions may be false, and someone may label something good which, even though they have an appetite for it, is actually harmful. Something is only good, in the true sense, if it really is conducive to the continuation of life. Individuals may well be able to close the gap between opinion and knowledge as their experience and prudence grows, but it is also possible that a place might remain in the scheme of things for moral experts. These will be moral experts of a strange type, as their moral judgements will be based upon judgements concerning vital motion.

Returning to the question of motivation, it is useful to consider an example. It is not unreasonable to suggest that if I offer a heroin addict a free supply of drugs in return for his co-operation in some criminal activity, I am effectively causing that person to become a criminal. As stated before, what causes a man to act is the sum total of all conditions, personal and external relevant to the decision in question. Taking the example of the drug addict, the overriding factor has to be his addiction, but in a less extreme case the influences may be numerous. In the light of all these considerations one deliberates, and whilst doing so is naturally drawn towards the alternatives

that appear good, and away from those less favourable. If therefore someone introduces a motive for acting in a certain way they are effecting how good this course of action appears to be, and therefore causing you to move towards it. If they have correctly assessed your character, desires and circumstances the motive will be sufficient not only to attract you to the idea, but to make you do it.

However, it would be ludicrous in this situation to suggest that we were given a motive and left to consider whether or not to act on it; this was previously determined by antecedent causes, in the same way that we cannot fail to respond to our appetites. A given person in a specific situation will only ever react in one way to a given motive; only if a person's internal disposition or circumstances alter will their reaction adjust accordingly. If someone we know very well acts in a way that we would call unpredictable, we may have to accept that there has been a change of circumstances about which we are as yet unaware.

Whilst we may be happy to accept the inevitability of the choice, most people would be reluctant to then accept that such a choice was free in any real sense. If reasons or motives can act as causes then the room for manipulation seems even larger. In the case of the drug addict, although he is free in that he may do as he wills, if he is

attempting to reform and we tempt him back into bad ways, surely his freedom is threatened. If someone can cause us to act from motives we should not wish to choose, it is not so easy to say that our acts are in any real sense free.

Hobbes would possibly make a special case for someone suffering an addiction, explaining it in terms of some mechanical malfunction. In the case of the drug addict his addiction has prevented him from functioning like normal human beings. His actions are backgrounded by his desire for drugs, as opposed to a fundamental desire for self-preservation. However, problems also arise in less extreme cases.

Consider the case of an individual asked to inform on his fellow workmates, with the threat that if he does not he will lose his job. The man may genuinely feel that he has no alternative but to comply, but would probably be at pains to make clear that he does not wish to behave in this way. A threat is a powerful motive, and it is difficult to see it as compatible with freedom as usually understood. The coercion in these examples is blatant, but it is possible to be more subtle.

Consider the infrequently discussed case of the eloquent philosopher who indirectly manipulates a person's brain by bombarding his ears with words of ravishing clarity and a host of persuasively presented

reasons, thereby inducing all his desires, beliefs and decisions.⁶²

In essence this 'indirect manipulation' is potentially just as worrying. As Hobbes is at pains to point out, eloquence and persuasiveness are valuable assets, too readily exploited by the ambitious and unscrupulous. However, we could consider the other side of the coin;

... the delightful case of the well informed, truthful oracle who indirectly manipulates a person's brain by bombarding his ears with lucid and accurate warnings, made all the more irresistible by the citation of all the evidence in their favour and a frank account of the entire evidence-gathering operation.⁶³

This surely is the only context in which freedom and causation through the use of arguments and reasons are truly compatible. As was discussed in the opening chapter of this thesis, freely given consent implies that the individual consenting has made a rational decision based upon complete and accurate information. If by providing someone with such information I assist them in 'tracking bestness' and I thereby cause them to become free in a positive sense. They remain free in this sense if they are able to act through motives they would have **rationally** chosen for themselves even if my persuasion lends towards coercion. If, as Nozick puts it, they can withstand the

⁶² Dennett, *op cit.*, p.64.

⁶³ *Ibid.*, p.65.

knowledge of the causal ancestry of their acts, then they may still be free. As Hobart states:

all compulsion is causation, but not all causation is compulsion. Seize a man and violently force him to do something and he is compelled and also caused to do it. But induce him to do it by giving him reasons and his doing it is caused but not compelled.⁶⁴

Of course this is true in some but not all cases; reasons can also seize and coerce, a fact of which Hobbes was no doubt aware. Similarly eloquence can be employed to both good and bad ends. Both these facts are relevant to the next stage of our enquiry.

Consent, freedom and political obligation: the Hobbesian version

In Chapter One of this thesis a general criticism was levelled against theories of political obligation. It was suggested that political obligations often lack the specificity of paradigm case obligations, especially when they are collapsed into a single obligation to obey the law. This criticism is particularly apposite in a Hobbesian context, where the obligation to obey the law essentially entails an undertaking to do whatever the sovereign commands. Since the Sovereign is given a free hand to do whatever he considers necessary to ensure peace

⁶⁴ Hobart op cit., p.11.

and security within his nation, and is answerable only to God for his actions, the scope of a citizen's obligations is potentially vast.

This interpretation is rendered slightly more acceptable if you appreciate the special meaning Hobbes gives to the term obligation. When offering his definitions of the terms employed in the discourse of covenanting Hobbes does not introduce the distinctions offered in the first chapter between being obligated, having a duty and what one ought to do. In Chapter 14 of *Leviathan* he happily conflates the three:

And when a man hath in either manner abandoned or granted away his right, then he is said to be OBLIGED or BOUND not to hinder those to whom such right is granted, or abandoned from the benefit of it; and that he ought and it is his DUTY not to make voyd that voluntary act of his own.⁶⁵

This 'traditional assumption of similitude' is rather unfortunate and ultimately unhelpful to Hobbes's case, as distinguishing between forms of moral commitment could be useful to him. Remembering that the individual's choice is determined at a local level by considerations of self-preservation and security, an agent ought (prudentially) to do that which promotes these goods, and he will do that which he believes to do so. He ought (morally) to do that

⁶⁵ *Leviathan*, Ch.14, p.191.

which he has consented to do only if it does not work against his self preservation.

An interesting example of Hobbes's implicit acceptance of the distinction emerges from his discussion of the laws of nature and the extent to which they constrain an individual's actions in the state of nature. In the state of nature individuals are obliged to obey the laws of nature *in foro interno*, that is within the realm of conscience only. When they act against the laws of nature they are required to acknowledge the fact, but they are not required to modify their actions. The reason for this is straightforward. The laws of nature are prudential maxims, commands men should obey if they wish to promote their welfare. As all normal men necessarily wish to promote their welfare, every individual has a reason to obey them.

However, the maxims only work to promote individual welfare in environments where general obedience can be ensured, and individuals have sufficient security to place moral requirements on a par with their selfish concerns. Such an environment is unlikely to exist in the early stages of the state of nature, but may well become more feasible as the evolutionary developments outlined in the previous chapter take place.

So, in Hobbes's terms we should only accept an obligation if we expect to benefit thereby, and we cannot benefit by

anything which threatens our survival. The happiest situation is that in which the individual consents and thereby becomes obliged to do that which *actually* promotes his welfare and security.

It would appear therefore that within a Hobbesian context the content of consent does appear to be crucial, in that we can only take to be the actions of a fully rational autonomous individual those which promote the continuation of life etc. To clarify this point a lengthy quote is required:

Whensoever a man Transferreth his Right, or Renounceth it; it is either in consideration of some Right reciprocally transferred to himselfe; 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 himselfe. And therefore there be some Rights, which no man can be understood by any words, or other signes, 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 ayme thereby, at any Good to himselfe. The same may be sayd of Wounds, and Chayns, 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 a mans person, in his life, and in the means of so preserving life, as not to be weary of it.⁶⁶

Obligating yourself is a voluntary act and, according to Hobbes, 'of all Voluntary Acts, the Object is to every man

⁶⁶ Leviathan, Ch.14, p.192.

his own good'.⁶⁷ This idea is born of his mechanism, but it fits in well with the classic social contract model which involves giving up certain individual rights in order to permit a government to secure others on your behalf. Of course Hobbes does not allow the individual complete discretion when deciding which rights to give up or transfer. Given that the object of the exercise is to benefit the obligee, he assumes that there are certain rights which are, for want of a better word, inalienable.

The message is clear, an individual cannot voluntarily take on an obligation unless (he at least expects) it will benefit him, and because no man can benefit from his own death and suffering, the rights which protect him from these states can never be renounced or transferred. In fact Hobbes puts this in the strongest possible terms:

And therefore if a man by words, or other signes, seem to despoyle himself of the End, for which those signes 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.⁶⁸

In both logical and moral terms you cannot be obligated to do that which threatens your life and security, and most interestingly, if anyone makes such commitment 'he is not to be understood as if he meant it.'

⁶⁷ *Leviathan*, Ch.14, pp.192, 209.

⁶⁸ *Leviathan* Ch.14, p.192.

It is worth noting at this point that Hobbes's prohibition upon consenting to certain things undermines his commitment to negative liberty - that is freedom in terms of being allowed to do as you will. It also allows for examples of coercion to be reinterpreted as an enhancement of freedom after the event. If we can show an individual that their agreement to do X contributed to their 'tracking bestness', then we might be able to override their dissatisfactions concerning what motivated them to agree to do X. So for example if we force someone to stop taking drugs by cutting off their supply, although they did not want us to do this at the time, they might in retrospect state that we had given them a new form of (positive) freedom by doing so. This second option smacks of Rousseauian style freedom which may be forced upon the individual,⁶⁹ but it would appear that Hobbes allows for the possibility of making people free, maybe even against their wishes. This is particularly true of men in the state of nature who may only base their deliberations upon information supplied by the senses, which Hobbes considers unreliable.

We therefore have a double task ahead of us if we wish to establish whether or not an individual is obligated to obey the sovereign in a Hobbesian commonwealth:

⁶⁹ J. J. Rousseau, *Social Contract*, ed M. Cranston Harmondsworth, Penguin, 1968.

First, because of Hobbes's commitment to the social contract model we have to show that the individual consented to obey.

Second, because of Hobbes's particular interpretation of obligation, we have to show that there is at least a reasonable chance of the individual benefitting from consenting to obey the sovereign.

Only the first enquiry is directly affected by the question of determinism, but some attention will be given to the second issue as well in the interests of a complete argument.

Do Hobbesian individuals consent?

Given the definition of consent we are working with, we have to establish the following facts in order to be able to say that an individual has consented:

1. that the individual intended to give the sovereign absolute power,
2. that he did so freely,
3. that he acted as a rational autonomous agent in doing so,
4. and that he made his choice on the basis of full and accurate information.

When speaking of commonwealth by institution the consent given is expressly stated as opposed to tacitly assumed, therefore we do not meet the problem of whether the individual intended to consent. However, we still have to ask whether the individual consented to do what we are assuming him to have consented to, in this case to obey the absolute rule of an individual sovereign.

In Chapter 21 of Leviathan Hobbes says the following:

For in the act of our Submission, consisteth both our Obligation and our Liberty; which must therefore be inferred from arguments taken from thence; there being no obligation on any man, which ariseth not from some free act of his own; for all men equally are by Nature Free. And because such arguments must either be drawn from the expresse words, I Authorise all his Actions, or from the Intention of him that submitteth himself to his Power, (which intention is to be understood by the End for which he so submitteth;) The Obligation and Liberty of the Subject, is to be derived, either from those words, (or others equivalent,) or else from the End of the Institution of Sovereignty; namely, the Peace of the Subjects within themselves, and their Defence against a common enemy.⁷⁰

This pronouncement would appear to allow us to read into the individual's consent the authorization of the Sovereign to do whatever he considers necessary to ensure the ends for which consent is given. In his account of the original contract Hobbes explicitly states the terms of the covenant, and is unambiguous about the extent of the individuals obligations. Intentionality may therefore be assumed both in terms of the individual intending to give

⁷⁰ Leviathan, Ch. 21, p. 268.

consent, and in terms of the individual intending to give consent to X as opposed to Y, or Z.

The question of freedom we have discovered emerges at a number of levels, and we now have a type of freedom available to us, which fits comfortably within the deterministic framework Hobbes constructs. As well as the freedom of being able to do what one wills (negative freedom), and the freedom enjoyed whilst deliberating (elective freedom) there is the freedom that arises out of self-realisation and tracking bestness (positive freedom). We now have to see how these concepts of freedom work alongside consent.

Given the assumption that choices are determined we need to show if and how the choice to consent may yet be said to be free. As has already been stated, Hobbes often shifts the emphasis away from the choice, and locates (negative) freedom at the point at which the choice is acted upon. This is of course relevant in that we would hope to ensure that once the individual has consented to do X in return for Y, nothing is done to prevent both parties performing their side of the deal. However, we need to show that there is a way in which the choice to consent to be ruled may be free, and the best way of doing this is to begin by showing how it may also be unfree or coerced.

In the preceding discussion much emphasis was placed on the role of deliberation in a deterministic framework. Deliberation is crucial to the survival of freedom first because an individual remains free until they have brought their deliberations to a close, and secondly, because by deliberating they exercise control over the causal chain and ensure that their choices promote their liberty in terms of tracking bestness. It is therefore a necessary condition for an act of free consent to ensure that the individual is afforded an opportunity to deliberate.

Because of his mechanistic first principles Hobbes sees man as fundamentally self-preserving, and subject to appetites for those things which enhance vital motion. A process of deliberation will involve comparing various actions to discover which is most conducive to this end. Sometimes the information he is dealing with will be unreliable, on other occasions some mental malfunction will cause him to lose sight of his true aims, but by and large he should, as his prudential powers develop, be able to deliberate effectively.

What causes man to deliberate is his wish to do the best thing, and it is the fact that man has this wish which sets him apart from other forms of matter in motion. What causes him to recognise this wish is his increasingly prudential if not fully rational nature. He realises that continued motion or life is a necessary prerequisite to all

further goods, and that his aim is to ensure for himself a life of continual satisfaction free from the fear of violent death. Man's image of what the best thing is therefore broadly fixed, but it is also determined by his *individual* nature, and will differ slightly from person to person as that nature will differ. Certain fundamental assumptions about the good life will be shared by all, in the same way as certain basic human characteristics are shared. What causes these shared characteristics may be lost in an interwoven tale of biological causes, but the characteristics themselves can be taken as given by all those who share the same theory of human nature. For this reason Hobbes feels safe to proclaim that those who choose to reject those things considered fundamental to human welfare do so through ignorance or madness, and their consent should not be seen as binding.

It was also stated that part of an individual's freedom within a deterministic universe entails them being happy with, or reconciled to, the causal ancestry of their actions. If Hobbesian man reflects upon his choices, he will realise that they are all backgrounded by the fundamental desires which are his biological inheritance—most obviously the desire to stay alive. There is little point in regretting these biological drives which will necessitate and motivate all his actions as they are a constitutive element of being a human. However, what he can regret are those occasions when he is forced to

sacrifice something else which is dear to him, in order to satisfy his most fundamental desires.

Returning to the example of the gunman. Hobbes says that you choose to give your money to the gun man, whereas most people would consider this an example of coercion as opposed to free choice. Although the hostage would probably continue to believe that he made the right choice, he will regret that the choice had to be made. The hostage was coerced because in this situation another individual relied upon the fact that he would have to satisfy his desire to stay alive, and made the cost attached to doing so artificially high.

This analogy can be usefully applied to the question of consenting to be ruled. Hobbesian man's motive for entering political society is to ensure his security and preserve his life. If he knows by experience that his present *natural* condition does not allow him to satisfy his desires, and if he can be shown by demonstration that a particular form of government will allow him to do so, then he will freely consent to that government. Even if he is motivated primarily by fears arising out of his present existence, the fears are rational, the condition is natural, and what he consents to is required to alleviate them.

However, if an individual has fears instilled in him, not by his experience but by the tales of others we have to enquire more closely. If we are talking about man outside the state of nature his reckonings may well be dependent upon another's account of a hypothetical state of nature. We then have to ask whether the tale he is told offers an accurate account of how things were, could have been and might still be, or whether they fulfil a purpose similar to the highway man's gun? It is possible that the picture offered will be an accurate account of reality (as far as that is possible), and then the free nature of consent is unaffected. If however, the account given misrepresents the costs attached to withholding consent, and perhaps also the benefits to be derived from giving it, the freedom of choice is diminished.

Hobbesian man has to (in the sense that he is determined) make the choice which he considers most appropriate in the light of his fundamental desires and aversions. Making the right choice is dependent upon having an accurate picture of his present reality, and a fairly reliable vision of the future. If this information is deliberately withheld or misrepresented then coercion accompanies determinism. Similarly, if one individual places another individual in a position where they can only choose to sacrifice something of value to them, because the alternative is death or suffering, coercion has occurred. This is not because they have acted from motives they would not choose

to act upon *per se*, but because an unnatural situation was created within which they were forced to act upon these motives, instead of those that they would have more immediately followed.

Concerning the rationality and autonomy of the individual we have a choice of interpretations. It was argued in the previous chapter that men emerge from the state of nature equipped with prudence. Full rationality, as Hobbes defines it, is not available to them as this has to be cultivated, and this is not possible whilst man's existence remains insecure. However, it would appear that men are capable of making decisions which we would ordinarily pronounce rational, and they are also capable of exercising autonomous - albeit determined - choice.

Hobbes's account allows for this reading, and he implicitly acknowledges the evolution of man's nature within the state of nature. However, it has been argued here that in the interests of the text as a polemic he prefers to present a more dramatic and necessarily less rational (in ordinary usage terms) picture of man outside the commonwealth.

Without going over old ground we shall simply state that man will be sufficiently autonomous, and will be capable of deliberating effectively when asked to consent. Whether or not he is given the opportunity to do so is a separate

question. What should be said however, is that given the definition of autonomy we are working with, there is no reason to suppose that handing power over to the sovereign necessarily entails a loss of autonomy. As discussed in Chapter One, if the decision to do so is a rational decision based upon the valid belief that the sovereign can achieve security and prosperity for the subject, then the subjects remain autonomous although no longer independent.

This brings us on to the final issue, which is that of information. We have already shown how the issue of information is crucial to the question of whether or not consent has been freely given. In order to clarify the argument we should now look at the Hobbesian social contract and assess whether the individual is provided with information which facilitates, or impedes, the consenting process.

Information relevant to the deliberations preceding consent is crucially important not only because the freedom of the consent relies upon its being accurate, but also because the valid creation of an obligation relies upon its facilitating an accurate cost-benefit analysis. If the individual's consent is to create an obligation in him, we have to be able to show that what he has consented to do will benefit him in some real sense.

It is important to view the question of information relevant to a Hobbesian social contract from two perspectives. First, information acquired through experience, that is the information available to those who have lived in the Hobbesian state of nature or an approximation thereof. Secondly, information provided by a second party, such as the account of life in the state of nature offered by Hobbes to his readership. One could also consider a third type of information that based upon deduction and demonstration carried out by individuals. Assuming this is based on true definitions and valid assumptions it is the best type of information but Hobbes believes that few will bother with such proofs preferring to rely on the reasoning of others.

Given that men will make decisions based upon their own experience, if their experience of the state of nature differs from the traditional account in the way suggested in the previous chapter, it is possible - indeed probable - that the decisions they make concerning the appropriate form of political rule will not coincide with Hobbes's recommendations. This in turn has implications for future generations of citizens who will be bound by the consent of their forefathers. Without going into great detail we can imagine that men emerging from a state of nature that had developed to the stage described in the previous chapter would be less convinced of the need for absolute rule ad infinitum. As man's nature is tempered by the development

of prudence, and eventually reason, he will begin to appreciate the benefits of commodious living, and perhaps at the same time begin to doubt the need for a Sovereign with the far-reaching powers Hobbes describes.

Most interestingly for us, however, is the effect that Hobbes's account of the state of nature would have upon his readership. Despite his initial commitment to scientific enquiry it has been argued that Hobbes presents a picture of man in his natural state which stands unsupported by his scientific conclusions. It is likely that he came to heed his own warnings about the inadequacies of science when met with a popular audience,

The Sciences are small power; because not eminent; and therefore, not acknowledged in any man, nor at all, but in a few, and in them, but of a few things. For Science is of that nature, as none can understand it to be, but such as in good measure have attained it.⁷¹

In its traditional form the account 'seizes and compels', and demands that those who care about their security consider the proposals Hobbes presents. Fear is introduced as a motive, it does not necessarily spring naturally from the reader's own experiences, even though Hobbes may wish to persuade them otherwise. Of course historical context does throw some useful light here given the background of the civil war, but I would suggest that the account is designed to terrify those for whom the war is distant history as

⁷¹ *Leviathan*, Ch.10, p.151.

well as those who lived through it. If you believe in Hobbes's state of war, he only has a little more work to do to get you to accept his absolute ruler. The question is will you have done so freely?

I suggest that we have discovered another fundamental weakness of Hobbes's theory. We can only show that men will freely consent to the Hobbesian sovereign if we accept that they do so to avoid the state of nature as represented by Hobbes. However, we can only show that they are free and autonomous beings capable of giving consent if we present their experiences in the state of nature quite differently. If the state of nature is a fiction, or at the very least an exaggeration, we have a problem in explaining why individuals consent: if the state of nature is as Hobbes's traditionally presents it we have a problem in explaining how men consent. It is my suggestion that a political philosopher should be more concerned with resolving the second problem, but a political pamphleteer will be more concerned with the first.

If we are forced to rewrite the state of nature as has been suggested, it is difficult to argue that men will rationally and autonomously choose to be ruled on a long term basis, in the manner Hobbes suggests. If we then say that Hobbes may have been aware of this fact, and deliberately exaggerated certain features of his account and underplayed others, we have to ask whether those who

accept the reality of his account, or find themselves seized by his imagery, are in a position to rationally evaluate his proposals.

If his account of the state of nature is inaccurate, Hobbes could be accused of polluting the deliberative processes of those who read it. Men lose their freedom to consent not because they are determined beings, but because Hobbes takes advantage of this fact and attempts to determine their actions in a particular direction. The account of the state of nature provides men with reasons to accept an absolute ruler. Although he could have freely consented Hobbes has robbed the reader of the opportunity to choose effectively amongst a variety of options.

This is an unpleasant conclusion to reach and it would appear that there is only one way in which Hobbes may be redeemed, if not fully then at least partly. It was stated above that the information upon which the decision to consent was based was important for two reasons, the second being the need for information to facilitate the cost benefit analysis required to back an obligation. So far we have only discussed information relevant to part of the story, that is information concerning the state of nature. Further information is required.

The covenant basically takes the following form: due to the dangers of the state of nature men come together and agree

(with one another) to pass over their natural right to do whatever they consider necessary for their self preservation to a sovereign who will in return provide peace and security. If the state of nature is not necessarily as dangerous as Hobbes says, then it is difficult to understand why men would agree to pass over all their rights (with the few famous exceptions) and why the sovereign should be made so powerful.

This is not to say that there is no way of understanding why men will leave the state of nature and institute government. As Locke informs us the 'inconveniences' of life outside a political system are enough to explain this. The difficult questions are 'why the Sovereign?', and 'why such absolute power'? If Hobbes can offer answers to these questions which would remain valid given our re-reading of the state of nature, there is a chance that we can view the situation more favourably.

If it can be shown that life under the Sovereign is a good life irrespective of whether the alternative is a 'solitary poor nasty brutish and short' existence, we might be able to say that the account of the state of nature is a necessary means to a justifiable end. In other words, Hobbes has sacrificed the proper working of the consent process in order to ensure that men will what is best for them.

The popular image of the Sovereign is understandably bleak, and many would concur with Locke's view that the journey from the state of nature to the commonwealth is akin to escaping a pack of wolves only to find yourself in a lions den. It is not my intention to mount an enthusiastic defence of Hobbes's absolutism, but in the interests of fairness it is necessary to see if it is possible to present it in a more palatable form.

What do they consent to?

In Chapter 18 of *Leviathan* Hobbes outlines the powers of the Sovereign, and in Chapter 19 he explains why he prefers monarchy to other forms of government. Later chapters are sprinkled with passages awarding the Sovereign yet greater powers including the right to suppress even correct philosophy if it undermines the laws of the Commonwealth.⁷²

It is difficult to argue that the enormity of the sovereign's power is balanced by the liberties of his subjects, which are outlined in Chapter 21 of *Leviathan*. However, the following points should be borne in mind.

1. The power of the sovereign lasts only as long as he is able to exercise his power effectively towards the ends for which it was given to him.

⁷² *Leviathan*, Ch.46, p.703.

2. The ability to ensure peace and security depends upon the obedience and support of his subjects. This is true both internally, and with respect to other nations with whom the commonwealth will remain in a state of war.

3. The obedience of subjects will be assured only for as long as they believe that the sovereign is ensuring their peace and security.

Although Hobbes is less than clear concerning the manner in which the original Sovereign will be selected, he does suggest that he will be chosen because of his personal qualities:

For he is Worthiest to be a Commander, to be a judge, or to have any other charge, that is best fitted with the qualities required to the well discharging of it;⁷³

Amongst these will be rational faculties which surpass those of the majority of men.

He who hath by Experience or Reason, the greatest and surest prospect of Consequences, Deliberates best himself; and is able when he will, to give the best counsell unto others.⁷⁴

Having been given power, the Sovereign will have powerful utilitarian reasons to ensure that his subjects remain

⁷³ *Leviathan*, Ch.11, p.160.

⁷⁴ *Leviathan*, Ch.6, p.129.

loyal to him. He is like them a form of matter in motion, and he wishes above all else to stay in motion. His ability to do so, given the state of war that exists outside his boundaries, is inextricably bound up with the fortunes of his subjects.

...considering that the greatest pressure of Soveraign Governours, proceedeth not from any delight or profit they can expect in the dammage, or weakening of their Subjects, in whose vigor consisteth their own strength and glory; but in the restiveness of themselves, that unwillingly contributing to their own defence, make it necessary for their Governours to draw from them what they can in time of Peace, that they may have means on any emergent occasion, or sudden need, to resist, or take advantage on their enemies. For all men are by nature provided of notable multiplying glasses, (that is their Passions and Self love,) through which, every little payment appeareth a great grievance; but are destitute of those prospective glasses, (namely Morall and Civill Science,) to see farre off the miseries that hang over them and cannot without such payment bye avoyded.⁷⁵

But he must be careful as the image of the state of war will be a distant one (despite Hobbes's attempts to keep it alive). The citizen must be made aware of the liberties and advantages he enjoys by being a subject of the commonwealth.⁷⁶ Civil liberties which exist in the areas

⁷⁵ De Cive, Ch. Xiii, sect. 8.

⁷⁶ As Hobbes points out in Chapter 30 of *Leviathan* ensuring the safety of his citizens does not mean 'bare preservation, but also all other contentments of life, which every man by lawful Industry without danger, or hurt to the Commonwealth shall acquire to himself.' p.376. He has previously stated in Chapter 27 that 'When a man is destitute of food or other thing necessary to his life, and cannot preserve himself any other way, but by some fact against the Law; as if in a great famine he take food by force, or stealth, which he cannot obtain for money or charity he is totally excused.' p.346. The sensible

in which the law is silent, and the most profound form of liberty which is freedom from the fear of death. For as long as this liberty exists men remain free in the most meaningful sense available, and the way is open to develop yet more freedom in the sense of positive freedoms acquired through self- development and living the good life.

Leisure is the mother of Philosophy; and Commonwealth the mother of Peace, and Leisure.⁷⁷

The commonwealth affords men the time and opportunity to develop themselves as rational human beings, and if they achieve this their deliberations will no longer be as dependent upon the vagaries of their senses, and the contingent effectiveness of prudence. However, the conclusion Hobbes refuses to reach is that the birth of reason might lead to the end of the commonwealth.

The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be reinforced. The sovereignty is the soule of the Commonwealth, which once departed from the Body, the members doe no more receive their motion from it. The end of obedience is Protection; which, wheresoever a man seeth it either in his owne, or in

sovereign therefore provides for his citizens in order to avoid external and internal disruption, and acknowledges that 'the good of the Sovereign and people cannot be separated.' p.388.

⁷⁷ Leviathan, Ch.46, p.683.

another's sword, Nature applyeth his obedience to it, and his endeavour to maintain it.⁷⁸

The problem for Hobbes is that if the Sovereign performs his job effectively he will, in the eyes of rational men, render himself redundant. In order to ensure that a majority of men do not come to share this conclusion Hobbes works hard to discredit the authority of such men, and counsels individuals to reach their own conclusions (unless they follow the opinions of the sovereign). The individualism championed by Hobbes has as much to do with fear of collaboration as it has to do with anything else.

He also offers his picture of the state of nature as an ever present possibility in order to counter men's criticisms of their present state. Hence the need for a vivid picture of a fearful existence which no man could rationally choose over any alternative offered. And the message that remnants of that terrifying existence persist even in ostensibly well ordered societies.

Ultimately, Hobbes has to rely upon the inaccurate information concerning the state of nature in order to disproportionately promote the benefits of life in the commonwealth. If men were left to decide without this dark spectre of an 'unavoidable' alternative, their

⁷⁸ *Leviathan*, Ch.21, p. 272.

deliberations might throw up a quite different system of rule.

The greatest freedom offered by life under the sovereign is the most dangerous freedom to that sovereign - rational autonomous men will be less susceptible to Hobbes's coercive attempts, they will see human nature for what it is, and trust themselves to be ruled in a different manner. It is my suggestion that the commonwealth is doomed not because of the sovereign's inability to exercise power, but because of the subjects' inevitable eventual realisation that the purpose for which that power has been given does not entitle the degree of power given. Just as human nature evolves in the state of nature, government will evolve in the commonwealth, and the Sovereigns' days will be numbered unless he significantly renegotiates the extent of his power.

Conclusion

This chapter has covered a great deal of ground, but the basic conclusions can be presented fairly simply. Hobbes's determinism does not in itself raise serious problems for his social contract theory, despite the fact that voluntarism and determinism do not appear mutually compatible at first. By looking at Hobbes's account of deliberation, and the forms of freedom he sees coming out

of it, it is possible to show how a choice may be determined and in some real sense free. Basically, those choices are free which correctly 'track bestness' or, in mechanistic terms, promote vital motion.

However, given the definition of consent we are working with something further is required to ensure a distinction between free determined choice and coercion. This is where the problems set in. Individuals can only make choices which correctly track bestness if they can acquire full and accurate information pertaining to their choice. There is a built in weakness to the system, as men gain information through their senses which can be unreliable, but Hobbes exacerbates this problem with respect to certain forms of information.

As was argued in the previous chapter Hobbes's scientific method should have thrown up a rather different picture of the state of nature to that which he offered. However, in the interests of his political aims he chose to exaggerate certain features of the account and suppress others. This has serious consequences for his claim to be committed to a consent-based theory of political obligation.

In the terms of his own theory men should only accept obligations if they expect to benefit thereby. To show that they will benefit sufficiently under the rule of the sovereign Hobbes's relies upon a comparison with life

without rule of any sort. He also relies upon a magnified and incomplete image of that life, and thereby deprives any individual who refers to his account of the information necessary to make a rational choice. He coerces through the use of imagery and ideas which get their power through trading on man's greatest fear - the fear of painful death.

This was not the only route available to Hobbes. He could have used his information concerning human nature, and his understanding of determinism in a far more positive manner. It is even possible that he could have achieved support for his political recommendations by so doing. If instead of relying upon fear as a motive he had relied upon the idea of a good life he could have persuaded without coercing, and forced people to be free through promises of a life not yet achieved rather than the threat of a life best forgotten.

As man's psychology develops, and his experiences change, the immediate fear of death will recede, and the basic desire to stay alive will develop into a more sophisticated desire to live well. If Hobbes can construct an image of the good life conducive to man's basic nature then his political recommendations can stand on their own, without the support of the state of nature. It is therefore necessary to evaluate the life offered under the sovereign to see if it is a good life in the sense required.

In terms of the negative liberty enjoyed by subjects the Hobbesian commonwealth is unpromising to say the least. In terms of positive liberties available the picture is slightly better. Released from the insecurity of the state of nature men will be able to develop the arts and sciences that were unavailable to them in their previous state. They may enjoy familial and commercial relationships, and the benefits accruing from these. On the re-reading offered here men will have experienced some level of civilisation within the state of nature, and will have been able to develop their moral faculties within their family units. Experience will show them that the way forward lies in the development of rationality, which will in turn reconcile them to the objective morality provided by the laws of nature.

Men who actually live in the state of nature will understand the way forward on the basis of their experience. Men who have not experienced life in that state could be ^rbought to see the nature and the benefits of ^rthe good life by argument and demonstration. Had Hobbes been confident enough in the power of science as opposed to rhetoric he would have attempted to do this. Although bad experiences are the best teachers, and fear is often the most effective motive, neither sit well with consent.

The conclusion reached is this. Hobbesian men emerging from a state of nature are able to give consent in a

meaningful way. It is not however clear that they would consent to the form and extent of rule Hobbes proposes. If they did, it is highly likely that the nature of rule would have to change as men and society developed. Men who are asked to consent at any stage after the initial covenant are at an immediate disadvantage, given that they cannot rely on experience, but must rely on the accounts offered by others. Hobbes offers such an account and in doing so he deprives those who are moved by his picture of life in the state of nature, of the ability to deliberate rationally and to make a free choice. Hobbes offers a good example of the way in which information concerning man's nature and the manner in which his actions are determined can facilitate manipulation. This confusion is doubly regrettable if one is unconvinced by Hobbes's claims that life in the commonwealth is a good life *per se*.

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Chapter Two

Locke on Oughts and ~~Intensions~~

John Locke is generally regarded as a classic proponent of consent-based political obligation. However, generations of Locke scholars have found it difficult to reconcile his commitment to a voluntarist ~~theory~~ of political obligation with the tacit consent theory he ~~claims~~ in his *Second Treatise of Government*.¹ Common failed analyses of the social contract as an isolated construct, and of the notion of consent working within the context of the contract, has led commentators to underestimate the significance of other less overt ~~aspects~~ aspects of the work. A failure to grasp the ~~central~~ role which these ideas play within the larger ~~political~~ framework, ~~mean~~ commentators have overemphasized the weaknesses of the framework, and made too much in the idea of consent-based obligations. It will be argued that individual express consent actually plays less of a role in Locke's theory than one might at first imagine.

¹ Unless otherwise stated all references to Locke's *Second Treatise* refer to *Two Treatises of Government* by P. Laslett, Cambridge University Press, Cambridge 1960. References will be given by section and page number. For the questions raised concerning the theory of tacit consent see for example D. C. Blyth's "The Social Contract" in *Essays Moral, Political and Literary* (Oxford University Press 1961); J. G. R. Heaton's *The Problem of Political Obligation*, Cambridge University Press, 1971; and F. H. Plamenatz's *Consent, Freedom and Political Obligation* (Oxford, Oxford University Press, 1971).

Locke's notion of consent has quite rightly been criticised at a number of levels, but to give it a fair assessment it must first be recognised as only a small part of a much larger whole. In this chapter I wish to illustrate this point by reference to the interrelationship between Locke's theory of natural law and his theory of political obligation. I hope to show that the relationship between these two elements of his theory does much to compensate for the failings of each when considered separately. I am also concerned to show that the political purpose for which the concept of natural law was employed does much to explain the particular way in which the Law of Nature is presented by Locke.

Using the distinctions made in the first chapter of this thesis, it will be argued that the basis for civil government within Locke's theory is profoundly moral, but that it may have more to do with what men ought to do, than with the specifically political obligations they consent to accept.

Responses to Locke's Theory of Natural Law

Of course much attention has been paid to Locke's theory of natural law in the past; but it has often been employed in the defence of somewhat extremist interpretations of his work, ranging from Strauss's claim that Locke himself did

not believe in the theory he put forward,² to Green's assertion that it was the most important element of his work, rendering the contract obsolete.³ Only recently has there been a concerted attempt to integrate the theory into the political framework as a whole, and assess its specifically political applications. This positive step was developed by such figures as Ashcraft, Anglim and Riley,⁴ who, within the vocabulary of Locke scholarship have been labelled the 'Restorationists'. Yet, even amongst these writers there has been a tendency to stop short of recognising the full implications of their theorising.

Most importantly, there has been a failure to appreciate the significance of the way, or more properly ways, in which Locke presents his theory of natural law. Many commentators have chipped away at Locke's 'proof' of God's existence, and his 'mathematical' aspirations, but few have asked why, on the question of natural law, he persisted along what seem to be two contradictory theoretical paths.

² L. Strauss, *Natural Right and History*, Chicago, University of Chicago Press, 1953, Ch V section B.

³ T.H. Green, *Lectures on the Principles of Political Obligation*, London, Longmans, 1941.

⁴ Each of these writers has published a wealth of excellent material, but most relevant to the present enquiry are R. Ashcraft, 'Locke's State of Nature, Historical fact or Moral fiction?' *American Political Science Review* LXII, 1968: P. Riley, 'On finding an equilibrium between consent and natural law in Locke's political philosophy', *Political Studies* XXII, 1974: R. Anglim 'On Locke's State of Nature', *Political Studies* XXVI, 1978.

In my view these questions are as important and relevant as those concerning the actual content and usage of the laws, and I intend to address the question of Locke's presentation of the argument for natural law in some detail.

In the *Second Treatise*, Locke's premier political text, he assumes a degree of foreknowledge and understanding of his theory of natural law that might appear unwarranted, stating that;

though it would be beside my present purpose to enter here into the particulars of the law of nature, or its means of punishment, yet it is certain there is such a law and that too, as intelligible and plain to a rational creature, and a Studier of that Law, as the Positive Laws of Commonwealth, nay possibly plainer:⁵

As Peter Laslett remarks,

Throughout the political work the expression natural law is used with suave assurance, as if there could be no doubt of its existence, of its meaning, of its content in the minds of author and reader.⁶

Von Leyden claims that 'for his purposes in this *Treatise* it was sufficient to have introduced the idea of the law of nature as the declaration of God's will, and as the

⁵ *Treatise II*, 12, p.315

⁶ *Introduction to Two Treatises*, op cit., p.94.

standard of right and wrong⁷ and leave it at that. Whilst Riley concludes that it would not have been advantageous for Locke to enlarge on the difficulties of natural law theory within the *Second Treatise*.⁸

Locke's friend Tyrrell on the other hand wrote

...I wish you would publish your owne thoughts upon this excellent; and material subject; since I know you have made long since a Treatise or Lectures upon the Laws of Nature which I would wish you would revive and make publick, since I know none more able, than yourself to do it...I have heard you say more than once that you intended it.⁹

Experience has shown that Tyrrell's opinion was wisely held, one cannot deny that Locke did himself a disservice by not giving readers of the *Second Treatise* more insight into his theory of natural law, and that as a result some quite spectacular misinterpretations have grown out of what is said in that work.

In the opening pages of the *Second Treatise* Locke states that one of the chief purposes of the work is to understand the nature and origin of political rule. In order to do so, one must begin by examining man in his natural state. This state is one in which men are in

⁷ W. Von Leyden, *John Locke, Essays on the Law of Nature*, Oxford, Clarendon Press, 1954, p.80.

⁸ P. Riley op cit., pp 432-52.

⁹ cf. *The Correspondence of John Locke*, 4: 112-113 (ed.) E. S. DeBeer, Oxford, Clarendon Press, 1979.

...a state of Perfect Freedom to order their actions and dispose of their possessions as they think fit, within the bounds of the Laws of Nature, without any leave or depending upon the will of any other man.¹⁰

He goes on to say that,

The State of nature has a law of nature to govern it which obliges everyone. And reason which is that law teaches all mankind who will but consult it, that being all equal and independent no one ought to harm another in his life, Health, Liberty or Possessions.¹¹

Some commentators have taken this to mean that the natural law is exactly synonymous with reason, an issue which will be discussed further below. Further references to the content of natural law are equally vague, he refers to the 'rule of reason and common equity'¹² and speaks of it as being the law which 'willeth the peace and preservation of all mankind.'¹³ Unlike Hobbes who meticulously lists the individual laws of nature,¹⁴ Locke does little to substantiate the concept beyond offering a set of rather generalised ends which it seeks to promote.

Passages in which Locke speaks of the law of nature as being "writ in the hearts of all mankind"¹⁵ and as

¹⁰ *Treatise II*, 4, p.309.

¹¹ *Treatise II*, 6, p.311.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Hobbes, *Leviathan*, Ch XIV.

¹⁵ *Treatise II*, 11, p.315.

"nowhere to be found but in the minds of men"¹⁶ have also caused problems. Leo Strauss took these to be statements to be evidence of the innateness of natural right, in direct contradiction to Locke's well known views on the unlikelihood of there being any innate forms of knowledge.¹⁷

Indeed Locke seems to require his readers to accept the existence of the laws of nature without being given much detail of their content or origin. While this was probably a safe assumption to make at the time he was writing, present day Locke scholars require further information in order to understand the way in which natural law contributes towards an explanation of the form and origin of civil government. This information, which is not to be found within the pages of the *Treatise*, must be sought elsewhere.

Today's interpreters have gained much from the relatively recent discovery of what must count as Locke's major work on the subject of natural law, *Essays on Natural Law*.¹⁸ Although written between 1662-64 these essays fell into obscurity until Wolfgang Von Leyden's meticulous survey of

¹⁶ *Treatise* II, 136, p.404.

¹⁷ L. Strauss, op cit., p.227. Strauss distinguishes clearly between natural right and natural law only the former being innate.

¹⁸ Cf. footnote 7 above. From here on references shall be given as *Essays*.

the Lovelace Collection in the 1940s. Realising the importance of a set of essays on the law of nature, written as lectures during Locke's time as Censor of Moral Philosophy at Oxford, Von Leyden translated and assembled them for publication in 1954, almost three hundred years after they were originally written.

Some commentators have questioned the wisdom of referring closely to material which the author chose not to publish. Locke's possible reasons for non-publication are therefore of significance here.

In the introduction to his edition of the *Essays*, Von Leyden suggests a number of reasons why the work was not published in Locke's lifetime, or indeed for so long after his death.¹⁹ The original essays were written in Latin which was becoming much less popular by the mid 17th century, meaning publication would probably have necessitated lengthy translation work. Also, much of the material within the essays was eventually used in *The Essay Concerning Human Understanding* of 1690, so re-editing would also have been called for.

Von Leyden also points out that while Locke was in his thirties when he wrote the essays, he still considered them to be a product of his youth, and as such might not have wanted to afford them any great public importance. This

¹⁹ *Essays*, Introduction, pp.14-15.

would sit well with Von Leyden's opinion that the *Essays* contain two quite contradictory accounts of the basis for moral obligations, a fault he would not have ascribed to the mature writer. Laslett, meanwhile, dismisses the *Essays* as 'the typical product of a mind capable of enormous expansion as yet unable to expand at all.'²⁰

It is of course feasible that political events in the decade leading up to 1668 caused Locke to lose confidence in some of his earlier views, making him diffident about their publication, I would argue however, that such an explanation is more applicable to the overtly political *Tracts*²¹ than to the *Essays*. Moreover, as there are no explicit links between the two works there is little reason to assume they should share the same reasons for non-publication.

The *Two Tracts on Government* first appeared in 1961 in an Italian translation, but remained more or less in obscurity until Philip Abrams published them in English in 1967. There are indeed fundamental differences between the views held in the *Tracts* and those of the later *Treatises*, such that Abrams felt confident in labelling the young Locke a conservative, in opposition to the traditional liberal characterisation of the mature writer. One can therefore

²⁰ *Two Treatises of Government*, op cit., p.34.

²¹ *John Locke: Two Tracts of Government*, (ed.) P. Abrams, Cambridge University Press, Cambridge, 1967.

understand a certain reluctance on the part of the older Locke to embrace this particular work of his youth.

As I have suggested above the *Essays* pose no such threat to Locke's traditional standing, and one is reluctant to ascribe political reasons for their lack of exposure. There are, however, certain theoretical strands which pass through both early and later works which should not be overlooked. As Abrams points out in his introduction to the *Tracts*, although very little reference is made to a theory of natural law, such a theory is needed to support the ideas put forward in the work, and had Locke included some discussion of the subject the overall argument of the *Tracts* would have appeared more coherent. Abrams further argues that the importance of objective natural laws was necessarily undermined as Locke came to rely more on voluntarist arguments in his later work.²²

The relationship between the *Essays* and Locke's *Essay Concerning Human Understanding* is at once more direct and more complicated. Von Leyden applies what can only be called 'informed imagination' to the question of the relationship between the two works, and describes how what we now know to be the two preliminary drafts of the *Essay*, grew out of a discussion in 1671 concerning 'the principles of morality and revealed religion', which soon became a

²² Ibid. p.88-92.

discussion of how the natural law might come to be known, and from there broadened out into an enquiry into the origin and extent of human knowledge.²³

Whilst Locke clearly does not lose sight of the original question of natural law throughout the course of this great work, a lengthy discussion of the subject would have been out of place in what is essentially a work of semiotics as opposed to ethics. Some commentators are worried enough by the apparent clash between the hedonism of the *Essay* and the theory of natural law, to suggest this as a further reason for the latter's 'abandonment'. It is undeniable that Locke was aware of a conflict between his belief in an ultimate moral law, and his assertions supporting a pleasure and pain principle in the *Essay* and other works. Yet, three years after the publication of the *Essay* he expressed the following sentiments in a commonplace sheet

Voluntas: That which has very much confounded men about the will and its determination has been the confounding of the notion of moral rectitude and giving it the name of moral good. The pleasure that a man takes in any action or expects as a consequence of it is indeed a good in the self able and proper to move the will. But the moral rectitude of it considered in itself is not good or evil nor anyway moves the will, but as a pleasure or pain either accompanies the action itself or is looked on to be a consequence of it. Which is evident from the punishments and rewards God has annexed to moral rectitude or pravity as proper motives to the will, which would be needless if moral rectitude were in itself good, and moral pravity bad.²⁴

²³ *Essays*, Introduction, pp.60-65.

²⁴ Quoted by Von Leyden, *Essays*, pp.72-73.

It is also worth remembering that although the seventeenth century was the heyday of natural law theory, by 1660 the debate was long run, and a thinker as innovative as Locke, hungry to break new intellectual ground, may not have wished to voice his opinions in the public arena. Rather, he wished to formulate a sound theory which he could then apply in a political context, and thereby set the debate on an original footing. Furthermore, Locke was somewhat out of step with his contemporaries in the debate, his interest in the subject being largely epistemological as opposed to legalistic or historical, and with him retaining a metaphysical basis for the law, whilst Grotius ²⁵ et al were looking for a more scientific, or at least secular interpretation.

Ever mindful of the practical purposes to which his theoretical reasoning could be put, Locke was no doubt anxious to protect his theory of natural law from criticism borne of opposing theoretical perspectives. Locke's great contribution was to be in the public and political arena and he did not seek diversions in the form of arguments concerned with theoretical specifics. Indeed, he may well have been mindful of Hobbes's lengthy correspondence with Bishop Bramhall on the subject of liberty and free will.

²⁵ H. Grotius, *De Jure Belli ac Pacis, Libri tres* *editio Novissima*, Amsterdam 1625, (1712).

What is important is that Locke's loyalty to a universal natural system of laws survived, and the subject is utilised, if not discussed, in a selection of otherwise diverse works, adding further dimensions to the core theory as presented in the *Essays*. Most importantly in the present context, it will be argued that his theory of natural law is central to the argument of *The Second Treatise of Government*. However, it is to the *Essays* which one must turn to avoid misunderstanding resulting from the paucity of detail on the subject of natural law in that work.

The Theory Itself

Written in the form of lectures the *Essays* answer eight specific questions concerning natural law, examples being, **Is there a rule of moral law or law of nature given to us?** **Is every man's own interest the basis of natural law?** Although there are a few discrepancies between the different essays, with some contradicting others on passing points, they succeed in presenting a fairly coherent theory of natural law. Many agree that, despite a certain dogmatism, Locke succeeds in covering in depth a subject that all too many of his predecessors had skirted around.

The most obvious question which arises out of Locke's theory is why he accepted the existence of a law of nature.

In the first of the *Essays* he offers five reasons for his belief.

1. The first arises from two principles found in Aristotle's *Nichomachean Ethics* which state that 'the special function of man is the active exercise of the mind's faculties in accordance with rational principle' and that 'a natural rule of justice is one that has the same validity everywhere'.²⁶ Taken together these two principles suggest to Locke the existence of a system of universal moral law, which is not threatened by the fact that a large section of mankind live as if there is no such law, and is only strengthened by disagreements concerning its form and content.

2. Locke also points to human conscience , which acts in the absence of other laws , to show that there is some moral law by which men are bound. Although conscience is not in itself a sufficient guarantee that the laws will be obeyed, its existence offers powerful evidence of the laws existence.

3. From Aquinas and Hooker Locke takes the point that all things in the universe are governed by law, so man must necessarily have some guiding principle suitable to his

²⁶ Aristotle, *Nichomachean Ethics* Bk I. 1098 a7 & Bk V 1134 b18.

nature. As God made man reasonable and susceptible to law, man must be guided by his reason to submit to the law.²⁷

4. Human society, Locke argues is necessary for the full development of human potential, and it in turn depends on (a) a constitution and form of government, and (b) an obligation to fulfil contracts i.e. an obligation independent of human will.

These two fundamental bases of human society are totally dependent upon the prior existence of natural law. If that law - and they in turn - are found to be groundless, no man will be bound by positive law.

5. Finally Locke argues that without natural law there would be no honour or virtue, no baseness or vice; men would therefore have nothing to do but that which his will, utility or pleasure recommends 'or what blind or lawless impulse might happen perchance to fasten on.'²⁸

Presumably Locke the empiricist has worked back from the existence of society, human conscience, good and evil, rational will and order, to locate and identify the law of

²⁷ R. Hooker, *Preface to The Laws of Ecclesiastical Polity in Works* (1632 etc) (ed.) J. Keble, 3 vols, Oxford, 1836 and Aquinas *Summa Theologica*. For further discussion of their influence see Von Leyden's introduction to the *Essays*.

²⁸ *Essays* pp.119-21.

nature, rather than working from the necessity of such values towards the desirability of positing a law of nature which promotes them. Had he not done so his theory would be dangerously close to that of Hobbes, who presents natural law as a set of prudential maxims, based on independently determined ends. Locke works from his observation of the world as it appears to be, to the belief that a law of nature is a necessary component of such a world.

Of course each stage of Locke's argument is open to question:

1. Even if man's special function is 'the active exercise of the mind's faculties in accordance with rational (and presumably moral) principle', this does not in itself prove that such principles exist naturally. Indeed another theorist might well argue that such principles are necessarily artificial, in the sense that they can only become known and recognised in political society. To state that a natural law of justice must have the same validity everywhere is a far cry from establishing that such law in fact exists. Indeed empirical observation makes it appear unlikely that it does exist.

2. Human conscience would appear to indicate the existence of some moral standards by which an individual has chosen to act. However, we have no way of knowing whether the

human conscience of all individuals is informed by the same moral code.

3. Statements about human nature are always open to question. One need only look as far as Hobbes's theory of natural law to see how a different view of man's nature radically affects the content of the laws he is taken to be governed by naturally.²⁹ Some commentators have argued that Locke, instead of sticking to his minimalist account of man's nature as 'rational and susceptible to law', constructed a picture of natural man which included profoundly social characteristics, and then produced a law of nature in accordance with that image of social man.³⁰

4. Locke argues that men are naturally driven to form societies and that such an impulse is necessary for the full development of human potential. However, as he himself states in the *Treatise*, the move to society, and the establishment of government are two separate steps,³¹ and moreover, one could argue that the second does not necessarily follow on from the first in the manner Locke would wish.

²⁹ Cf. *Leviathan*, especially Chs.13-15.

³⁰ C.B. Macpherson *The Political Theory of Possessive Individualism*, Oxford University Press, Oxford, 1962. See particularly Chapter V, Section 3.

³¹ *Treatise* II, 77, p.362.

5. Without natural law, natural freedom would become license and this is unacceptable to Locke. However, this is more a value statement than a proof that such a law exists. Before one can even begin to establish that man's natural state was law-governed, it is necessary to consider the possibility of a lawless state in which every man did as his will, utility or pleasure recommended. It is at least possible that the two would not differ significantly, which would suggest that man's nature determined the moral climate as opposed to the natural law.

Ultimately Locke is more successful in showing *why* it is desirable to assume the existence of a natural law, than he is in demonstrating its actual existence. However, having shown to his own satisfaction - through deduction based on empirical observation - that the law of nature exists, Locke proceeds to show how men acquire knowledge of that law.

As seen above, Locke's initial assumption concerning man is that he possesses reason. By reason Locke means a discursive capacity of mind, as opposed to an objective set of moral principles. As he explains in the *Essay*,

...it stands for a Faculty in Man, that Faculty, whereby Man is supposed to be distinguished from

Beasts, and wherein it is evident he much surpasses them.³²

Locke is seeking, from a factual starting point, to develop a theory of moral obligation such that men are obliged to use their reason. He believes that reason is an essential characteristic of humanity, and that man's special function on earth is to exercise his reason. This is a profoundly Aristotelian move such that morality entails perfecting one's natural function, and being a 'good man' entails exercising one's reason, which will inevitably lead one to discover the rules of 'right reason' by which every man should govern his life. However, the classic problem of deriving an ought from an is, of moving from a value free assertion of man's nature to a normative/prescriptive statement as to how men ought to behave given that nature soon arises. Luckily it becomes clear why Locke feels he can make this move, a point that will be discussed further below.

Leaving this problem aside for the moment, having accepted that the existence of reason as a faculty natural to man, plus a natural obligation for man to make use of that capacity, Locke has to show how men utilise their reason to

³² *Essay Concerning Human Understanding* BkIV, Ch. XVII, Sect. 1. Unless otherwise stated, all references refer to P.H. Nidditch, (ed.) Clarendon Press, Oxford, 1975. References shall be given as *Essay*, Bk., Ch., Section.

discover their moral duties and obligations. This is both a meta-ethical and an epistemological question.

Discovering the Laws of Nature

In epistemological terms Locke can be classified as an indirect perceptual realist. In its simplest form this refers to our only having an indirect awareness of the external world via our direct awareness of ideas. We understand these ideas and the relationships between them by employing reason. Ideas may be either simple or complex, the latter being a combination of simple ideas. Reason cannot create simple ideas, it can only seek them out and interpret them, so Locke has to identify the possible sources of these simple ideas which are the basic building blocks which form complex ideas, and ultimately knowledge.

In the *Essays on the Laws of Nature* Locke discusses three possible forms of knowledge.

1. Inscription, or knowledge through innate ideas
2. Tradition, or knowledge through hear-say
3. Sensation, or knowledge through sense experience.

In line with his later works, especially Book One of the *Essay Concerning Human Understanding*, Locke rejects the

doctrine of innate ideas.³³ In the third *Essay on the Laws of Nature* he deals explicitly with this question, and although in some of the other essays he is less adamant about the impermissibility of natural law being innate, the overall impression still is that he does not regard innate knowledge as the source of moral truths. His views foreshadow this passage from the *Essay*:

There is great deal of difference between an innate law, and a law of nature; between something imprinted on our minds in their very original and something that we, being ignorant of may attain to the knowledge of, by the use and due application of our natural faculties.³⁴

So the laws of nature are not "natural" in the sense of being ideas naturally imprinted on man's mind. Rather, they are discoverable by man in his natural state - once he has developed reason. He makes this point quite clearly in the *Treatise*

Adam was created a perfect Man, his Body and Mind in full possession of their strength and reason, and so was capable from the first instant of his being to provide for his own support and preservation according to the dictates of the Law of Reason which God had implanted in him....³⁵

....The Law that was to govern Adam was the same that was to govern his posterity, the Law of Reason. But this off-spring having another way of entrance into the world, different from him, by a natural birth, that produced them ignorant and without the use of

³³ *Essay*, Bk.1, Chs.II & III.

³⁴ *Essay*, Bk.1, Ch.II, Section 13.

³⁵ *Treatise* II, 56, p.347.

reason they were not presently under that law: for no body can be under a law which is not promulgated to him; and this law being promulgated or made known by reason only, he that is not come to the use of reason cannot be said to be under this law.³⁶

Locke also dismisses tradition as an origin of knowledge, although he does accept that true knowledge and positive morality will be handed down, and that men may subsequently learn the moral law as a traditional doctrine bequeathed to them by their forbearers. This point becomes significant when one considers the political importance of natural law and the necessity of its reaching the largest possible audience. In the *Reasonableness of Christianity*³⁷, Locke stresses the importance of transmission far more forcefully than elsewhere, arguing that prior to the Gospels:

'Human reason unassisted failed men in its great and proper business of morality. It never from unquestionable and clear deductions made out an entire body of the law of nature.'³⁸

Transmission is vital but it does not in itself prove the truth of the maxims transmitted, one still has to explain how the originator of the tradition came to discover the truth. If we can explain how the laws first come to be known, we can then go on to show how tradition plays an

³⁶ *Treatise II*, 57, pp.347-8.

³⁷ *On the Reasonableness of Christianity as Delivered in the Scriptures*, (ed.) G. Ewing, Gateway Editions, Chicago, 1965. References will be given as *Reasonableness*, pg x.

³⁸ *Reasonableness*, p.140.

important role in explaining how subsequent generations come by their knowledge of these laws.

This leaves only sense perception as capable of explaining how knowledge of the laws was originally acquired, and in the Fourth Essay on the Laws of Nature Locke argues that it is possible for reason, starting from the basis of truth perceived by the senses, to acquire full knowledge of the laws of nature.³⁹

Three different forms of knowledge can be constructed on the basis of sense perception: sensitive, intuitive and demonstrative knowledge.

Sensitive knowledge derives from ideas that are so vivid, constant and sharp that they are very obviously different from imagination - for example knowledge of the external world. This is the least secure form of knowledge.

Intuitive knowledge is that which is based upon a self-evident connection between ideas, for example knowledge of one's own existence - Descartes's Cogito.⁴⁰ In order to think something one must exist, there must be an 'I' to do the thinking. Therefore, if one thinks anything one must

³⁹ Essays pp.149-59.

⁴⁰ R. Descartes, *Meditations on First Philosophy* in *Descartes Philosophical Writings* (eds) E. Anscombe & P. Geach Nelson's University Paperbacks, Middlesex, 1954. Second meditation, pp.66-76.

thereby know that one exists. This according to Locke is the surest form of knowledge.

Demonstrative knowledge is less pure than intuitive knowledge, because by its very nature it allows for the possibility of doubt. Demonstrative knowledge depends upon establishing a sequence of steps to carry one from an original presupposition to a final idea. Intuitively it may be impossible to associate the final idea with the original proposition, but one must be able to show that each individual step is intuitive knowledge. The more steps needed to make the connection the more vulnerable to doubt the knowledge is.

Knowledge of the Laws of Nature is most easily understood as a form of demonstrative knowledge, which immediately makes the task of explaining how men acquire such knowledge a complex business. Ideally, Locke wishes men to act as if the laws of nature are known to be true intuitively, but he recognises that first he must offer something approaching a demonstration of their existence, origin and binding nature. In order to do so Locke invokes God. The route to knowledge of the laws of nature is via the recognition of God as a law maker and the acceptance of all that entails. Because we are told, 'what Duty is cannot be understood without a Law, nor a Law be known, or supposed, without a Lawmaker.'⁴¹ It is then necessary to recognise that the

⁴¹ *Essay*, Bk.I, Ch.III, Section 12.

will of the law maker is the law by which one should conduct ones life.

To establish morality , therefore, upon its proper basis, and such foundations as may carry an obligation with them, we must first prove a law, which always supposes a law maker: one that has superiority and right to ordain, and also a power to reward and punish according to the tenor of the law established by him. This sovereign law maker who has set rules and bounds to the actions of men is God, their maker, whose existence we have already proved. The next thing to show is that their are certain dictates which it is his will all men should conform their actions to, and that this will of his is sufficiently promulgated and made known to all men.⁴²

As this passage suggests, Locke has a twofold objective: first to show the basis upon which morality should be built, and second to show that the dictates of morality ought to be promulgated and obeyed. First, however, we need to examine his assertion that the existence of God has already been proved.

Proving the Existence of God the Law Maker

As mentioned above, Locke's starting point is more or less Cartesian - man is aware of his own existence, he is conscious therefore he is. 'I think it is beyond question that man has a clear Perception of his own being; he knows certainly that he exists and that he is something' and 'If I doubt of all other things, that very doubt makes me

⁴² J. Locke 'Of Ethics in General' in P. King, *The Life and Letters of John Locke*, Vol 2, published by George Bell and Sons, London 1884, p.133.

perceive my own Existence, and will not suffer me to doubt that.'⁴³ King reproduces a manuscript entitled *Deus-Descartes Proof of God, from the Idea of Necessary Existence examined* (1696), in which Locke argues thus,

'Real existence can be proved only by real existence; and therefore the existence of God can only be proved by the real existence of other things. The real existence of other things without us, can be evidenced to us only by our senses; but our own existence is known by us by a certainty yet higher than our senses can give us of other things, and that is internal perception, a self consciousness, or a most incontestable proof of the existence of God.'⁴⁴

Knowledge of one's own existence is knowledge of the surest sort, and it is this knowledge which gives the first clue as to the existence of God. Having accepted his own existence man turns his attention to those things existing external to him which he experiences through his senses. Locke believes that on looking around himself man is left in no doubt as to the reassuring formality and pleasing regularity of the world around him. Indeed commentators criticise the extent to which Locke is prepared to take existence of the external world for granted, in a manner which to contemporary philosophers might seem naive.

Having seen the nature of this external world, man's reason helps him discern that something must cause this wondrous pattern of events, because he works on the scholastic

⁴³ *Essay*, Bk.IV, Ch.IX, Section 2.

⁴⁴ King, op cit., p.317.

principle that every event has a cause. What is more, a further scholastic principle suggests that not only did this cause exist in eternity when the causal chain began, but it must contain even greater properties than those things it created. A cannot lack what it is responsible for giving B, so the creator of the world, who is also man's creator must be reasonable and powerful.

At first this creator does not appear synonymous with the Christian God, but before long his identity is made obvious. And, unlike Hobbes, Locke works hard to make his God good and reasonable as well as all powerful, meaning that man can adhere to the precepts of God's law not only as a respecter of his power, but also as a moral agent acting upon the precepts of right reason.

There are a number of obvious difficulties with this account. First, in his empiricist guise Locke should have trouble with the proposition that every event has a cause, as the notion of a cause cannot be made to follow analytically from the concept of an event. As Hume was to later point out, an uncaused event is not inconceivable.⁴⁵ What is more even if the principle of causation were valid in terms of individual events, one could reasonably argue that it need not apply to the universe as a whole.

⁴⁵ D. Hume, *A Treatise of Human Nature* ed. P. Nidditch Oxford, Clarendon, 1978, Bk I Part 3, Section 3, pp.78-79.

Even if every particular event is caused it might be wrong to assume one overall cause, if, once every particular event is explained, there is nothing left to explain. Locke however, persists in his claim that there has to be a final (as in first) cause of the series in which the events occur.

As for the creator possessing the qualities of its creation one does not need the assistance of sophisticated science to discover numerous examples disputing Locke's claim. Once again Locke accepted and employed a questionable scholastic assumption, 'proven' by concentrating on a limited range of examples which made the principle appear sound.

Whilst it would be permissible to assert that a creator should have the ability to create the features of its creation, this allows for the possibility that the creator does not in fact possess the actual abilities itself. Consider for example the ballet mistress who 'creates' a world class ballerina. It is quite possible that the teacher never had the talent of her protegee, yet it is only she who could have nurtured that talent in the younger dancer, and have created the prima ballerina, who - without her influence - would have spent her career in the back row of the corps de ballet.

Locke would have been unwilling to recognise such examples as relevant because this would allow for the possibility that man, as an intelligent rational being, was created by something, or a combination of things, which need not have been rational. To make this admission would be very damaging to his argument at a number of levels, as will become apparent. Locke desperately needed to represent man as the creation of a rational, intelligent and reasonable God.

Leaving aside questions of the precise nature of the God which Locke identifies as man's creator, and the question of how well or badly he manages to prove (his words not mine) the existence of God, the most interesting question in this context is why he tries so hard to do so : accepting as one surely must that the weaknesses in his theory are not intentional components of a Straussian hidden argument, as one recent interpretation has suggested.⁴⁶ As Locke himself wrote in a letter

one cannot say that because a writer is obliged to use imperfect, inadequate obscure ideas, where he has no better, he is deliberately trying to exclude those things out of being, or out of rational discourse by making them obviously implausible.⁴⁷

⁴⁶ W. Bluhm, N. Teger & S. Wintfield 'Locke's Idea of God: Rational Truth or Political Myth? *The Journal of Politics* Vol 42, 1980.

⁴⁷ cf. *Essay*, Bk.II C. XXXI, Sections 1 & 2 for definition of adequate and inadequate ideas. See also *Locke's Life and Letters*, pp.198-201.

It would appear that although unsuccessful, Locke's attempt at a rational proof of God's existence was an important component of his attempt to give man's guiding moral principles the firmest and broadest possible grounding. Ultimately it is insufficient to prove the mere existence of a natural law, or to explain how man acquires his knowledge of such a law. Unlike Hobbes, Locke was not willing to settle for an original position in which men recognise the laws only *in foro interno*.⁴⁸ Rather he sought to construct an explanation of how those laws place obligations on men, and the motives which lead them to fulfil those obligations.

It is not insignificant that the notions of obligation and obedience are separated here, Locke himself makes this distinction, and a failure to appreciate its significance has been the cause of some misunderstanding in the past. As has already been discussed in some detail above, the existence of an obligation may not in itself explain an act of obedience. Obedience can result from the recognition of an obligation to obey, but such recognition does not always provide a sufficient motive to act. Ultimately Locke seeks to show that men are obliged to obey the laws of nature and that they have strong reasons (motives) to fulfil that obligation. In fact, it is more appropriate to say that men ought (in a strongly moral sense, as well as a prudential sense) to obey those laws.

⁴⁸ Hobbes, *Leviathan*, Ch.16, p.215.

The desire to prove the existence of God as law-maker is closely related to the political significance and purpose Locke wished to afford to his laws. If the laws of nature were to be central to his theory of government then, it was important that their influence should not be restricted to a small section of mankind. Unless God's existence is in some sense provable, one has to accept that his laws will have no meaning to those who choose not to believe in him. If, however, the existence of God the law-giver can be proven, then the laws of nature will become law to those who were unprepared to accept them as a dictate of faith.

The distinction between those who have faith and those who do not is an important one in this context, and one which many commentators have chosen to ignore. Perhaps one need not go so far as to make the distinction between faith and the lack of it, instead one might wish to speak of those who believe and accept unquestioningly the dictates of their God, and those who at the same time require further rational reasons for obedience. It will be argued here that Locke was well aware that his arguments concerning the binding nature of the laws of nature would have to satisfy two types of men, the ordinary God-fearing individual, and the potentially sceptical 'studier of the laws'. Locke's handling of the laws of nature shows how he appreciates that knowledge can be acquired and transmitted in ways more or less, appropriate to the audience concerned.

This explains the fact that the body of Locke's work on natural law utilises two rather different theories to explain its origin and binding power. A conflict is avoided by the fact that both accounts are built upon one basic fact which never alters - the law of nature obliges man because it is the will of God. The accounts vary in the way in which Locke presents this will and the individual's relationship to it, and the motives he puts forward as a spur to obedience. One is reminded of the way in which a child is told to eat carrots because they will help him to see in the dark, whilst an adult would eat them because he knows that they contain valuable vitamins, one of which is claimed to enhance vision in dull lighting conditions.

It is possible to show why, whether or not he was successful, Locke tried to prove the existence of God, and why as well as using revelation and scripture as authorities, he also employed anthropological theories, and an argument from design. By offering a rational proof of the existence of God, as well as pointing the faithful towards the traditional Biblical 'proofs', Locke hoped to provide a law-maker for every section of the community, and thereby provide the foundations for a system of natural law with a wide range of influence.

By examining the two forms of argument offered by Locke it should emerge that they do not differ significantly in content. The important difference is in terms of style.

Horses for courses, arguments for audiences.

The argument for the faithful

The most natural adherents to the law of nature, both prior to and subsequent to the creation of government, are religious men. Locke links a knowledge of and adherence to natural law very closely to men's nature, and their natures will have been the least corrupted. Religious men will come easily to a recognition of the moral worth of a life ruled by the law of nature. Christians accept as a dictate of their faith the existence of an omnipotent and omniscient God, quite apart from any rational proof Locke can offer. Faith is a very powerful force in Locke's estimation, and one that he plans to harness for his own purpose. Belief is to play an important role in his system:

the greatest part of mankind want leisure or capacity for demonstration, nor can carry a train of proofs, which is what they must always depend upon for conviction, and cannot be required to assent to, until they see the demonstration....the greatest part cannot know and therefore they must believe. The

instruction of the people were still best left to the precepts and principles of the Gospel.⁴⁹

As he has stated earlier in the *Reasonableness*,

It should be seen by the little that has been done in it, that it is too hard a task for unassisted reason to establish morality in all its parts, upon its true foundation, with a clear and convincing light. And it is at least a surer and shorter way to the apprehensions of the vulgar, and mass of mankind, that one manifestly sent from God, and coming with visible authority from him, should, as king and law maker TELL them their duties, and require their obedience, than leave it to the long and sometimes intricate deductions of reason, to be made out of them such trains of reasoning the greatest part of mankind have neither leisure to weigh, nor for want of education and use, skill to judge of.⁵⁰

Here Locke is more or less advocating religion as a form of political education, and he clearly suggests the importance of belief and faith in bringing the religious man to the knowledge - if not a very thorough understanding - of the laws of nature. It need not be the case that he cannot know, but rather that it is not always necessary for him to do so. According to Locke, belief based on revelation is the nearest one can get to truth or certainty without rational proof. In the final pages of *The Reasonableness of Christianity*, he emphasises the importance of the Gospels in teaching the uneducated mass natural law, and providing sanctions to obedience that they will understand. The faithful will gain knowledge of God's existence through

⁴⁹ *Reasonableness*, p.146.

⁵⁰ *Reasonableness*, p.139.

revelation, and receive his teaching through the words of Scripture and Gospel.

Leo Strauss is critical of this part of Locke's argument and claims that the discrepancies between Locke's theory of natural law, (or rather Strauss's interpretation of it), and scripture are enough to suggest that the natural law is not the will of God as presented by the Gospels, but rather artificially constructed in line with man's individualistic nature, and based upon an innate natural right to happiness or self preservation.

Locke's natural law teaching can then be understood perfectly if one assumes that the laws of nature which he admits are, as Hobbes put it, "but conclusions, or theorems concerning what conduces to the conservation and defence" of man over against other men.... The law of nature, as Locke conceives of it formulates the conditions of peace or,, more generally stated, "of public happiness" or the "prosperity of any people."⁵¹

This is not a strong piece of evidence, especially in view of the fact that Locke spends the first section of his Sixth, as well as his entire Eighth *Essay on the Laws of Nature* arguing that self interest/preservation cannot be regarded as the basis of natural law. This is not to say that there may not be a coincidence between what the law dictates and the means to public happiness, and this idea will be explored further below.

⁵¹ Strauss, op cit., p.229.

Concerning Locke's refusal to base civil law directly on scripture as evidence for his claims, Strauss is forced to ignore what Locke has to say about the nature of Scripture. Locke acknowledges that what is written in the Bible is necessarily an interpretation of events and ideas, and feasibly at times a misinterpretation. Furthermore, once set down the scriptures are open to further interpretation, and one need only consider Locke's fundamental disagreement with Filmer's interpretation of scripture on the questions of property and paternalism to appreciate the significant differences of opinion that may arise. Locke is insistent nonetheless, as shown in the *Second Vindication of the Reasonableness of Christianity* that both the law of reason and revelation express the will of God, and neither contains distinct or unique injunctions which the other does not have. 'It is no diminishing to revelation, that reason gives its suffrage too to the truths revelation has discovered.' As Yolton observes the moral law intuited by reason, and the moral law implicit in the New Testament are fundamentally one and the same,⁵² and Locke has a further commitment to the idea that no civil law should be in contradiction of either.

Locke's reluctance to establish the Scriptures as the sole basis of a political system stems in part from this problem of interpretation, but also derives from the fact that a

⁵² J. Yolton, 'Locke on the Law of Nature' *Philosophical Review* 57, 1958, p.489.

purely scriptural foundation would necessarily exclude from influence all those outside the Christian church. What is more the positive law of government will often need to address questions unimagined by the writers of scripture. In order to do this they cannot be restrained by a requirement that all law be fundamentally based upon the specific word of the Bible. Finally, Locke was willing to accept that historical precedent offered little evidence of the Scriptures acting successfully as guardians of peace

These are essentially practical considerations, relevant to the political purposes envisaged for the laws of nature, but in no way detracting from the claim that for those willing to accept its teachings, the Bible is a good representation of the will of God, and thereby of the laws of nature so long as they find no discernible differences between the two. And concerning the relationship between the laws of nature and positive law, Locke never abandons the belief that 'municipal laws of countries (which) are only so far right as they are founded on the Law of Nature, by which they are to be regulated and interpreted.'⁵³

As we have seen in discussing the law of nature Locke was anxious not only to show that the law had been received but also that it would be obeyed. As well as requiring the existence and recognition of a law maker he clearly states in the *Essay* that a system of rewards and punishments is a

⁵³ *Treatise II*, 12, pp.315-6.

constitutive element of law. Locke therefore assumes the existence of a system of divine rewards and punishments, which form a crucial part of his "religious" argument. Strauss sees Locke's reliance upon such a system as a weakness in his argument, and maintains that since Locke cannot demonstrate immortality and the certainty of a life after death in which these rewards or punishments will be afforded, they cannot serve the purpose demanded of them, and therefore natural law can never really be a law in the proper sense of the word.⁵⁴ Just as the sovereign and his sword is essential to Hobbes's concept of law, so the system of divine rewards and punishments are to operate as God's irresistible and essential weapon, but they can only do so if one accepts the existence of an afterlife in which they shall be made real.

Whilst it is true that Locke does not feel able to offer a rational proof of an afterlife, this does not immediately exclude the possibility of employing a system of divine rewards and punishments as sanctions to obedience at this level. This is not to say that there are not problems involved, and Strauss was by no means the first to point them out. Locke's contemporary Tyrrell challenged him on

⁵⁴ Strauss op cit., p.220 It is worth noting that other respected commentators have been happy to acknowledge Locke's insistence upon the need for divine rewards and punishments without feeling that it poses the same sort of problem. See for example J.W. Lenz 'Locke's Essays on the Laws of Nature', *Philosophy and Phenomenological Research* XVII, 1956/7 and J.W. Yolton op cit..

the question of immortality as early as 1690.⁵⁵ Locke attempted a defence, and began by stating that demonstration of the facts could be taken far further than it had to date, but nonetheless, one had to settle for something less.

Were it not for two important factors, Locke might seem to be attempting to sidestep the issue.

1. Sanctions are employed only as **motives** to obedience as opposed to bases for obligation, and
2. this whole argument is directed at the religious believer who does not require rational proof, and for whom faith and belief are stronger bonds than rational persuasion.

Locke's statement that the 'bare possibility which nobody, can make doubt of, of an after life makes it a **good bargain** to conform actions to divine law,'⁵⁶ becomes more acceptable when these factors are borne in mind. Probability as opposed to certainty is sufficient when dealing with those prepared to make the leap of faith: the mistake would have been if Locke had tried to incorporate

⁵⁵ See Locke's reply to Tyrrell reproduced in King, op cit. pp.198-9.

⁵⁶ Ibid. In the *Essay* he discusses a category of propositions that 'border so near on certainty that we make no doubt at all about them.' *Essay*, Bk. IV, Ch. XV, Section 2.

a system of divine rewards and punishments into his attempt to persuade those without pure faith of their obligations under the laws of nature.

Locke, as a religious man, did in fact believe that immortality could be proved by revelation, and that nothing genuine in revelation could contradict reason. Though true, something might still be beyond the discovery of reason, but the faithful are protected by the fact that 'nothing that is contrary to, or inconsistent with the clear and self evident dictates of reason has a right to be urged or assented to as a matter of faith.' As one commentator puts it

The scriptures like convictions and common-sense, only confirm the voice of reason; they cannot contradict it, but are tested by it.⁵⁷

So, Locke's divine rewards and punishments are motivating forces employed at a psychological level, and concerned with obedience to the law, as opposed to the morality of that law, or the individual's obligations under it. For these reasons, and because those whose obedience is in question are believers, it is fair to assume that such sanctions will function quite adequately, and that the status of natural law is unthreatened.

⁵⁷ M. Seliger, 'Locke's Natural Law and the Foundations of Politics' *Journal of the History of Ideas* XXIV, 1963, p.344.

Before moving on to discuss the use to which Locke put his theory of natural law, once he had established that it would be understood and obeyed by the majority of individuals, it is worth asking more about the actual content of the laws. Given his belief that the law of nature is the law of God he could have employed a very basic command theory of law, yet he chose instead to elaborate.

Unlike Hobbes, who simply identified law with the will of he who has power, Locke introduces the notion of right. Men are obliged only to obey those superiors who have the right as well as the power to command them. God has such a right because he created man, and those familiar with Locke's theory of parental control, or his theory of property will appreciate the importance afforded to creation, and the rights arising from it. 'He has right to do it, we are his creatures'⁵⁸

Locke offers the further assurance that the nature of God's will is such that you will be able to obey it not only because of his evident power, but also because his will may be rationally apprehended as right, thus making obedience a truly moral act.

'The first knowledge of the truths... is owing to revelation; though as soon as they are heard and

⁵⁸ *Essay*, Bk.II, Ch.XXVIII, Section 8.

considered they are found to be agreeable to reason; and such as can by no means be contradicted.⁵⁹

Furthermore, God's will is neither arbitrary nor unstable, but rather consistent with the eternal order of the world. It is fortunate, he states, that 'the law of nature is the law of convenience too'.⁶⁰

Already we can see ways of casting the argument in a more intellectualist or rationalist mould. One might even suggest that Locke goes beyond the level of argument required to convince those who believe in an omnipotent and omniscient God who created man to do his work. In fact it will be suggested here that there is a quite deliberate shift in the tenor of his argument such that it is designed to convince an entirely different audience of their moral obligation to obey the laws of nature.

As Locke's argument progresses it moves away from positions which require a basic leap of faith, and thereby appears to be directed also towards those who, for whatever reason, are unwilling or unable to receive the laws of nature directly through Christian teachings.

⁵⁹ *Reasonableness*, p.140.

⁶⁰ *Ibid.*

The argument for the rational man

Having dealt with "all the day labourers and tradesmen, the spinsters and dairy maids"⁶¹ Locke feels it incumbent upon him to offer a thesis 'proper only for a few, who had much leisure, improved understandings, and were used to abstract reasonings.'⁶² Faith can conceivably be lost, but a rational proof once accepted can never be rejected, and permits the constancy necessary to ensure political stability and legitimacy.

Locke as a true believer cannot reject as a starting point the existence of God as law maker, but for this potentially sceptical audience he has to offer something approaching a mathematical proof of that existence; nothing can remain a mere question of faith or revelation. He has previously declared that 'whatsoever should thus be universally useful as a standard to which men should conform their manners must have its authority EITHER from reason or revelation'⁶³ and at a certain point in his argument he turns his attention to the rational, and constructs an explanation designed to satisfy the 'studiers of law'.

⁶¹ In *The Reasonableness of Christianity* Locke remarks that 'you may as soon hope to have all the day-labourers and tradesmen, spinsters and dairymaids perfect mathematics, as to have them perfect in ethics in this way.' p.146.

⁶² *Ibid.*

⁶³ *Reasonableness*, p.142.

It is within this context that his rational proof of the existence of God is crucial, and the fact that it is a very weak proof and thus a weak link in his argument cannot be overlooked. It does however explain why he persisted with his attempts at a proof in the face of a sceptical audience. Much has been written on Locke's failure in this field and I shall not attempt further analysis here rather I shall suggest that having established to his own satisfaction the existence of the law-maker Locke set out to make the (potentially sceptical) individual understand the nature of his creator, his relationship to him, and the true value of what he commands.

At this level of argument, God the creator's relationship with his major creation, man, must be presented in such a way as to enable the individual to perfect that relationship, and learn from it without priestly intervention, or the strictures of any specific established church. In order to embrace those who for whatever reason choose not to rely on revelation and scripture, Locke advocates a form of private religion based on rational understanding as opposed to blind faith, a relationship between the individual and his law-giver unrestricted by the requirements of formal religion. The individual will learn of the law of nature, and become obligated to obey it, by employing his God-given faculty of reason. This element of Locke's theory indicates a profound shift from the position held in the earlier Tract, wherein his views

on the importance of upholding ritual and ceremony within the Church struck a distinctly conservative note.⁶⁴

The argument runs as follows - God created the world and everything in it, a fact that one can grasp without reference to scripture through observation and rational deduction. Reason further tells us that God is not only powerful but also wise, therefore one must assume that his creation was made for some purpose. God's purpose is referred to explicitly within the context of Locke's theory of property, and alluded to throughout his work. The hedonism towards which Locke was undoubtedly attracted further suggests that everything is done to promote pleasure or good, either directly or indirectly. As God is all knowing and wise, the purpose of his action will be to promote 'The Good'. With this purpose in mind he creates man with a nature conducive to the pursuit of good, and provides him with laws to live by which complement his nature, and facilitate God's overall purpose.

There is great logic in this system, and although the ultimate source of the laws to which man is obliged is still the will of God, they can now be appreciated at a different level - as part of a rational and eternal order in some way independent of that will. Independent because

⁶⁴ As well as the Tracts as cited above, see P. Abrams, *John Locke as a Conservative: An Edition of Locke's First Writings on Political Obligation*, 1961, Unpublished Dissertation in Cambridge University Library.

once God has created the world for a particular purpose, and given man a particular nature, the laws governing man, and the world in general, have to follow on logically. This is what Locke means when he states that the laws of nature are not based on a changeable and unpredictable will. God has a purpose towards which all his activities are directed, and all that he creates and directs is in line with that purpose. He states in the *Essay* 'That God himself cannot choose what is not good; the Freedom of the Almighty hinders not his being determined by what is best.'

This aspect of Locke's theory has led Von Leyden to comment:

By holding that moral values cannot be other than they are on account of their suitability to the essential nature of man, Locke provides law with a natural foundation and makes human reason a self dependent source of obligation.⁶⁵

This is to overstate the case as Locke never abandons the belief that the law of nature obliges because it is the will of God. What he does do however is provide an additional reason for accepting the fact that the will of God is worthy of the obligation demanded. He is once again dealing with motivation as opposed to obligation.

He states:

⁶⁵ *Essays*, Introduction, p.51

In fact it seems to me to follow just as necessarily from the nature of man that, if he is a man, he is bound to love and worship God and also to fulfil other things appropriate to his nature ie. to observe the laws of nature. As it follows from the nature of a triangle that if it is a triangle its three angles are equal to three right angles.⁶⁶

In line with his basic epistemology Locke proceeds from a self evident proposition or definition, through a necessary consequence, to arrive at a certain truth.

One of the plainest examples of Locke's theory as presented at this level appears in a journal entry dated 15th July 1678.

God having given man above other creatures of this habitable universe a knowledge of himself which the beasts have not, he is thereby under obligations, which the beasts are not, for knowing God to be a wise agent; he cannot but conclude that he has that knowledge and those faculties which he finds in himself above other creatures given for some use and end. If therefore he comprehends the relations between father and son and finds it reasonable that his son whom he has begot (only in pursuance of his pleasure without thinking of his son) and nourished should obey, love and be grateful to him, he cannot but find it much more reasonable that he and every other man should obey and revere, love and thank the author of their being to whom they are all that they are. If he finds it reasonable that his children should assist and help one another and expects it from them as their duty, will he not also by the same reason conclude that God has made him and all other men in a state wherein they could not subsist without society, and has given them judgement to discern what is capable of preserving that society, can but conclude that he is obliged and that God requires him to follow those rules which conduce to the preserving of society.⁶⁷

⁶⁶ Cf. *Essay*, Bk. IV, Ch. X, Section 1.

⁶⁷ Bodleian MS Locke f3, pp 201-2 headed *Lex Naturae*.

By this argument, man is to come to understand the laws of nature by understanding his own nature, and his obligation to obey them by appreciating the relationship between father and son, creator and created, God and man. He also suggests that this relationship should appear reasonable to man, as will the assertion that God has some purpose for him to fulfil.

On other occasions he is less confident of this being so evident, and once again he introduces the notion of motives to obedience. As suggested above, divine sanctions will not suffice in this context, because of the difficulties in providing a rational proof of an afterlife. Locke therefore introduces a more earthly form of hedonism.

It has been argued that the psychological hedonism common to Locke's later writing is damaging to his rationalist interpretation of law. However, when placed in the context of the argument above, this hedonism, for want of a better word, will be seen to compliment his theory of natural law.

As suggested above, Locke felt it 'fortunate' that God had linked the virtuous to the 'convenient'. In fact he explicitly states that God has 'by an inseparable connection joined virtue and public happiness together'⁶⁸

⁶⁸ *Essay*, Bk.I, Ch.II, Section 6.

and that 'the law of nature is the law of convenience too'.⁶⁹ The use of the term 'public happiness' in this context should not pass unnoticed. Desire for happiness, Locke states in the *Essay*, is a natural inclination of mankind, 'everyone constantly pursues, and desires what makes any part of it'.⁷⁰ Given that God cannot but pursue happiness, and men naturally pursue happiness, it makes sense that the law which God makes to govern men should promote that desired happiness. Not because that is the reason for which the law is created, but because the law is created to promote what is morally right, which is in turn appropriate to man's nature. Moreover, in the realisation of man's true nature lies the surest route to happiness.

An advantage of this reasoning is that those who fail to grasp the nature of the good which God ultimately pursues, and Locke admits that men will not always be capable of understanding the ways in which God's purpose is being acted out, can relate instead to their own personal good, which is necessarily a part of a larger whole. In securing their own personal pleasures, by obeying the law suitable to their natures, they will also be obeying that law which pursues something far greater, and possibly beyond their everyday grasp.

⁶⁹ *Reasonableness*, p.142.

⁷⁰ *Essay*, Bk.II, Ch.XXI, Section 43.

It might be thought that this interpretation is approaching a notion of rule utilitarianism, however it is essential to appreciate that in this instance utility is the result of acting morally, as opposed to the reason for doing so. 'Utility' Locke assures us 'is not the basis of the law, or the ground of obligation, but the consequence of obedience to it.'⁷¹ Furthermore the reference above to 'public happiness' is enough to suggest that immediate personal pleasures and appetites might sometimes be sacrificed. And, finally, it is an inescapable conclusion of Locke's theory that personal judgements as to the good or evil of an act have no objective moral status, they are correct only in so far as they accord with God's judgement.

Natural law, politics and morality

Having shown how it is possible for all men to come to an understanding of the laws of nature, and furthermore, how all men can be given good reasons to obey those laws, Locke is able to place them in a central position within his theory. It will be shown that he takes full advantage of this opportunity, and thereby changes the emphasis of his theory in a way which may not appear immediately obvious.

In the *Treatise*, as quoted above, Locke first speaks of the laws of nature within his account of man in his natural state, a state he defines as 'Men living together according

⁷¹ *Essays*, p.215.

to reason without a common Superior on Earth to judge between them'.⁷² Locke never questions man's inherent sociability.

God having made man such a creature, that, in his own Judgement, it was not good for him to be alone, put him under strong obligations of necessity, Convenience and Inclination to drive him into Society, as well as fitted him with Understanding and language to continue and enjoy it.⁷³

Within this state the law of nature is the only law, and for as long as man's life remains simple, and his nature largely uncorrupted, it is sufficient to ensure peace and individual security.

However, there are certain inadequacies within the law and the 'inconveniences' of life in the state of nature arise mainly because it remains un promulgated, and there is no indifferent judge to adjudicate conflicts arising from its application. What is more Locke's 'peculiar' theory of punishment allows every man to judge in his own case, and execute punishment as he judges appropriate. As a set of moral dictates the law of nature is more than adequate, as a law it is lacking. However, 'till by their owne Consents they make themselves Members of some politick Society'⁷⁴

⁷² *Treatise II*, 19, p.321.

⁷³ *Treatise II*, 77, pp.361-2.

⁷⁴ *Treatise II*, 15, p.318.

men remain both subject to, and individual executioners of this law, and this law alone.

Returning to the vocabulary of the opening chapter of this thesis, it would appear that within Locke's theory the laws of nature inform man as to what he ought morally to do, the content of that moral ought being either discovered by his reason or dictated by his faith. The laws of nature stand as an objective standard of right and wrong, in terms of which men should judge their actions. Locke sometimes chooses to speak in terms of 'natural obligations' resulting from those laws, but he also clearly states that the laws tell us what we ought not do.⁷⁵

It could be argued that Locke's use of the word obligation is not altogether appropriate when discussing man's relation to the laws of nature. The 'previous committing action' common to all clear cases of obligation is difficult to identify, and it is not easy to see how these natural obligations may ever be discharged. Furthermore the specific relational aspect of an obligation is absent, instead one has general and universal moral duties to perform or refrain as the law requires. In a sense the dictates of natural law are like positional duties attached to being human, but more usefully they may be understood as indications of what man ought to do *qua* man.

⁷⁵ *Treatise II*, 6, p.311.

Going against the law of nature is equivalent to 'varying from the right rule of reason whereby a man becomes so degenerate and declares himself to quit the principles of human nature and to be a noxious creature'.⁷⁶ Locke comes close to saying that to perfect humanity is to live by the laws of nature, and to abandon the laws of nature is to become less than human.

In the paradigm case of an obligation one may often choose whether or not to create one, but man cannot choose whether or not to be bound by these laws. He is bound because he is human and because he is God's property, it goes without saying that he is subject to God's law. Even on the fundamental issue of control over his own life man is subject to Gods rule and preference:

For men being all the workmanship of one omnipotent and infinitely wise maker; all servants of one Sovereign master sent into this world by his order and about his business, they are his property whose workmanship they are, made to last during his not one anothers pleasure.⁷⁷

By representing man's relation to his maker in terms of property ownership, and by explaining God's right to control as deriving from his creating man, Locke disregards

⁷⁶ *Treatise II*, 10, p.313-4.

⁷⁷ *Treatise II*, 61, p.350.

the point that obligations are most commonly understood to be self assumed.⁷⁸

In the paradigm case, either a man expressly places himself under an obligation, he or acts in such a way as to indirectly create an obligation. In Locke's account the obligation is seen to exist irrespective of man's actions. As in the case of a child's natural obligations to his parent, it is the actions of the obligee that appear to create the obligation, not those of the person who is obligated. The important issue then becomes whether or not men choose to recognise these 'obligations' to the extent that they feel obliged to act upon them. It has to be shown that men are willing to accept an obligation to do what the laws of nature prescribe/tell them they ought to do. Thus the big issue is motivation.

It has already been shown above that Locke goes to some lengths to provide an account which as well as describing how men arrive at a knowledge of the laws of nature also explains why they will be motivated to obey the laws. According to Locke, man recognises his obligations under the laws of nature either because he is a Christian and/or because he is rational. Throughout the Treatise he is

⁷⁸ Cf. above p.20ff.

careful to present all significant forms of knowledge as discoverable through reason and/or revelation.⁷⁹

Although there are both moral (the laws are the will of God) and prudential (God's laws are directed towards mens' best interests and have heavenly sanctions attached to them) reasons for recognising and accepting one's natural obligations, Locke does not lose sight of the fact that men may nonetheless feel free to decide whether or not to obey these laws. Just as it is a problem within the state of nature that the laws of nature remain 'writ within the minds of men', it is a problem that the motives toward obedience are dependent either upon a belief in the afterlife, or a fairly sophisticated grasp of God's purpose as it relates to man.

It is possible, if not probable, that even if man recognises his natural obligations as such, he will not feel sufficiently motivated to act upon them; just as he might choose on occasions to rank the demands of a prudential ought as more urgent than those of a moral ought. Human nature is such that men will find it difficult not to judge in their own favour, and interpret the laws as suits their purposes.

⁷⁹ cf. *Treatise II*, 25, p.327 in relation to private property, and *Treatise II*, 52, p.345 in relation to a mother and father having an equal title to power over their property.

though the Law of Nature be plain and intelligible to all rational Creatures; yet men being biased by their Interest, as well as ignorant for want of study of it, are not apt to allow of it as a Law binding to them in the application of it to their particular Cases.⁸⁰

This is why Locke is forced to admit that life in the state of nature will be uncertain, and the enjoyment of property will be insecure. In a journal entry dated 20th March 1678 Locke laments that

Our state here in this world is a state of mediocrity' wherein 'we are not capable of living together exactly by a rule, not altogether without it.⁸¹

And in the Treatise he gives as the chief reason for wishing to join a civil society the desire to protect one's Property, which in the broad sense adopted here includes 'Lives, Liberties and Estates'.⁸² He then goes on to list the 'inconveniences' of the state of nature which make the enjoyment of one's property uncertain, the first of which is the lack of an 'establish'd, settled, known Law, received and allowed by common consent to be the standard of Right and wrong'⁸³

⁸⁰ *Treatise II*, 124, p.396.

⁸¹ 'Journal Entry 20th March 1678', Manuscript Msf3 Bodleian Library.

⁸² *Treatise II*, 123, p.395.

⁸³ *Treatise II*, 124, p.395-6.

This is not to say that such a standard of 'Right and Wrong' does not exist, however, as the preceding quotes suggest impartiality is too much to expect of men, especially in the state of nature.

The move to civil society is in the main an attempt to make effective the law of nature, and thereby protect men in the enjoyment of their property. The hope is to avoid the need for 'appeals to heaven', where, in the absence of a clearly written law and an earthly judge 'every the least appeal is apt to end.' ⁸⁴

It would be wrong given this account, to see the introduction of civil law as sweeping away or replacing the law of nature. Civil law does not supersede the law of nature, rather it amplifies and supplements it. Nothing can justly be called law which contradicts the laws of nature. In fact, the laws of nature will often prove more accessible to reason than the municipal laws of a society.

It is to this law that man first owes his obedience and this fact does not alter. Given the serious manner in which Locke regards transgressions against the laws within the state of nature, it would be unrealistic to assume that they become less important within civil society.

⁸⁴ *Treatise II*, 21, p.323, also *Treatise II*, 243, p.477.

In transgressing the law of nature the offender declares himself to live by another Rule, than that of reason and common equity which is that measure God has set to the action of men for their mutual security; and so he becomes dangerous to mankind, the tye, which is to secure them from injury and violence being slighted and broken by him. Which being a trespass against the whole Species and the Peace and Safety provided for by the law of nature.⁸⁵

Locke is most anxious to carry the concept of natural law over from the state of nature into civil society. Within the commonwealth, 'tyes' between men are reinforced and extended, but an attack on the law of nature still constitutes a severe blow to man's fundamental security. The law of nature is the law of man's creator and as such it remains in place throughout man's existence.

Thus the law of nature stands as an eternal rule to all men, Legislators as well as others. The rules they make for others mens actions, must as well as their own and other mens actions be conformable to the law of nature and the fundamental law of nature being the preservation of mankind, no humane sanction can be good or valid against it.⁸⁶

On the one hand Locke presents men as able to understand the laws of nature, but he also recognises that it may often be difficult for them to act upon what they know to be right. These difficulties result from man's own nature and also from certain structural difficulties with the law

⁸⁵ *Treatise II*, 8, p.312.

⁸⁶ *Treatise II*, 135, p.403.

of nature. To ensure their effectiveness they must be made more law-like. This entails:

1. Clearly promulgating the laws.
2. Appointing judges and magistrates to administer disputes.
3. Annexing tangible sanctions to the laws to ensure obedience.
4. Clearly affording an appropriate body power to punish offenders.

Nowhere is it argued that the essential dictates of the law are inappropriate or in need of alteration, the problem is one of form rather than content, and such problems can be rectified.

'The obligations of the law of nature cease not in society but only in many cases are drawn closer, and have by humane laws known penalties annexed to them, to inforce their observation.⁸⁷

The structural problems associated with the laws of nature explain the need for a 'law-maker' on earth, a sovereign power which will be obeyed. This is the role of government, and the first requirement upon any government is to 'govern by establish'd and standing laws, promulgated and known by the people and not by Extemporary Decrees.'⁸⁸

⁸⁷ *Ibid.*

⁸⁸ *Treatise II*, 131, p.399.

These laws should be 'directed to no other end, but the Peace, Safety, and publick good of the people.'⁸⁹

Locke is committed to creating a model of government which will be best able to fulfil these tasks. Thus it will be seen that the desire to transfer the laws of nature into civil society determines not only the content of the civil laws, and the establishment of a sovereign political power, but also the form, extent, proper origin, and even personnel of government.

The moral state

Having been 'driven' into society men choose to take things further, and look to create a civil or political society where they will be:

united into one body, and have a common established law and judicature to appeal to with authority to decide controversies between them and punish offenders.⁹⁰

Civil society is an artificial entity which has to be created, and the form of political society that might be seen to evolve most naturally is not necessarily the most

⁸⁹ Ibid..

⁹⁰ *Treatise II*, 87, p.365.

desirable.⁹¹ Men decide to become members of civil society, and it is open to them to decide not to do so. Being essentially rational and peaceable it is safe to assume that the large majority will choose to do so.

As argued above, the fundamental principles of civil law are non-negotiable, based as they have to be upon the laws of nature. However, If the laws are now to be 'made' by government, in the sense of being written down, codified and promulgated there has to be some way of testing that they are in fact based on the fundamental moral principles which men ought to live by.

Happily, there are a number of 'tests' available. The content of the law may be judged either directly, in terms of its identity with the laws of nature, or indirectly, in terms of its ability to achieve its purpose, that is the extent to which it ensures 'the Peace, Safety and publick good of the people.' It would be interesting to consider the extent to which this second standard of judgement might allow an 'ends justifying means' type argument to slip in.

⁹¹ The account offered in Chapter VI of the Second Treatise suggests that paternal power will develop into monarchical power, but the important point is that this power is not based on right but rather on the consent of children which is based on gratitude. However, Locke wishes to keep any discussion of absolute monarchy firmly within the sections dealing with the state of nature (cf s90, s93) and leaves a discussion 'Of the Beginning of Political Societies' to the next chapter.

Some commentators do worry about this in relation to Locke's majoritarianism.⁹²

However, just as Locke chooses to define the state of nature as a state of perfect freedom, but not of licence. A state in which every individual has executive power of the Law of nature, and a state in which every one has the right to judge in his own case and punish those who transgress.⁹³ He defines the existence of political society in terms of men giving up their rights to judge independently on the basis of the laws of nature. The individualism inherent in his account of man in his natural state is thus modified.

Locke clearly states that 'No Man in Civil Society can be exempted from the Laws of it.'⁹⁴ However, there is also a natural law, which is

as intelligible and plain to a rational creature, and a studier of that Law as the positive laws of commonwealths, nay possibly plainer; as much as reason is easier to be understood than the phansies and intricate contrivances of Men, following contrary and hidden interests put into words; For so truly are a great part of the Municipal laws of countries which are only so far right, as they are founded on the Laws

⁹² Cf W. Kendall, 'John Locke and the Doctrine of Majority Rule', *Illinois Studies in the Social Sciences*, xxvi, 2, 1941.

⁹³ *Treatise II*, Ch.2.

⁹⁴ *Treatise II*, 94, pp.373-4.

of Nature, by which they are to be regulated and interpreted.⁹⁵

If this is so, it suggests that individual men will, at times, be in a position to judge that the laws of their country do not conform to the natural law of human kind. If this is so then they must also know how to proceed.

In Chapter II of the *Treatise* when Locke is seeking to substantiate his claim that in the state of nature 'every man hath a right to punish the offender and be Executioner of the Law of Nature', he draws an analogy with a government's right to punish an 'alien' for crimes committed in their country.

The legislative authority by which they are in force over the subjects of that commonwealth hath no power over him. Those who have supremem power of making laws in England, France or Holland are, to an Indian but like the rest of the world. Men without Authority: And therefore if by the law of nature every man hath not a power to punish offenders against it as he soberly judges the case to require, I see not how magistrates of any community can punish an Alien of another country, since in reference to him they can have no more power than what every man may naturally have over another.⁹⁶

This is a reiteration of the point that everyone remains governed by the laws of nature, plus the additional point that these laws are universal, and cross national boundaries. 'The tyes of natural obligations are not

⁹⁵ *Treatise II*, 2, p.308.

⁹⁶ *Treatise II*, 9, p.313.

bounded by the positive limits of kingdoms and commonwealths.⁹⁷ However, the really interesting point is that it is suggested here that men retain - in some sense at least - their right to punish those who offend against the laws of nature. Although this power will now be exercised by those with political authority, it is derived from the fact that all men actually retain such a power, if not the right to exercise it.

The Judicious Hooker wrote that we must obey the laws of our society 'unless there be reason shew'd which may necessarily inforce that the laws of reason, or of God, doth enjoyn the contrary.'⁹⁸ Locke is surely committed to the same view. Unfortunately the passage in which he most directly addresses this question is far from clear.

But though every man who has enter'd into civil society, and is become a member of any commonwealth, has thereby quitted his power to punish offences against the Law of Nature, in prosecution of his own private judgement: yet with the judgement of offences which he has given up to the legislative in all cases, where he can appeal to the magistrate he has given up a right to the commonwealth to employ his force, for the Execution of judgements of the commonwealth wherever he shall be called to it; which are indeed his own judgements they being made by himself or his representative.⁹⁹

⁹⁷ *Treatise II*, 118, p.392.

⁹⁸ Cf. Hooker op cit.

⁹⁹ *Treatise II*, 88, p.368.

Punishment of offences is no longer an individual right within civil society, the right to 'appeal to the magistrate' however remains, and this will be discussed further below. What is particularly interesting however, is Locke's statement that the judgements of the commonwealth are indeed the individual's own judgements 'they being made by himself or his representative.'

For this statement to be morally significant Locke needs to show that in some real sense the judgements of the commonwealth remain the judgements of each individual within it. Hence the importance which he places on individual consent.

It is not sufficient that a government either emerges naturally, or takes power through superior might. Rather, it must acquire the power it exercises over the people directly from the people. The people must understand that the work of government is the employment of their collective power on their behalf. They must also understand that the only way in which a government can rightfully gain sovereignty over them is through a transfer of power. If these facts are made clear, then although power is ostensibly removed from the people, it actually remains with them, as it is their right to entrust it, and indeed remove it as they see fit. Governments are empowered by people, and that empowerment is conditionally granted.

Men being, as has been said, by Nature, all free, equal and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent.¹⁰⁰

To be legitimate political power must rest on consent, but Locke then takes the argument further, and seeks to ensure that the legitimacy of government is determined not only by its origin, but also by its form. In the context of a discussion on slavery, Locke states that a man not having complete power over his own life (only God has that) 'cannot by Compact or his own Consent, enslave himself to anyone, nor put himself under the Absolute, Arbitrary Power of another, to take away his life as he pleases.¹⁰¹ The 'cannot' in this context having both logical and moral force.

This prohibition has a number of implications:

First, it illustrates the formal point that if one is to be moral and rational, one is not completely free to give one's consent as and when requested. As discussed in the first chapter, the fact that something has been consented to does not of itself make that thing moral, unless the immorality of the act is defined solely in terms of a lack of consent eg. rape. One has to ask a separate question as to whether, having consented to do so, it would be moral

¹⁰⁰ *Treatise II*, 95, p.374.

¹⁰¹ *Treatise II*, 23, p.325.

(or in the case sighted above, possible) to act in such a manner.

Second, when transferred to political context, it makes a specific point about the nature of political rule one is free to consent to. Logically it is impossible to place oneself under the complete control of another being, because one does not initially possess complete control over oneself. More importantly, one ought not morally consent to 'absolute, arbitrary Power' being exercised over one, because the only rightful possessor of such power is God. One is only free to pass over limited power and conditional obedience,¹⁰² and, 'the State of War and slavery ceases, as long as the Compact endures.'¹⁰³ Anything beyond limited political power is slavery, and those who seek to exercise such power over others place themselves in a state of war with respect to them.

Within this prohibition lie the seeds for both Locke's famous theory of revolution expanded in Chapter 19 of the *Treatise*, and his theory of limited representative government.¹⁰⁴

¹⁰² *Treatise II*, 135, p.402.

¹⁰³ *Treatise II*, 24, p.326

¹⁰⁴ Locke is willing to accept the need for absolute power to be in operation within certain circumstances eg, the armed forces, but even here it is restricted to power in matters relevant to the ends in sight, so an officer can demand that his soldier die in battle but cannot demand that he give over so much as a farthing of his money. cf *Treatise II*, 139, p.408. 'Because such blind obedience is'

Having rejected absolutist rule as morally unacceptable and equivalent to slavery, Locke is required to show what degree and nature of rule is morally acceptable. In terms of a model of government he favours a representative democracy, in which the legislative, executive and judicial powers are separated. Moreover, he feels the government should be free to exercise only such power as is necessary to achieve the ends for which it is instituted.

Two interesting questions now arise:

1. Why does Locke favour a representative as opposed to a direct democracy ?
2. What degree of power will he accept as necessary to achieve the ends for which government is created?

It has been argued that Locke's recommendations arise purely from normative ideological preferences.¹⁰⁵ However, it may be clearly demonstrated that the form of government he chose was dictated by the aims it was meant to achieve.

On the question of the extent of governmental power desirable or appropriate, it is generally assumed that as a classic liberal Locke will only be prepared to sanction

necessary to that end for which the commander has his power, the preservation of the rest, but the disposing of his goods has nothing to do with it'

¹⁰⁵ Cf. MacPherson op cit., and Pateman op cit.

minimal government intervention through law. However, unlike Hobbes who can never quite reject the idea that liberty and obligation or law are opposing concepts, Locke moves cautiously towards the position of Rousseau, such that true freedom is only possible through law - 'where there is no law, there is no freedom'¹⁰⁶

For law in its true notion, is not so much the Limitation as the direction of a free and intelligent agent to his proper interest and prescribes no further than is for the General Good of those under that Law.¹⁰⁷

In this passage liberty is presented as a positive concept, involving the 'proper interest' of 'free and intelligent agents', and concerned with the 'general' as opposed to particular good of individuals.¹⁰⁸ Just as the laws of nature promote God's purpose, so civil laws ought to promote God's purpose writ small in the commonwealth, that is the public interest, or perhaps more properly man's global interest. This allows Locke to differ profoundly from the classic negative position on liberty favoured by most liberals, where the freedom of the individual is measured in terms of the extent to which he is left unhindered in the pursuit of his individual desires.

¹⁰⁶ *Treatise II*, 57, p.348 Of course I have to acknowledge that the interpretation of Hobbes offered in the preceding chapters appears to place him in a similar position.

¹⁰⁷ *Ibid.*

¹⁰⁸ Cf. King's *Life and Letters* ii. pp.95, 103.

Although the extent of governmental power is always limited by the fact that men only transfer a part of that which they can transfer, it may well go beyond the level favoured by classic liberals. Despite Locke's reassuring assertions on the importance of private property, and the injustices of taxation, it is at least possible to detect some scope for state paternalism. The free and rational individual may well understand the law as an enhancement of his freedom, and readily acknowledge the fact that it fences him off from bogs and precipices. But what of the less rational man?

According to Locke, what makes a man free is 'a capacity of knowing that law',¹⁰⁹ in other words reason (or alternatively revelation). Those who are incapable of developing reason can never be free men. He sums up thus:

The Freedom then of Man and Liberty of acting according to his own Will, is grounded on his having Reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will. To turn him loose to an unrestrained liberty, before he has reason to guide him, is not the allowing him the privilege of his nature, to be free; but to thrust him out amongst Brutes, and abandon him to a State as wretched, and as much beneath that of a man as theirs.¹¹⁰

¹⁰⁹ *Treatise II*, 59, p.349.

¹¹⁰ *Treatise II*, 63, p.352.

This point is made in the chapter concerning Paternal power, however, in a wider social context it could be seen to have quite profound political consequences.

Locke acknowledges that in reality an age is set, by which all but the most obvious exceptions amongst men are taken to have acquired reason. This is in line with later liberal thinkers such as Mill, who are willing to assume rationality unless it is patently obviously absent. However, referring to Locke's earlier discussions concerning rationality, there appears to be scope for inquiring as to the extent to which people have acquired reason, by testing the extent to which they are able to 'carry proofs'.

If it is the case that those who are completely without reason need to remain under the government of those who have acquired it (as is the case with children, lunatics and idiots), might it not also follow that those who have greater reason are in a position to govern those with less? This could offer an explanation of Locke's preference for representative democracy, wherein the 'studiers of law' may take responsibility for the welfare of 'the spinsters, milkmaids and day labourers'.

Many might choose to label this elitist, but to borrow Locke's term, it is 'fortunately advantageous', because,

according to him these men will also be those in the best position

- a) to know what is morally right, and,
- b) to understand that which is morally right is also advantageous.

It would appear that by identifying the 'studiers of the laws of nature' Locke has also identified those most qualified to rule, and those who will be most committed to the idea of limited rule, suitable to man's nature, and in conformity to the laws of nature.

It is therefore possible that man is only truly free if he consents to **rule by particular men**. Locke appears to acknowledge this when he demands that

when the People have said, We will submit to rules and be govern'd by laws made by such men, and in such forms, no body else can say other men shall make laws for them ¹¹¹

The legislature, it would appear, is not a featureless body of substitutable men. To ensure that government fulfils the purposes for which it is designed men must consent to a particular form of rule by particular men. But this is not where the political role of natural law ends. As stated above, political power is entrusted conditionally,

¹¹¹ *Treatise II*, 141, p.408.

and it is up to the citizenry to ensure that the terms of the trust are met.

However, Locke is made unhappy by the apathy of men in this respect, and accuses them of all too often waiting until the chains are on before crying for their freedom. What is required is an active citizenry, or at least an active core within the citizenry and these will be men of high morals and principle, they as well may be drawn from the ranks of the 'studiers of the laws'. It is also probable that these will be the men who choose to consent expressly, as opposed to merely tacitly, to the laws of (just) governments.

This is not to say that government will be above criticism as faults of human nature may well exist within government: the studiers of the laws of nature are only human after all. Individual subjects therefore retain the right to question (either directly or through their representatives) not only the misdemeanours of individuals within government, but also the positive laws if they appear to contradict the laws of nature. This appeal may now be made on earth. Central to Locke's theory of government therefore is the need for a rational active section within the citizenry capable of, and committed to monitoring the laws of government.

Men consent to take on political obligations but they are only binding if they fit in with the morally binding

requirements of the laws of nature. If they don't, or if they stop doing so, then one may be required (prudentially) to obey the laws but one might also be obliged (morally) to get them changed.

Throughout the *Treatise* Locke is careful to maintain the distinction established earlier between questions of obligation and questions of obedience. He speaks of a child's obligation to honour his parents, which is a moral obligation based upon gratitude for the care he has received. This obligation persists beyond maturity, obedience on the other hand is something a parent can expect only for as long as they have the power to command it, and beyond maturity this power is most realistically understood as being based upon the power to bestow their estates with 'The possession of the Father being the Expectation and inheritance of the children'.¹¹² Indeed the father may choose to exercise this power in relation to his child's political obligations:

He may indeed annex such conditions to the land he enjoyed as a subject of any commonwealth, as may oblige his son to be of that community, if he will enjoy those possessions, which were his Father's property; because that estate being his fathers property, he may dispose or settle it as he pleases.¹¹³

¹¹² *Treatise* II, 72, p.357.

¹¹³ *Treatise* II, 116, p.390, see also *Treatise* II, 117, p.391.

Just as this is 'no small tye on the obedience of the children',¹¹⁴ it is no coincidence that there is 'always annexed to the enjoyment of Land, a submission to the Government of the country of which that land is part.'¹¹⁵ Personal benefit under the laws of inheritance is seen as a motive for general obedience to the laws of one's society, at the base of which lie the laws of nature. The move into civil society annexes known penalties to the laws. Add to this the heavenly sanctions levelled against the religious man, and the hedonistic motives offered to the rest, and one sees that Locke attempts to ensure obedience even before he has gone far in his discussion of voluntarily assumed obligations to do so.

However, one cannot ignore the fact that Locke goes on to develop a theory of political obligation in which voluntarily acquired obligations to obey the law have always been seen as central and binding. As a social contract theorist it is generally assumed that the citizen's obligation to obey the laws originates from his consent to do so. However, some interesting questions arise:

1. How exactly does consent contribute to his theory of political obligation?
2. What is the nature of the relationship between the natural moral duties arising from the laws of nature, which

¹¹⁴ *Second Treatise* II, 73, p.358.

¹¹⁵ *Ibid.*

have the same force as moral oughts, and the duties arising from positive law which are taken on as the result of voluntarily consenting to accept such obligations?

It will be argued here that the voluntarism Locke injects into his theory has more to do with concerns about **obedience**, than with determining how men ought to behave. Locke's theory of consent basically offers a second sort of reason why men ought to do what the law of nature, as represented in the positive law, demands. The problems arise if the positive law does not represent the dictates of natural law, because if it does not, consent in itself does not provide a moral ought directive.

To remain consistent with the discussion in Chapter One of this thesis it has to be shown that moral oughts are the moral bottom line, that they trump all other considerations, including voluntarily acquired obligations. In other words it has to be shown that the dictates of natural law are the final word on moral matters, and that they effectively restrict the realm of actions to which an individual can freely and willingly consent. Just as one cannot use as a defence the idea that one had a positional duty to do something one had a moral duty to refrain from doing,¹¹⁶ Locke has to show that morally one cannot consent to accept something which the law of nature prohibits.

¹¹⁶ Cf. Ch. 1 pp.19-23 above.

Locke makes this point quite explicitly in the *Treatise* when he discusses slavery.¹¹⁷

As defined above, the freedom of nature is to be under no other law than the law of nature¹¹⁸, however once in civil society the definition of freedom ostensibly changes and

Freedom of men under Government, is to have a standing rule to live by, common to everyone of that society, and made by the Legislative Power erected in it; A Liberty to follow my own Will in all things, where the rule prescribes not; and not to be subject to the Inconsistent, uncertain, unknown, Arbitrary Will of another man.¹¹⁹

This passage is somewhat misleading, as the individual is not free to follow his will in all things, because in matters of moral import his actions remain governed by the laws of nature even if the civil law is silent. More correctly, freedom within civil society is freedom to live under the rule of law, and to manage one's affairs governed by the natural law alone in those areas in which the positive law is silent. This may well entail voluntarily restricting one's freedom to do as one wills even when the law is silent. For example, the positive law in this country allows for acts of homosexuality between consenting adults, however many leading churchmen believe that

¹¹⁷ *Treatise* II, 23, p.325.

¹¹⁸ *Treatise* II, 22, p.324.

¹¹⁹ *Ibid.*

Christians should recognise a scriptural prohibition on such acts.

As previously noted, Carol Pateman reads this prohibitive strand as something of an internal contradiction within liberalism, such that the emphasis on individually assumed duties and obligations is diminished by the willingness to make some rights inalienable, and certain duties inviolable. However, it seems essential to incorporate this idea into Locke's theory, and it is interesting that the founding fathers, who claim Locke as a great inspiration, chose to frame the liberties of their new nation around a constitution which made certain rights inalienable and inviolable.

If one accepts the existence of a set of universally binding moral dictates which exist independent of individual human will, then one must also accept that one ought not to will that which goes against these dictates.

Conclusion

This chapter has concentrated attention upon Locke's theory of natural law, and particularly the way in which it becomes known to men, and the manner in which men become motivated to obey it. It has been claimed that Locke implicitly recognises that his arguments on these matters

must suit two very different audiences. First there are the ordinary people who will accept the existence of God, and obey his laws because of their religious faith and the teachings of scriptures. Secondly, there are those for whom faith is not sufficient because they require a proof that God exists, and also require reasons to explain why they must accept his laws as binding.

This dichotomy has implications far beyond questions of epistemology. Having introduced the 'studiers of the laws' there is a potential for Locke to give them a significant role within his political theory. First however, it has to be shown that the laws of nature themselves are significant to that theory.

It was argued here that the laws of nature are indeed politically significant, and that in fact they may render consent far less important within Locke's theory than is usually assumed. The laws of nature are rational dictates which guide men towards fulfilling God's purpose. The god in question is a good and wise god who attaches to his own purpose certain benefits for those men who pursue it. These rewards may be earthly or heavenly, as may be the motives to obedience. Irrespective of why individual men feel obligated to obey the laws of nature, they are all obligated to do so *qua* men. The laws of nature are the ultimate point of reference in determining what they ought

to do - nothing which is against the laws of nature may be obligatory.

As this is the case certain moral standards have to be set in political society without reference to consent, or if consent is utilised it is merely a rubber stamp. One then has to wonder how these standards will be set, and Locke offers a variety of sources. Some moral dictates will be handed down by tradition, others will be revealed by revelation, the most interesting source however will be through the work of the studiers of the laws of nature.

There will be men who through their reason, and possibly their faith, will be equipped to interpret God's purpose and laws directly. These men will have a fundamental part to play in government, both as members of the legislative and executive bodies, and as leaders of the citizenry. Those in government will be charged with ensuring that the positive law does little beyond codifying the laws of nature. If they do their job well then the citizens have no need for concern. If however such men fail to guide the positive laws in the right direction they must be bought to task, and this move will be led by their fellow studiers within the citizenry.

Consent is less important than it might otherwise be because consent merely creates political obligations, and these are only binding if they are identical with what one

ought to do morally, as dictated by the laws of nature. Ultimately it is not left to individuals to determine what these laws dictate, rather it is handed over to experts - be they priests or scholars. It is then the responsibility of these men to make positive laws on the basis of the natural laws, and to seek to overturn those laws which do not conform to the dictates of natural law. To a large extent the mass of the people wait on the sidelines to be mobilised.

If you read Locke as a classic proponent of the traditional liberal democratic model his theory of political obligation is fraught with difficulties and contradictions. If on the other hand you place a more realist interpretation upon his moral theory, you see that there is room for a quite different reading of his political theory. Locke was not a subjectivist about ethics. The laws of nature provide a set of moral dictates which correctly state what is right and wrong. A political proposal is only morally right if it is in conformity with these moral dictates. Therefore the fact that even a majority of people has consented to do X does not guarantee that it is right to do X, similarly the fact that only a small percentage of the population has expressly consented to do Y does not make it wrong to demand that Y be done.

Consent is more relevant to explanations of obedience than to statements of how men ought to behave. The perfect

situation is one in which men rationally comprehend the binding nature of natural law, and consent to be governed by those laws which correctly enshrine its dictates. In such a case obligation, obedience and what one ought to do are joined together. Failing this it is advantageous to ensure obedience through consent by offering motives, such as the avoidance of punishment, or the ability to inherit property. In the last resort however it is more important that men obey the right sorts of laws than that they obey only those laws they consent to.

For this reason Locke removes direct political control from the people and asks instead that they entrust their power to those best suited to rule. Having done so the people are still required to judge the success of their government, and remove power from them if they fail consistently to fulfil their tasks, but whether or not the people will fulfil this task is left open to question.

Conclusion

No conviction has caused more violence, oppression, suffering. The cry that the real present must be sacrificed to an attainable ideal future - this demand has been used to justify massive cruelties.

Sir Isiah Berlin, 1979.

As stated in the first chapter of this thesis questions of political obligation still exercise our minds, and will no doubt continue to do so. While some choose to reassess the extent to which an individual is obligated to obey the laws of the state, others persist in announcing that no such obligations exist. Those who accept the existence of such obligations still find it difficult to explain their origin and justify their binding force. Consent based theories continue to receive particular attention from philosophers and political theorists, with new variations appearing, and with the classical social contract theorists remaining under scrutiny.

It has been claimed here that a proper case of consent, whatever the context, should entail that the person consenting is free (in the sense of uncoerced), autonomous and fully informed, and that the situation within which consent is requested should not work against this being the case. What the individual is consenting to do, be, or accept should be clearly stated, and understood by them,

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and the act of consenting should be deliberate and intentional in the full sense of these words. Anything less than this deprives consent of the moral force required for it to perform its tasks.

The work assigned to consent is the creation of rights, corresponding duties, and, most importantly for our purposes, obligations. Because obligations and duties account for only a 'small segment' of moral reasoning, the scope of consent is limited in moral terms. The fact that one has consented to do X does not make X morally right, nor does the fact that one has taken on an obligation to do X mean that one ought to do it.

These limitations may well have an accompanying effect on the political effectiveness of consent, particularly in those areas where morals and politics are joined. Where moral and political demands conflict the existence of an obligation created by consent may not be enough to ensure the obedience and loyalty of citizens. If an individual considers X to be a morally acceptable act he may still accept that he has a political obligation which entails his refraining from X, but if he considers X to be morally unacceptable he may well refuse to fulfil a political obligation to perform X.

Despite its limitations we soldier on with the concept of consent, and this is probably because it fits relatively

neatly into the broader political ideology we are most comfortable with. The individualism we value so highly demands a role for the individual citizen in political life, and even the most inadequate consenting procedures pay lip service to that role. The image of the government as serving the needs of the people is promoted by the accountability built into any contractual relationship. At an intellectual level we remain committed to making consent work.

Sadly however, the first conclusion of this thesis is that consent is not a feature of modern political life. In reality, consent has become something of a fiction. What we accept as consent in a political context is a pale imitation of the paradigm case, and the obligations we accept on the basis of that so called consent go far beyond what any theory could reasonably justify.

Even in a liberal representative democracy political life affords the individual little opportunity to give or withhold consent, and when such opportunities do arise the odds are stacked against the concept doing its work. This is a comment not only on the political systems involved, but on the individuals whose consent is (so rarely) requested. To get consent working properly would require fairly radical reorganisation of our political system, and, even more importantly perhaps, extensive re-education and motivation of the citizenry.

In contemporary political society obedience is more easily explained in terms of what people feel they ought to do prudentially (to avoid punishment, ensure a quiet life look after their interests, etc.), than in terms of what we they feel obligated to do morally. The activities most commonly taken to be acts of consent (eg. voting, paying taxes, staying put) are rarely intended as such, and the choices and information made available to people when they are asked to consent are severely limited. Essentially the people are not engaged with the system in the manner, or to the extent, envisaged by the theoreticians, and required by the theory.

In the face of these facts we can choose one of two responses. Either we can attempt to change the system and the attitudes of individuals so that consent can operate effectively, or we can accept that it is not going to be a dominant feature of political life. Neither option is easy, and the second may at first appear completely unacceptable given our attachment to the concept. But if we discover that consent has never really played as large or definitive a role as we might have assumed, even in the work of the most famous social contract theorists, it may appear less shocking.

Many commentators have had their doubts about 'Hobbes the consent theorist', usually because of the system he seeks to justify on the basis of consent, and the desperate

position men are in when asked to give their consent. I have attempted to allay some of these traditional doubts, but in doing so have been forced to acknowledge some rather different ones.

The re-reading I have offered of Hobbes's state of nature emerges, I claim, from a more accurate reading of his account of human nature. Because of his mechanistic first principles Hobbes understands man as a form of matter in motion, and the most fundamental characteristic of man is taken to be his desire to stay in motion, that is stay alive. All human endeavour will be directed towards this end, and anything militating against it will be a subject of aversion. Combined with this irrefutable and very basic fact are further intrinsic properties - insatiability, equality, and hunger for power, - and also interactive features which necessarily develop, the most important of which is prudence.

In his account of the state of nature Hobbes tells the story of how man's intrinsic nature is affected by his experiences prior to the institution of political society. However, we discover that although Hobbes is a good (as in effective) story teller, his account is not as true to his theoretical findings as it ought to be.

It was argued in Chapter Two, that Hobbes's theory of human nature commits him to an evolutionary account of human

psychology, yet his state of nature presents a static vision of the human mind and condition. Although we might want to say that men were at some point just as Hobbes described, by the closing stages of the state of nature important changes have taken place. Some men will have lived through the full horrors described, for others they will be a dim memory from their youth, and still others will have only the tales of their parents and grandparents to rely on.

The possibility of a re-reading once a full account of man's psychological development is incorporated has important implications for three quite separate groups of potential consenters - the participants in the original covenant, those living in situations analogous to the state of nature as presented by Hobbes, and those living in established, secure and peaceful political systems.

Given Hobbes's account of the state of nature, as traditionally read, it is admittedly difficult to envisage the emergence of the original contract. However, many of the doubts concerning the ability of men to come together and consent to be ruled disappear if you accept, as argued here, that men develop significantly within the natural state.

Although Hobbes will not permit talk of rationality prior to the formation of the commonwealth, the prudence he

attributes to men is sufficient to explain how they will come to recognise the need to leave the state of nature. Similarly, their albeit limited social and familial relationships will have shown them the potential advantages of co-operation, and attack will no longer be seen as the only form of defence.

What becomes less easy to explain on this re-reading is the choice of an absolute sovereign, and the extent of rule to which individuals agree. If men are not in the state of war Hobbes describes so vividly we have to question whether they will be convinced of the need for absolute and arbitrary rule, even if the model of rule experienced within the family at least explains the acceptance of an individual monarch.

It is of course relevant to ask who will be consenting, and if we accept that it is likely to be the heads of families, then we can claim that they will have the most real experiences of the state of nature in its early stages. However, if their memories have faded, as memories inevitably do, and their more recent experiences are of co-operation within the family, and relative peace between families, they may well question the need to hand over so completely the power they have no doubt come to enjoy.

We must not forget however that this more optimistic reading of the state of nature is not made easily available

by Hobbes. He chose not to present us with the account of the state of nature that his own psychology necessarily committed him to. What we eventually realise is that his account is not primarily a record of how political society was first formed, but rather it is an integral component of all subsequent consenting procedures.

The state of nature, and the account of human nature offered therein, is primarily, and most importantly, information provided for individuals taking on political obligations within established political societies. It is designed precisely to affect all those who read it in such a way as to determine the forms of government they consent to, and those that they reject. The question remains as to whether or not it will succeed.

The word 'determine' is particularly appropriate here given Hobbes's commitment to a deterministic model, as discussed in Chapter Three. Hobbes's determinism has been taken to conflict with the voluntarism inherent in the social contract model, but here it has been argued that determinism and voluntarism need not necessarily conflict.

In Hobbes's case his account of deliberation within the deterministic framework allows for the incorporation of choice, but our definition of consent requires free choice, and one has to enquire further to discover whether the

specific choices made are free in the sense of uncoerced, as opposed to undetermined.

No choice, according to Hobbes, is undetermined, but it can be free in other important respects, and if it is, it is irrelevant that no other choice could have been made in the same circumstances. In this thesis it was argued that a determined choice is a free choice only if it is based on deliberation which could effectively permit the individual to make the best choice available, given their pre-determined goals and desires. In line with Hobbes, free and voluntary does not necessarily mean rational, but there must be the possibility of rational choice.

In some cases men lack the ability to make appropriate choices, which is essentially an issue of individual capability or autonomy. However, it becomes an issue of liberty if the lack of ability is due to the deliberate action, or inaction of others. This is where Hobbes's account of the state of nature becomes acutely relevant.

Given a deterministic system we have taken voluntariness to entail acting from motives or reasons one is (or should be) happy to act upon in the particular situation. Given that some motives are irresistible we have to make the distinction between free and unfree, voluntary and 'untary in this way, even though Hobbes fails to do so.

So, for example, in the familiar case of the robber holding a gun to my head and demanding my money, my handing it over is not a voluntary act.

Even if we accept Hobbes's claim that all actions and choices are backgrounded by the desire to stay alive, we still have to say that the validity of consent may be threatened if this desire is artificially, and inappropriately, forced into the foreground. I have chosen to hand over my money, but (given my desire to stay alive), I could not choose to ignore the considerations that motivated my choice.

Hobbes performs precisely the same trick with his account of the state of nature. By presenting the state of nature as an ever-present, and terrifying, possibility, a moment in history, frozen, magnified, and served up as man's pre-political reality, he holds a gun to the head of all those consenters who have not actually experienced the situation he describes. Only some will be in a position to realise that the gun is a fake.

We need not argue with Hobbes's claim that all normal men wish to avoid death, ensure felicity and secure a commodious living, to do so would be to question his entire theory of human nature which is not part of our purpose. Nor do we need to question at this stage whether the political recommendations he makes constitute the

individuals best means to that end. Even if we allow Hobbes his basic assumptions about human nature, and his preference for absolute sovereignty, there are interesting issues still to be raised.

Essentially the claim made here is that Hobbes's account of the state of nature is a tool of coercion. The state of nature as presented by Hobbes is a fiction grounded on fact. Had he presented an accurate account of man's development as dictated by his own theorising, his political theory would have had a much stronger moral foundation. However, had he done so he would have denied himself a powerful persuasive tool, and the logical case for an absolute sovereign would have been severely undermined.

As mentioned above a re-reading will have implications for two further groups of consenters, first we must consider those living within political societies in which the situation is analogous to the state of war Hobbes describes. One could include in this group contemporaries of Hobbes, who would have been his original readership.

It is in relation to these people that Hobbes's account is least problematic. Hobbes's contemporaries may have experienced if not the exact horror of the state of nature, at least something akin to it. The same could be said of those living in today's trouble spots, such as Beirut and Belfast. For them the tale of horror touches and

illuminates and goes beyond their own reality, and cannot fail to make them concerned for what might happen next. Their own experiences may well make the desperate outcome Hobbes predicts appear at least possible, if not probable. One also has to worry that the powerfulness of his account will blind them to the possible flaws in Hobbes's argument, particularly in terms of a gap between the description he offers and the recommendations he makes. One can easily imagine that people who face daily threats to their security in reality will be particularly vulnerable to the force of Hobbes's claims.

Those who live in a peaceful and settled political state will be less easy to convince, but in a desperate attempt to do so Hobbes trades accuracy for dramatic effect, science for poetry. Their experiences of hardship will be extremely diluted, but their fundamental fears and preoccupations will be the same, and if he has correctly identified those basic fears, he may well convince them that the threats posed by the return of a state of war have completely not receded.

In both cases Hobbes attempts not merely to persuade but rather to determine man's political choices. He feels confident that he can do so because of his belief that man is a determined being, and because he feels he possesses a thorough understanding of precisely what determines man's actions. He knows what men want (even when they don't know

it themselves) and he no doubt feels entitled to force men to accept a system appropriate to the satisfaction of their fundamental desires. However, his belief in man's basic equality, combined with his identification of man as an egotistical being, means that he must appear to allow them to govern their own existences through the consent process.

Having been forced to put the machinery of consent in place Hobbes attempts to determine the outcome of the consenting process by polluting the information upon which decisions will be based. He feels justified in doing this because, for reasons he has failed to present adequately to his readers, he is convinced that the political system he proposes is that which will promote human happiness, prosperity and, in a very particular sense, freedom.

But of course the consent is a facade, although the original consenters will be capable of consenting, those who read Hobbes's account are robbed of the opportunity of doing so. They are all denied accurate information upon which to base their choices, and in the case of those living in situations similar to those Hobbes describes their real fears are compounded by the horrendous finale Hobbes paints for them. This may prevent their rationally judging between Hobbes's recommendations and those of more temperate theorists.

The ultimate tragedy is that if they consent to put the system Hobbes proposes into place, they effectively deny themselves the opportunity to renegotiate their contract (unless the sovereign fails dramatically in his role). Furthermore, the obligations they acquire on the basis of their consent entail a far stronger commitment than suggested appropriate by the paradigm case of obligation outlined in Chapter One of the thesis. Even the moral hierarchy of oughts, obligations and duties is thwarted because what one ought to do morally depends upon the sovereign's interpretation of the laws of nature, for which he is answerable only to God.

Contemporary experiences suggested to Hobbes the fundamental importance of peace and security as necessary prerequisites to the fundamental goal of preserving human life. His political solutions were designed to secure these ends. Had he promoted these political goals more directly it is at least possible that some of those whose lives had been tainted by war and instability would trade political liberty for peace and security, others would not. The important point is that they would have been afforded the real choice that consent based theories seek to protect and promote.

Instead Hobbes emerges as a positive libertarian who, despite his rejection of Aristotelian teleology, had a very clear idea of the good life, dictated to him by his beliefs

concerning man's basic nature. The exact details of the good life are essentially determined by individuals, and will differ from person to person. Men will pursue their own interests, and enrich their existence in the manner that they choose, but they can only begin to do so once unhindered by fears for their safety, and threats to their security. According to Hobbes, the only way to guarantee such an existence is for men to place themselves under the rule of a sovereign and transfer absolute power to him.

What causes him problems is that his true account of human nature does not entitle him to promote life under the sovereign as enthusiastically as he does, nor will it help him to do so.

Those who have lived through the Hobbesian state of nature as presented here, may well consider the extent and severity of rule unnecessary, if not in the first instance at least over time, as the memory of life in the early pre-political society fades. Even those who have experienced horrors akin to those Hobbes described will be disadvantaged by reading his account, as their choices will be unavoidably motivated by the fears his tale compounds. For those who have not experienced anything like the state of nature Hobbes's describes his recommendations will be particularly unpalatable, but thankfully they will be the least susceptible to his influence. Their decisions will be backgrounded by the desire to stay alive, but will be

foregrounded by more immediate and more sophisticated preoccupations, including perhaps the desire for political and individual liberty.

Unless we share Hobbes's faith in absolute sovereignty the tricks he plays with his account of the state of nature are completely unacceptable. Even if we do, we might still wish that he had left individuals free to choose or reject his proposals, as required by a proper theory of consent. Hobbes was so convinced of his political beliefs he manipulated the consenting procedure in order to promote them. Social contract theory demands that the primary loyalty be to the procedure of consent, and that one accepts whatever form of government consented to. Hobbes is unwilling and unable to accept this fact.

Locke's theory of political obligation presents rather different, though not completely unrelated, problems. The question of information is once again important, and just as Hobbes is concerned to capture his audience as effectively as possible, Locke seeks to present his views in a way (or more properly ways) conducive to a number of different audiences. However, Locke does not wish to pervert the consenting process, rather it has been suggested that he wishes to supplement it and thereby strengthen it.

Locke has frequently been criticised for his willingness to employ a theory of tacit consent which almost completely disregards the requirement that consenting be an intentional act. It is difficult to defend him against this claim without arguing that individual consent may not be as fundamental to his theory as usually assumed. If we do make this claim however, we also need to show what does the work usually assigned to consent.

In Chapter Four, I argued that this work is actually performed by Locke's theory of natural law, with the result that ensuring obedience, loyalty, and legitimacy within political society has more to do with instructing citizens and governments of what they ought to do morally, than what their *obligations* are politically. Essentially Locke seeks to provide reasons for obedience which exist independent of consent, and which can in moral terms trump the obligations consent creates.

A similarity with Hobbes lies in the fact that Locke is as convinced of the correctness of his moral views, as Hobbes is convinced of the correctness of his political recommendations. Locke is a moral realist who essentially believes that there are facts about morality in the same way as there are facts about the number of books in a library, or the cost of a car. Issues of right and wrong can be settled by reference to these facts, and are in no way dependent upon human will. On this he differs

profoundly from Hobbes, who essentially remains true to a subjectivist model.

In Chapter One of the thesis, I acknowledged the difficulty of putting content to the abstract notion of 'doing what one ought to do morally'. A realist must show us how to discover the facts about morality, and Locke has a ready answer. What men ought to do is obey the laws of nature, and the content of what one ought to do is precisely what the laws of nature command.

Locke is in no doubt that such laws exist, but claims that different people will come to know of them in different ways, and with varying success. Despite several confusing references he does not believe that they are innate ideas, but he does hold that they are discoverable by human reason. More obviously however they are available through the medium of Christian religion. The laws of nature are the will of God, and it is by understanding the nature and purpose of that God that one most easily learns what is required to be moral.

This is where Locke explicitly acknowledges the existence of two quite different audiences for his views. Those who have faith will hear the word of God through revelation and scripture, and particularly in the case of the uneducated the Gospel will be the easiest source of moral instruction. However, the Bible is open to interpretation, indeed the

message it presents has already been interpreted in the process of being written down. Sometimes an authoritative interpretation will be required, and here the role of the expert is invoked, as it tends to be in any realist theory. If there is a correct way of seeing the world, or reading the Bible, we may sometimes need to be guided towards it by those who know the way.

The experts in question are those Locke refers to as the studiers of the laws of nature, his second audience. These may well be men of faith, but they need not be in the first instance, because Locke also (attempts) to provide a logical proof of the existence of God which will allow those without faith to come to know that he exists. What is more they will learn that the God in question is a good and rational god, whose purpose is entirely compatible with that of his greatest creation - man.

This second point is of crucial importance, as Locke is acutely aware of the issues of moral motivation discussed in Chapter One. Even with his benevolent interpretation of man's nature he has to accept that what we ought to do morally will not always coincide with what we want to do, or with what we feel we ought to do prudentially. Yet he has to ensure that in the event of conflict the correct moral choice wins out. He therefore offers two systems of reward and punishment designed to ensure obedience where pure reason or religious commitment alone fail.

For the religious person the rewards are in heaven, the punishments in hell. It does not matter that Locke cannot prove the existence of an afterlife because these people will believe, independently of proof and as a matter of conviction, in a life after death.

For those who may on the one hand accept the existence of a rational first mover, but reject the trimmings of Christian doctrine, Locke offers more earthly inducements. One ought (prudentially) to obey the laws of nature because they promote human happiness, which is God's purpose writ small.

Importantly, neither of these arguments are designed to explain why the laws of nature are binding. They are binding *purely* because they are the will of God. These arguments address the crucial question of moral motivation and provide prudential reasons for doing what do what is right. If, and when, the prudential justification seems weak, and the action demanded appears self defeating, the duty to perform it still exists. God's purpose is not always laid bare, but he always has the last word.

Locke is thorough-going in his commitment to moral education, and if he can succeed in bringing all rational beings to an understanding of the laws of nature, by one means or another, the effects on his theory of political obligation will be profound. Given the fact that what one

ought to do necessarily trumps what one has an obligation to do, when the two are in conflict the laws of nature may well render consent redundant in certain situations. Even where consent remains in place the focus will shift onto what is consented to, rather than the process of consent - for Locke the content of consent is extremely important.

Locke explicitly states that individuals cannot be understood to give their consent to anything which the laws of nature prohibit. So, irrespective of consent, certain laws, and presumably political regimes will be illegitimate. Locke, along with Hobbes, rejects the idea that one should accept whatever the consenting system throws at you. If this is so we need to know what the laws of nature will, and will not, permit.

As stated in Chapter One a theory of political obligation need not explain how an entire population becomes obligated to obey the laws of its government. Some people will not be obligated, and this is an acceptable fact. Yet, in Locke's theory no one escapes political obligation because even a visitor, or alien, is bound through tacit consent. This is a damaging consequence of his willingness to accept as signs of consent actions such as 'walking along the highway,' and, his quite separate but related belief that the receipt of certain benefits is a sufficient grounding for obligations. Those who expressly consent to be governed account for only a small proportion of the

population, and are most obviously members of the property owning classes.

Given the fact that Locke's theory of tacit consent fails to meet the criteria set in Chapter One, few people would appear to have consented in the true sense of the word. However, all who lay claim to the title human share a positional duty attached to that status - that is the duty to obey the laws of nature. Furthermore, in this instance there can be no conflict between positional duty and what one ought to do, as the two are identical.

Each individual citizen is, first and foremost, a human being, a creation of God, bound to follow God's will. Being a citizen is a secondary role, which must on occasion give way to the demands of the more important role as God's subject. To ensure that the two roles do not conflict steps must be taken to make political will and God's will coincide, and Locke suggests a number of ways in which to attempt this. Most interesting is the role of he implicitly constructs for the moral expert.

The studiers of the laws of nature will for the most part be educated and wealthy men, and as such will be in a position to exercise influence and acquire power. Some will seek direct political power as members of government, others will remain within the body of the citizenry, but they too will have an important political role.

By ensuring that those with political power are morally well-educated Locke hopes to guarantee that civil law will match up to the standards set by the laws of nature. Just as the content of consent is important to Locke, so to is the nature of the individuals who hold power. Hence his rejection of hereditary monarchy in favour of representative democracy. This system has the benefit of withholding power from those unqualified to rule (in effect the majority of the population), and requiring that those seeking power demonstrate their suitability.

Allowing once again for human frailty, Locke also seeks to ensure that there will be studiers of the laws of nature amongst the subjects, the express consenters. These citizens will have an important, although in their case informal, political purpose. They are the moral auditors, who, must stay awake whilst others fall asleep. They will be ready to alert their less educated fellows, if and when, the civil law and the moral law come into conflict.

This is the theory, but even Locke lacks complete confidence in his own plan. Political apathy is not a modern day malaise, and Locke complains that in practise the citizens will allow abuses to pile up, and let their liberties be severely eroded before they will put their political obligations aside and fight for what is right. However, when they do it will be because the studiers of the law, the moral experts, have finally been heard.

The option of civil disobedience and indeed revolution is built into Locke's system precisely because moral rectitude is more important than political stability. The difficult issue has always been to decide who will judge that the time has come to sacrifice the latter in the interests of the former. It has been suggested here that the call will come from the moral experts Hobbes calls the studiers of the laws of nature.

However, Locke is right to claim that his theory does more to avert revolution than encourage it. The most natural homes for the moral experts he relies on so heavily are in government and the church, the two great institutions of power, and the bodies best equipped to ensure that conflicts between moral and political commitments rarely, if ever occur. If the right people are given power the right to revolution will not need to be exercised.

The final conclusion is this. Consent for Locke is the icing on the cake. It only counts for anything if it is consent to what is morally right, and in a situation where the laws are morally right (that is based on God's will as stated in natural law), independent reasons exist for one being bound to obey them.

The purpose of consent is merely to engage individual citizens in the political process. Only express consent can achieve this end, but as it is only worthwhile engaging

those who can usefully contribute, it does not matter that only a minority of citizens consent in this way. Locke actually avoids giving direct power to the people until the point at which their numbers are required to overthrow evil. Even then they have to wait to be called into to action by a minority of educated men who will have judged it appropriate to move. Consent is the domain of rational autonomous agents, and Locke is ready to accept that those who are most rational and autonomous should play a special role in the consenting process. All men are capable of doing the right thing, but some will need to be helped by those who know better.

And so it would seem that even in the case of those we so readily call social contract theorists, consent in the strict sense defined here is difficult to find. In the case of Locke the implications are not too alarming, in the case of Hobbes they may not be too surprising. The question we are left with is this - is it worth another go at making consent work? And surely the answer has to be yes.

Both Hobbes and Locke dispense with consent because they hold claim to certainties few of us are confident enough to share. Hobbes feels free to pervert the consenting process because he is certain that the political recommendations he makes are correct, given his (equally correct) account of man's nature. Locke allows his standards to slip because

he feels certain that there is a moral life which is more important than any political reality. For those of us who do not live in a world of such certainties individual consent remains an important safeguard, even though we know that mistakes will sometimes be made.

By demanding the right to have a part in creating my own political obligations, I protect myself against the imposition of someone else's view of what is right for me.

There is a great deal of work that needs to be done to ensure that consent actually means what it is taken to mean here, but it is certainly a job worth doing. If we can afford individual citizens real opportunities to give or withhold consent we have made a good start. If we can encourage them to avail of these opportunities we have done even better. If we can help them to acquire the skills required to make effective choices we are well on the way to achieving something success. What we have to acknowledge is that they will not always choose in the way we would hope or prefer, but this is a strength as opposed to a weakness of the system.

Consent creates obligations which may *in the last resort* be overridden by stronger moral claims. We are not committed to sticking with whatever the consenting process offers up, but we should remain committed to that process in the first instance. If we do not we are at the mercy of those who

are, for whatever reason, convinced that they know what is best for us, and how to achieve it. And, as Berlin warns, such conviction too frequently sanctions acts of cruelty and oppression.

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