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**POLITICAL
PHILOSOPHY**

Fundamentals of Philosophy
Series editor: John Shand

**Also available as a printed book
see title verso for ISBN details**

successively widen the net over those it seeks to convince of its legitimate authority. The following outcomes are possible: (a) no argument convinces any citizen; (b) at least one argument convinces some citizens; (c) all citizens are convinced by at least one argument; but they are different arguments for different citizens; (d) there is at least one argument that convinces all citizens that they have a duty to obey the law. Outcome (d) is best for the state, but it may turn out that the state need not be so ambitious. If, as the dialectic proceeds, it transpires that there are no citizens who can reject every one of the arguments the state advances (outcome (c)), then its objective – of laying a legitimate claim to the obedience of all citizens – has been achieved. Third best, from the point of view of the state, would be the acceptance by most citizens of some of the arguments it puts forward.

The next question concerns the content of the state's requirements, a second dimension to its ambitions. The state, as we have surmised, will lay claim to the obedience of all of its citizens, for one reason or another. But does the state's claim on the obedience of its citizens require that they obey *all* of its laws? I think not. Again, this is too ambitious. First, we should recognize that the laws in place are likely to be a ramshackle collection. They are likely to be cluttered with dead wood. Alert students of the law of modern states will recognize plenty of laws in desuetude, relics of forms of life long gone, governing, perhaps, the rules of the road according priority to horses over pedestrians or vice versa. The invocation of such rules, as in the case of *Shaw v. Director of Public Prosecutions*,⁴ whereby the Star Chamber offence of 'conspiracy to corrupt public morals' was resurrected to convict poor Shaw, is widely deemed unjust. Second, some laws seem designed to be broken so long as law-breaking remains within acceptable limits. I confess to having broken the licensing laws as a juvenile drinking below the age of state consent, as an adult serving drinks after closing time, and as a parent buying alcohol for my under-age children. (If you are not sympathetic to this example, think of *your* violation, as driver or willing accessory, of the Road Traffic Acts.) We are all, all of us car-drivers, law-breakers on a regular basis. So we shouldn't be too po-faced (unless we have chosen to be politicians!) about the content of the requirement to obey the law.

To be effective *at all*, laws need to be precise in contexts which

defy calculation and invite contravention. Citizens, unless they are paradoxically pernickety, know this too well, and are willing to accept, say, parking fines, as a tax rather than accept the imputation of moral wrong-doing which they would generally attach to law-breaking. They invoke parameters, of good luck or good judgement, where the law asserts specific constraints. Are such 'criminals' self-deceiving or do they draw fine but valid distinctions concerning the import of the criminal law? The argumentative terrain is unfamiliar to philosophers, but certain obvious truths deserve to be recited. Unless one accepts that all illegal behaviour is morally wrong – which is the question too often up for begging – one will be hard put to explain the wrongness of well-judged, unimpugned and harmless, law-breaking. The most sensible conclusion to reach, in the face of the philosopher who insists that we should emulate the rare but precious driver who never, or hardly ever, exceeds 70m.p.h. on a motorway, is that the state requires, not so much absolute literal obedience to its declared laws, as a disposition to law-abidingness.

This whole issue is cluttered by the evident overlap of laws and moral requirements. Where the dictates of law repeat and thereby endorse the requirements of morality, the scope for unashamed law-breaking will be severely constrained. Where the conduct is conventionally regulated – there must be *some* limit on the speed of cars, *some* limit on the age of permissible drinking of alcohol: what should it be? – one may expect social tolerance and personal insouciance. The most a sensible state will require, in respect of the private judgements, if not public statements by its representatives, is that citizens are disposed to take seriously its regulations, disposed within parameters of realistic laxity, to obey its laws. This is not quite the view, as told me by a local policeman, that Sicilians regard the traffic laws as possibly useful advice.

Finally, one should realize that laxity, on the part of the state, and low standards, on the part of the citizens, are one thing, conscientious disobedience quite another. This issue is too complex to take on board in its fine detail here. But we are required, as a final qualification to the thesis that the duties of the citizen require her to obey *all* of the laws, to acknowledge that normally obedient citizens may find, as a matter of idiosyncratic but not thereby mistaken moral beliefs, that they cannot, in good conscience, obey the

law. They may judge that the proper duty of the citizen in such cases is to disobey the law. In these (possibly tragic) circumstances, the state must accept the possibility that well-meaning citizens may get things right or wrong, without impugning the overall authority of the state. Indeed, such citizens may endorse this authority, in a peculiarly self-denying but recognizable fashion, if they invite prosecution as the inevitable, but publicity-acquiring, cost of disobedience.⁵ They may view their disobedience as the most appropriate, because most effective, way of discharging their citizenly duty to participate in the enactment of just laws. Civil disobedience in appropriate circumstances may well be one of the duties of the good citizen.

The last formal point I shall raise concerns the stringency of the duties of the citizen. We should consider, in the first place, whether the duties are conditional or unconditional. Hobbes believed that the duties of the citizen were unconditional in the precise sense that their successful ascription did not require the fulfilment of any duty on the part of the sovereign. He used both formal and substantive arguments to make this point. Formally, the contract which is the normative basis of the citizens' duties is a contract made amongst the citizens themselves, 'a Covenant of every man with every man'. The sovereign is not a party to the contract: 'That he which is made Sovereaign maketh no Covenant with his subjects beforehand, is manifest.'⁶ Since for Hobbes, duties can only arise by the voluntary concession of a liberty, and since the sovereign concedes nothing, the sovereign has no duties to the citizens which might operate as conditions on the citizens' fulfilment of their duties in turn. If this argument works by applying Hobbes's analytical apparatus to the facts of the matter (a Covenant was made amongst the people, the sovereign did not in fact take part, etc. . . .), it is worthless, since there are no facts to support it. The strength of the argument relies upon its standing as a reconstruction of how rational agents would behave were there, hypothetically, no government. Against the background of such a thought-experiment, Hobbes conjectures that rational agents would not endorse a limited sovereign, since, if the sovereign's competence were limited, his performance would be subject to adjudication. If the possibility of such adjudication were to be institutionalized, this would require an institution superior to the

sovereign to make a judgement of whether the sovereign had complied with his duties – and that institution would be the true sovereign. If, on the other hand, adjudication of whether or not the sovereign had met the conditions which constrain his exercise of sovereign power were not institutionalized, each citizen would retain exactly that power of private judgement which creates the problems of the state of nature in the first place, problems which the institution of the sovereign is designed to resolve. For Hobbes, there are these alternatives: either an absolute, unconditional sovereign and its corollary, a citizen body with unconditional duties, or a degeneration of political life back into the state of nature, the condition of anarchy.⁷ Life under even the worst, most self-serving, sovereign could not be as bad as reversion to the state of nature.

Hobbes's rigorous and daunting conclusion is disputed by John Locke, whose arguments, again, I brutally condense. Hobbesian man, famously, is motivated primarily by self-interest. He seeks to preserve his life and to enjoy commodious living. Lockean man is motivated by these goods, too, but in addition, he respects the tenets of natural law: '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.'⁸ Such duties comprise a set of natural (negative) rights – 'side-constraints' in Nozick's useful terminology. Rational citizens recognize that such rights need to be enforced by punishment, but realize that effective punishment requires a state. Hence they would endorse a state which served the specific purposes of protecting the rights everyone claims. It follows that they would have no duty to obey a state whose demands exceed, and powers reach beyond, what is necessary to carry out this specific function and a right to rebel against a state which actively threatened the rights it was instituted to protect. The conclusion of this line of argument is that the duties of the citizen are conditional on the state's fulfilment of its assigned duties.

Should we deem the authority of the state to be absolute or limited, the duties of the citizen, unconditional or conditional on the satisfactory exercise of the powers assigned to the state? Should we follow Hobbes or Locke?⁹ Technical weaknesses undermine Hobbes's position, since rational individuals could not be understood to give up their right of self-preservation and must

retain a power of judging how far the state threatens rather than secures their life prospects. But aside from this, at the heart of Hobbes's defence of absolutism is an empirical claim that the worst of governments is better than the state of nature. This supposes first, what many will dispute, that Hobbes is correct in describing life in the state of nature as so awful – 'solitary, poore, nasty, brutish, and short'.¹⁰ But granting him this; it certainly does not follow that any sovereign is better. He was quite wrong to suppose that the self-interest of sovereigns would invariably counsel them to promote the well-being of their people, 'in whose vigor consisteth their own strength and glory'.¹¹ To be fair to Hobbes, the sovereign he envisaged was more like a jolly Restoration monarch than a Pol Pot or Hitler, his main concern being to let his subjects get back to dancing round the maypole whilst he sorted out the fractious clerics who disturbed the peace. But this won't do for the twentieth or twenty-first centuries. No state is so poor – think of Haiti – that a Papa or Baby Doc can't enrich himself at the expense of his tyrannized people and salt away the proceeds in some secure Swiss Bank prior to a hasty departure and secure retirement. Tyranny may even undermine the rationality of those who inflict it, dictators becoming madder than most of their citizens and striking out at them in a deadly uninhibited fashion. In the matter of the rationality of absolute sovereigns, history rather than Hobbes's cod psychology is decisive.

This judgement supposed, what Hobbes thought most efficacious, that the absolute sovereign would be a single figure, a monarch or her modern equivalent, the dictator with a gang of henchmen. Arguably, the position is different if the absolute sovereign is the people, as in a direct democracy, or complex, articulated, representative institutions governed by the rule of law. In such cases, more attention has to be paid to the meanings of 'absolute' and 'limited' sovereignty and it may well turn out that absolute authority and unconditional duty are not correlative terms. For the moment we should draw the more modest conclusion that citizens' duties are conditional on the proper exercise of sovereign power, however that is characterized.

Anarchism and communitarianism

Before we proceed to examine the cogency of the arguments advanced by the state we should notice two dissenting voices to the enterprise as I have characterized it. The first such voice – that of the anarchist – insists that we are attempting the impossible. Since the state is an evil, the effort to justify it is wasted ink, rhetoric designed to dignify a solecism. The second voice also emphasizes the futility of the exercise, but on radically different grounds. The communitarian (I can think of no better soubriquet) disputes a crucial presupposition of the exercise – that we have the philosophical resources or intellectual capacity to conduct the enquiry. We are assuming that the citizen is able to detach herself from the force of social duties which bind her and investigate, as it were from the outside, the credentials of the claims of the state. In this respect we help ourselves to a distinctively liberal assumption – that the claims of the state are susceptible to review on the part of citizens.

In a passage we have noticed before, Kant expressed this assumption nicely in the first Preface to *The Critique of Pure Reason*:

Our age is the genuine age of criticism, to which everything must submit. Religion through its holiness and legislation through its majesty commonly seek to exempt themselves from it. But in this way they excite a just suspicion against themselves, and cannot lay claim to that unfeigned respect that reason grants only to that which has been able to withstand its free and public examination.¹²

The communitarian, as I distinguish that position, challenges this distinctively liberal claim that the authority of the state can be subjected to the requirements of rational legitimation. Both of these positions – the anarchist and the communitarian – are worthy of lengthy examination. We shall have to treat them briskly.

First, then, anarchism. It is impossible to portray the depth and richness of anarchist writings on the small canvas available here.¹³ But we can state the central elements of the anarchist case. The

characterization I shall offer will be a composite picture, the elements drawn from a range of classical and modern theorists. I hope it will serve to draw readers to the great anarchist texts, not least because anarchism is surely the most attractive of the great political ‘-isms’ through the generosity of its various conceptions of human nature and its optimism concerning the possibility of human goodness. This point is worth stressing right at the start of any treatment of anarchism, because the conventional associations of the term ‘anarchy’ and its cognates are so disreputable. Speak of the anarchist and thoughts drift towards Victorian images, Conrad’s *Secret Agent*, and stories of Peter the Painter and the Siege of Sidney Street, pictures of black-coated, top-hatted foreigners ready to lob a smoking bomb in the direction of some royal carriage.

One belief is distinctive of all versions of anarchism: the state is an evil too great to be tolerable. ‘All coercion is an evil’, thought John Stuart Mill but on his account it may evidently be the lesser of two evils, notably when it is threatened or inflicted by the state in order to prevent some folk harming others. The anarchist would demur, believing either that the cure (laws, police, criminal courts and gaols) is worse than the disease (immorality or law-breaking) or, more radically, that the touted cure may be the cause of the illness. We shan’t attempt here to define the state – it’s hard to define anything that has a history – but Max Weber’s account will serve: the state is whichever institution successfully claims ‘a monopoly of the legitimate use of physical force within a given territory’.¹⁴ The anarchist will latch on to the element of this epithet which employs the idea of physical force and claim that the institutional use of physical force against persons is always wrong, because physical force is generally unnecessary to prevent wrong-doing.

This claim may strike you as incredible. You may look around (or more likely read the newspapers) and observe (or read about) thieves and murderers galore. This may justly be deemed the Hobbesian perspective on current affairs. We may correctly judge ourselves to be vulnerable to these criminals, or, perhaps exaggerating our vulnerability, may nonetheless demand a quality of protection that we cannot provide for ourselves. Isn’t it reasonable, not to *call* our neighbour a knave – that might result in our being

sued for defamation – but to assume that he may be one and in light of this possibility, however remote, insure ourselves against the eventuality? Isn't the endorsement of a state with effective coercive mechanisms the best form of insurance? The anarchist insists not.

Once the state is at work, commanding people to do this, punishing them for doing that, the mechanisms of threat and enforcement will undermine the moral consciousness of citizens. The capacities that individuals have to decide what morality requires of them will shrink and petrify, for want of active engagement. Citizens ask: What does the law require? What penalties might contravention incur? What is the risk of suffering them? Is the game worth the candle? True moral agents, by contrast, consider only whether proposed lines of conduct are morally right, wrong or permissible and invest effort in the employment of the reflective capacities that can give them an answer. Citizens of the state have no more moral authenticity than a ventriloquist's doll; they mouth the rules that the state legislates. It is unsurprising therefore that the moral dwarfs who are the product of the densely coercive activities of the state, activities which reach into the home, practices of education and maybe religion, too, will act wickedly if they identify an opportunity to advance their own interests by harming others with impunity. Under the regime of a coercive state it is reasonable to assume your neighbour is a knave, but this assumption holds only under the conditions of moral ineptitude that the state induces.

This is the gist of Rousseau's criticism of Hobbes and other theorists of the state of nature: 'in speaking of the savage, they described a social man.'¹⁵ So far as the interpretation of Hobbes goes, Rousseau is mistaken; Hobbes only ever attempted to describe the psychology of social man, himself and his contemporaries. The state of nature was a hypothetical construction, a portrayal of how man as we experience him would behave were there no sovereign power. It was never intended to portray pre-political social relations, as Rousseau attempts to do. But Rousseau is right in his substantive point that descriptions of human nature that proceed from data concerning mankind's psychology and behaviour in conditions governed by the state should not purport to be universal if there is any possibility that humans might think and act differently were they not to live under the shadow cast by

the state's employment of physical force. This is the opportunity that the anarchist exploits and it yields a rich literature.

Has the coercive apparatus of the state suffused our decision-making to the point where we either unthinkingly endorse the state's commands or surreptitiously contravene them for reasons of self-interest? Our inclination is to deny the charge – after all, it is directed against us and neither alternative is admirable. It is we, we docile, unreflective citizens of whatever state, who are alleged to be the moral incompetents the anarchist describes. And so the anarchist expects massive resistance to her most fundamental claim. Who will admit that their reasoning and decision-making is corrupt? The issue would be a stand-off, with the anarchist position perhaps weakened by its whiff of knowing unimpugnability (who knows what folks would be like if . . . ?) if there were no empirical evidence available to decide the issue. But fortunately there is, and it does not make comfortable reading.

In the early 1970s, Stanley Milgram conducted a series of experiments which exposed people's willingness to obey authority. His (unknowing) experimental subjects accepted the invitation to take part in trials which required them to inflict pain on ostensible subjects (mercifully, good actors) who answered questions wrongly. The experimental scenario was designed to emphasize the authority of those who conducted the experiment – it stank of *science*, which is to say the experiments took place in a university and the instructors wore white coats. The lessons were salutary – to the point that Milgram's work should be Lesson One in any course designed to educate children in how to be a good citizen. Willingly, although often reluctantly and against their evidently better judgement in many cases, far too many subjects did what they were told and inflicted what they believed to be great pain upon the actors. The lesson is humbling – who knows what you or I would have done had we been recruited as experimental subjects? We hope, pray and trust that we would have been amongst the very small minority who resisted the imperatives communicated by the authoritative scenario. But we cannot deny the claim that we would likely be dupes who would collude with the requests made of us in the name of scientific advance.¹⁶

If we are likely to behave like this because we believe that the pursuit of knowledge requires our collaboration and obedience,

how realistic is the thought that we would be heroically independent when the state calls upon us to follow the rules? Might not the habits of deferential compliance revealed in Milgram's experimental subjects be a consequence of our induction into rigmaroles of obedience sanctioned and supervised by the state? Whatever its origin, our tendency to obey authority runs deep and it undercuts our ability to review our conduct in light of the thought that it might be misplaced. It might never occur to us that what we are doing is wrong, and even if it does occur to us, we might have lost the capacity to deliberate in an independent fashion about how we ought to behave. As Mill instructs us in *On Liberty*,¹⁷ this capacity is threatened by authority and needs liberty to flourish. Anarchy is the extremity of liberty, as the anarchist emphasizes.

Most discussions of anarchy focus on the possibility of resolving conflict and achieving the rewards of co-operation without the state apparatus of rules and sanctions. And as one might expect, the discussions are inconclusive since at bottom the issues are empirical, the facts are contested and conclusive experiments impossible. Models of successful anarchy are available¹⁸ and examples of efficient yet anarchical practice should be familiar to most readers. My own favourite example is the unregulated Boyd Orr car-park in the University of Glasgow which daily accommodates a greater density of vehicles than any planner pushing a white-line machine would dare prescribe – and rarely are exits blocked. But the sceptic asks, cogently, whether such examples, as well as the case-histories beloved of anarchists, of ungoverned communities managing better than their closely regulated neighbours,¹⁹ can be persuasively generalized without significant losses of welfare. What would be the anarchist equivalent of the National Health Service or, for that matter, the armed forces, if citizens were to move towards anarchy in one country? One does not need to be a Hobbesian (or even take a quasi-Hobbesian approach, emphasizing the priority rather than the ubiquity of self-interest) to worry about one's vulnerability. The conscientious can get things wrong, the pure-in-heart can pursue evil ends, and the incorruptible can resolutely send their compatriots to the gallows or the guillotine.

It is easy to reconstruct debates which are irresolvable, and this I suspect is one of them. I think it is a great and cheering lesson

that the anarchist will not be silenced, not least since her survival attests the extension of human kindness and generosity into the emotionally arid fields of political speculation. But I do not expect many readers to enlist under the black flag of anarchism and confess, with just a little measure of shame, that I do not do so myself. I don't trust you enough to dispense with the forces of law and order, and suspect, without being self-deceiving, that most of you would not trust me enough either. And sadly, I cannot assure myself that your distrust would not be justified. The Achilles heel of anarchism is that little bit of self-doubt that generates suspicion which prompts caution and quickly ramifies into demands for the kind of security which only the state can provide.

Before we leave the topic of anarchism we should note a distinctive modern variant – that of philosophical anarchism. This takes two forms. The first is primarily a sceptical position induced by the perceived failure of all arguments in favour of the authority of the state and citizens' consequent duties to support it. Since we shall be reviewing a range of standard arguments in what follows, we should reserve judgement on this conclusion. The second brand of philosophical anarchism, elegantly stated in modern times by Robert Paul Wolff, argues that acceptance of the authority of the state is inconsistent with the highest duty of mankind, the duty to act autonomously. To accept the authority of the state is to accept the moral weight of the fact that the state makes demands on our conduct, quite independently of our judgement of the rightness or wrongness of what the state requires us to do. (This moral weight need not be decisive or overriding.) Yet, 'for the autonomous man, there is no such thing, strictly speaking, as a *command*'.²⁰ Autonomy requires that each moral agent deliberate independently on how they should behave. Authority requires that those subject to it give up their autonomous moral judgement over the domain that authority governs. The value of autonomy deems this submission to be irrational. This is a striking thesis – but having stated it in brisk terms, I am content to leave it on the table, since discussion of it would take us too far afield. Further consideration of it requires these things: careful elaboration of the concept of authority and the investigation of the standing and claims of specifically political authority; further articulation of the concept of autonomy and a clear view of the strength of the duty to act

autonomously; and lastly an explicit judgement of how far the autonomy of the agent is compromised by his submission to the authority of the state or his acceptance of political obligation. All of these matters are controversial, with very deep ramifications in moral philosophy.²¹

Reluctantly, let us put anarchism to one side and consider the other claim that there is no philosophical problem of political obligation. The communitarian²² does not advance his argument on the ground that nothing can justify an institution as evil as the state, rather he claims that the state is immune to the demand for rational legitimation. I think, endorsing the judgement of Kant that we cited above, that this conclusion should sound incredible to the modern ear. 'This is the genuine age of criticism.' So let us try to make it sound persuasive. Let us advance the most plausible case.

We can begin with an analogy. Consider family life – or family life that is going well – or, best – family life that is going as well as its most fervent apologists tell us it can go: not *The Simpsons*, more *Little House On The Prairie*; not *King Lear*, more *The Darling Buds of May*. Mother and father love each other, care for their children and look after ageing parents. Where family matters are concerned they think about things, not as individuals pursuing their own discrete agendas, but as a couple, an organic unity speaking in the first-person as 'We'. They recognize their evident duties, of fidelity to each other, of loving care to their children and honour to their parents, and fulfil them gladly. These duties don't pose any evident ethical problem. Ask them why they do things in this way and they are puzzled. 'Because we are a family', they say. 'What other reason could there be?' A similar question could be put to the children. 'Why do you believe you have a duty to obey your parents?' And we expect these respectful children to be equally stumped.

Then they twig that philosophical questions are being asked: 'What are the reasons why you accept these duties? Just why do you think it would be wrong to reject them or fail to fulfil them?' The questioner should realize that she is unlikely to elicit answers that reveal foundations in the sense of deeper principles from which the duties concerned can be derived. What is being probed is the sense of identity of the family members. Seeing themselves as

parents or children amounts to recognizing the duties incumbent on them in these roles. Some say duties of this kind constitute the identity of their bearers – in which case we should not be surprised at the inarticulacy of those who are questioned or their puzzled repetition of obvious facts like ‘But I am their parent’, ‘But I am their child’.

This conception of duties as constitutive of social roles which persons generally find themselves occupying, which they haven’t chosen to inhabit, receives its most systematic and articulate philosophical expression in Hegel’s account of ‘Ethical Life’ (*Sittlichkeit*) in *The Philosophy of Right*. In a rational state, individuals will find themselves related to other family members in a specific kind of domestic structure, working alongside others in an economy which organizes their relationships with fellow producers and consumers, subject to the rule of law and the disciplines of regulatory bodies, and living in a political world with a constitution that promotes their freedom and is a focus for their patriotic sentiments. These nested relationships comprise an ethical home, complete with a full moral address. The model citizen will just find that, being describable as John Smith, son of Arthur and Margaret, husband of Annie and father of Katy and Helen, colleague of Jones and client of Microsoft, member of the Association of University Lecturers, inspected regularly by the Quality in Teaching Agency (QUIT), member of the Freedom for Old Labour Democracy Party (FOLD), and citizen of the UK, he has duties galore!

Duties of these sorts, some that John selected, some that he was born with and some that have just grown, emerge out of every citizen’s life-story. We have before us the example of the duties of family life – a soft-hearted version of Hegel’s account. I think it makes good sense to accept that one who regards himself as a family member, on the model thus described, may not be able to question the duties ascribed to him, although he can of course decide not to comply, to do what he believes to be wrong.

Arguments of this form gain their plausibility from the reader’s approval of the social arrangements which are being described. It is important that Hegel believes he is describing the uniquely rational form of family life, that which best permits humans to express distinctive elements of their nature. The rules of ethical

life do not operate as constraints, they liberate persons who would otherwise be unable to develop, as in family life, their capacities for long-term commitment to other persons. Marriage thus is not a ball and chain but an opportunity for persons to grow out of the bonds of atomized self-concern.²³ If the social arrangements which are described were thought to be inhibiting, as they are for women under Hegel's description of their proper social role, then those who suffer under them could perfectly well challenge the specification of their duties. They may not, in fact, do so. They may be self-deceiving or, more likely, victims of false consciousness, embracing an ideology which limits rather than promotes their personal growth.

Hegel believes that he has explained the rationality of the institutions which constitute the modern state. He has traced their history and can explain how they meet the aspirations which mankind has learned to articulate as they have thrown over the institutions which crippled them. The different dimensions of social life, domestic, economic, legal and political, fit together in a fashion he described as dialectical but which we can see as coherent, making it possible to be all these kinds of person at once, to fulfil the duties of one's various stations without generating social conflict or personal fragmentation. It was also important to him that citizens could recognize the rationality of their condition, although commentators vary wildly in their assessment of how seriously Hegel took this requirement. Endorsement must be given but the reflections from which it issues do not permit the possibility of challenge. But, there again, why should anyone want to challenge institutions which, in their broad framework at least, cannot be improved? At the end of history, 'what is rational is actual; and what is actual is rational'.²⁴

It follows that there cannot be a problem of political obligation any more than there can be a problem of terraced housing. Once we understand the nature of the modern state, interpreting its distinctive institutions as serving necessary functions given the desires and values humanity has developed through its history, once we acknowledge the state's contribution to our freedom, we find that in describing it, we recognize its legitimacy. Rational legitimation is, as it were, built into the structure of the moral world we inhabit.

There is another, more philosophically parochial, less methodologically explicit, way of making these points which owes something to Wittgenstein. Some claim that our understanding and endorsement of central elements of our political life is likewise built into the language we use to talk about them. Such language is suffused with normativity, with a recognition of the requirements made on us by the institutions we use such language to describe. If we know what it means to talk about the state, authority, government and the law, if we can play this particular set of language games, we can see that asking, 'Why can't I break the law?' is like asking 'Why can't I move a rook along a diagonal?' whilst playing chess. Thus T. MacPherson insists that:

'Why should I obey the government?' 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*.²⁵

In similar fashion, Hannah Pitkin argues that:

The same line of reasoning [as that adopted to dispose of the question 'Why should I keep a promise?'] can be applied to the question 'why does even a legitimate government, a valid law, a genuine authority ever obligate me to obey?' As with promises, and as our new doctrine about political obligation suggests, we may say that this is what 'legitimate government', 'valid law', 'genuine authority' *mean*. It is part of the concept, the meaning of 'authority' that those subject to it are required to obey, that it has a right to command. It is part of the concept, the meaning of 'law', that those to whom it is applicable are obligated to obey it. As with promises, so with authority, government, and law: there is a *prima facie* obligation involved in each, and normally you must perform it.²⁶

To be rude, we can recognize the Wittgensteinian tenor of the argument when we hear the *sound* of the italics. These arguments derive their plausibility from conceptual connections which are evident enough: once we modify the nouns with the adjectives 'legitimate', 'valid' and 'genuine', 'prima facie' even, there is very

little room to manoeuvre. (But there is some: couldn't a legitimate government or genuine authority get things wrong and make an unjust law, a law that one is not obligated to obey?) Obligation falls out of the legitimacy, if, as is plausible, we understand a legitimate government as generally having the power to impose obligations. But notice, in the Pitkin quotation in particular, how the adjectives slip out of the argument. As soon as we see that we can properly speak of lousy governments as well as legitimate ones, of unjust laws as well as valid ones, of spurious authorities as well as genuine ones (the last with only the slightest whiff of solecism), we can see how these arguments trade on the assumption that is explicit in Hegel, viz. that the institutions to which these terms are applied have already passed the test of rational legitimation. If we do not make this assumption, then we shall find that we do *not* judge that 'it is part of the concept, the meaning of "law" that those to whom it is applicable are obligated to obey it'.

The implication of Kant's quotation is that we are never so engulfed or encumbered by an institution that we cannot step back from it, detach ourselves from its embrace and adopt a perspective from which we can examine its credentials, asking whether this is the best way to live. Whether or not we can do so is, I believe, an empirical question. With respect to any given institution, some may be able to do so, others not. Some, in philosophical mood, may attempt to justify, for example, the requirement that they care for their children and find that there is no answer that they can come up with that is as certain as the conviction that this is just the right thing to do. Nonetheless, although the search for foundations or an accommodating reflective equilibrium may turn out to be fruitless, it is important that we see the necessity of making an attempt. There is no duty so sharp and clear, so inherently indisputable, that we don't find, or find reports of, people who just don't see it. However confident we might be in our own case that we see things right, we are likely to find, dialectically, that we need something in the way of an argument to support our views in order to shift the moral perspective of those who get these things wrong. We tend to believe that what is beyond the pale of decency is beyond the reach of argument. But to ask, rhetorically, 'Do I need to be able to demonstrate the wrongness of sexual relations with infants?' is to give up on the task of educating the moral sens-

ibilities of those who, as a matter of fact, do not recognize their wrong-doing. It is also to give up on the task of defending one's certainties against the challenge of wilful objectors, and also, probably least important, to fail to acknowledge the possibility of conscientious error on one's own part.

The ethical perspective of those I have dubbed 'communitarians'²⁷ is blinkered in this fashion. There are two things that are odd about this position: in the first place it has been used by conservatives to challenge the impertinent, inherently questioning stance of modern liberal individualism. But as Kant (and Hegel) recognized, this sceptical perspective on the claims of authority is distinctive of the contemporary mind-set.²⁸ Now there are post-modernist philosophers who repudiate the enterprise of rational legitimation as a defunct because discredited element of the 'Enlightenment Project'. The task should be banished along with the associated acceptance of science and belief in human progress. But it is difficult for the conservative to ally himself with this style of argument, since the obstinate questioning attitude that Kant celebrated is part of our intellectual inheritance. It should by now be sanctified as a well-entrenched and unrenounceable element of our traditional beliefs. Its corollary sin, intellectual forelock tugging in the face of monarch, priest or professor, is as disreputable as pre-Copernican cosmology. Bluntly, the conservative cannot shout at those who raise questions about the legitimacy of institutions that it is impossible for these questions to be intelligibly put. 'Who are you to challenge the state or the family?' carries no rhetorical weight because it is likely to get a sensible positive response, namely, 'I am one who has been brought up in a society with a philosophical and political tradition of raising such questions and attempting to find an answer'.

When applied to the question of political obligation, the second oddity of this approach is that its proponents write as though the anarchist had never lived, had never written, could not even be a figment of a lively philosophical imagination. Imagine Godwin, Proudhon, Bakunin or Kropotkin reading the texts I quoted above. They would roar with laughter and then rage louder in their pamphlets. They would invent new words to describe the political institutions they detested (or put the old ones in inverted commas) and invite their opponents to describe the grammar of their fresh

coinage. Reluctantly, I abandoned serious investigation of the anarchists' claims by reciting the sort of 'common-sensical' wisdom about the rationality of trusting ourselves and others at which any anarchist worth their salt would scoff. *Mea culpa*. But in a spirit of half-hearted apology, I insist that the anarchist position cannot be defeated by reading him a few lessons in how treacherous fellow travellers like me (not to say, zealots for the state) actually speak. Between the two extreme positions, of rejecting the state and all its works on the one hand, and wondering what all the philosophical fuss is about on the other, I think there are good questions to be asked. So let us proceed.

Consent and contract

In the *Discourse on the Origin of Inequality*, Rousseau asks himself what could have been the origin of the state, how could such a social condition have originated? A good question, one might think, given the formidable coercive powers of the state. But the context in which Rousseau poses the question – a conjectural history of the human race, adducing no 'facts' and speculation running riot – might lead one to believe that the question is silly. Who knows when politics was invented, which was the first state and why people accepted it, if they did? Who cares? Rousseau's history of the world in thirty pages is not intended as a crib for the historically challenged. It is a document written with a strong ethical purpose – to establish a benchmark description of human nature which enables us to chart the measure of human degradation, as revealed, in particular, by the development of structures of inequality.

When Rousseau reaches the point where he supposes political institutions must have developed, he makes two striking claims. First, he argues that to be accepted as legitimate, all those subject to the authority of the constituted sovereign must have consented to its institution. Arguing in a fashion that he will later reproduce in the opening chapters of *The Social Contract*, he concludes that legitimate authority could not have originated in exercises of force, since no rational person would accept that might is right, that the exercise of arbitrary power carries its own legitimizing

credentials. Prudence might dictate compliance, but grudging, enforced compliance does not amount to a recognition of authority. Nor should the legitimate exercise of sovereign power be thought to derive from any natural properties of those who claim it. The only natural relationships which confer authority occur within the family and Rousseau summarizes a whole tradition refuting the application of this model to political life when he says that ‘instead of saying that civil society is derived from paternal authority, we ought to say rather that the latter derives its principal force from the former’.²⁹ A process of argument from elimination leads him to endorse the ‘common opinion’ that regards ‘the establishment of the political body as a real contract between the people and the chiefs chosen by them’.³⁰ Second, since the contract was evidently between unequal parties, establishing political inequalities on top of structures of economic inequality, entrenching and exacerbating what are already conditions of injustice, the ‘real contract’ must have been a fraud.

What is interesting here is Rousseau’s appropriation of what he takes to be common opinion. ‘We’re all contract theorists nowadays’, he seems to be saying. We should look carefully at this tradition of argument and tease out the complexities.

Contract arguments trade on the more fundamental notion of consent. If you and I contract (or covenant – that is the term Hobbes uses) we are voluntary parties to an agreement we have set up to bind us. I want the coal and you want the business. We agree that you will deliver it and I shall pay the bill. The transaction is consensual and both of us are bound by it. This model represents the primitive beginnings of dense and finely articulated structures of morality and, most importantly, law, whereby conditions and qualifications galore are written up and spread over library shelves. At the heart of such institutions is the thought that things that are otherwise painful, your loss of the coal, my loss of the money in payment, are transformed into states of affairs which are, on balance, preferable to the *status quo ante* the transaction. Consent (suitably qualified – we suppose it to be uncoerced, fully informed, rationally judged and generally not in pursuit of an immoral objective) is the miracle ingredient which transforms what would otherwise be a violation of rights into a legitimate performance. Consent marks a crucial difference between

legitimate sexual intercourse and rape, between my proper use of your car and theft, between slavery and hired labour, just as it marks the beginnings of ethical debate in these areas about what can be counted as proper, legitimizing agreement.

The state has its laws, its police, courts and prisons. It certainly looks nasty and in dire need of legitimization. Here, too, consent is the miracle ingredient. If it can be shown that citizens consent to it, that's that – the task of legitimization has been accomplished. I can't see any challenge to this argument.

I can see plenty of challenges to its application. The anarchist may say that the act of submission to a political sovereign is so harmful as to be irrational, just as Rousseau, following Locke and arguing against Grotius, insisted that voluntary slavery is inherently irrational. Suppose the anarchist is right. The conclusion we are invited to draw strikes at a crucial premiss in the statement of a contract argument, suggesting that, whatever persons say or do, if submission is irrational then their actions do not amount to rational, fully informed agreement. Such arguments do not attack the conditional judgement: if citizens consent to obey, they have an obligation to do so. They attack the assertion of a minor premiss to the effect that citizens do so consent. In the same way, the radical feminist who claims that marital intercourse is rape, is challenging the view that marriage vows or any permission subsequent to them can be taken to express rational consent.

So far as the form of the argument goes, consent arguments are unimpugnable: if x consents to y then x is obliged to accept y . X does so consent. Therefore x is obliged to accept y . Consent arguments are good arguments, which is why they are so familiar. In political philosophy, contract arguments are a generalization of them, preparatory to a conclusion that all parties consent to the established dispensation of power. Having claimed that consent arguments are good arguments, and having explained their general force and attractiveness, their status as 'common opinion' in Rousseau's terms, I want to insist that all the crucial issues concern their usefulness since it is an open question whether or not they may be successfully applied. We should think of the dialectic as working in this fashion: we all agree that consent entails obligation. The state then attempts to impute consent on the part of its citizens, recognizing that obligation will follow. Citizens then

examine the imputation, hence testing whether they are indeed subject to the obligation which the state asserts. The state is resourceful. It advances a range of different claims in support of its imputation of consent. Let us look at these in sequence.

Original contracts

Rousseau's argument in the *Discourse on the Origin of Inequality* cites an historical (but fraudulent) contract between the people and the chiefs as the origin of government. Other models are available. In *Leviathan*, Hobbes describes the citizens covenanting with each other to accept the rule of whoever the majority of them authorize in a future election.³¹ Locke concurs. Free men unanimously agree to form a civil society, community, government or body politic,³² which then entrusts power to whatever form of government they see fit. Suppose each of these authors is relating the facts of the matter as they see or conjecture them to have been.³³ Would such a contract support an obligation to obey the authorized sovereign? Evidently it would. Is this argument useful? Everything depends on whether or not there ever was such a contract.

When Locke was writing, many clearly believed that such a contract was in place, at least in the version where the sovereign contracts with the people. Following the flight of King James VII of Scotland and II of England in 1688, Parliament resolved that 'having endeavoured to subvert the Constitution of the Kingdom, by breaking the original contract between King and people . . .' he had *de facto* abdicated. Locating the original contract and specifying its content was a cottage industry amongst the students of the 'Ancient Constitution'. The quest was hopeless. Nonetheless it is a familiar aspect of modern political practice that new constitutions or striking constitutional innovations are put to the people in a referendum so that the ensuing settlement can be recognized as legitimate. De Gaulle's Fifth Republic was instituted by referendum in 1958 and modified, again following a referendum, in 1962. Following the downfall of the Communist regimes, referendums proposing draft constitutions were held throughout Eastern Europe. Britain's membership of the EEC was endorsed by a