

The Precursors

The distinction between natural and civil rights was a commonplace of seventeenth- and eighteenth-century political thought. For Thomas Hobbes, 'The right of nature, which writers commonly call *jus naturale*, is the liberty each man hath to use his own power, as he will himself, for the preservation of his own nature: that is to say of his own life: and consequently of doing any thing, which in his own judgement and reason, he shall conceive to be the aptest means thereunto.'¹

Hobbes looks upon this right as comporting a duty, which is incumbent upon oneself. He speaks of there being 'a precept or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his own life, or taketh away the means of preserving the same; and to omit that by which he thinketh that it may be best preserved'.²

Misleadingly, Hobbes refers to this precept as a law of nature, obliging every man to preserve peace so long as he can reasonably hope to do so, entitling him to resort to war when this hope fails, and entailing what he calls the first and fundamental law of nature, namely, 'to seek peace and follow it', together with 'the sum of the right of nature; which is, by all means we can, to defend ourselves'.³ From this first law a second, of crucial social importance, is supposed immediately to follow: 'that a man be willing, when others are so too, as far forth as for peace and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himself'.⁴

¹ Hobbes, *Leviathan*, ch. XIV.

² *ibid.*

³ *ibid.*

⁴ *ibid.*

In the following chapter,¹ Hobbes goes on to list some fifteen 'other laws of nature', of which the most significant are 'that men perform their covenants made', that when it comes to revenge or retribution 'men look not at the greatness of the evil past, but the greatness of the good to follow', with the important consequence that 'we are forbidden to inflict punishment with any other design than for correction of the offender or direction of others', that 'every man acknowledge other for his equal by nature', that controversies be decided by arbitration, and that judges, including arbitrators, deal equally between those who come before them. Less clear than the rest is a so-called law of equity, affording 'equal distribution to each man of that which in reason belongeth to him', for we are not supplied with a criterion for the rational apportioning of property. Hobbes goes so far as to say 'that such things as cannot be divided, be enjoyed in common, if it can be; and if the quantity of the thing permit, without stint; otherwise proportionably to the number of them that have right', but he gives no examples, nor does he explain how right is determined in such instances, except when it is made a matter of agreement. He does indeed say that in the case of things which can neither be divided nor enjoyed in common, the law of equity requires that the entire right, or the first possession, when it has been agreed that the use is to be alternate, is to be determined by lot. What is perplexing is that he goes on to identify what he calls natural lot with 'primogeniture' or 'first seizure'. Going by the general tenor of his remarks in this section, I am inclined to think that he did not here intend the word 'primogeniture' to carry its usual implication of the right's passing exclusively to the eldest son.

I wrote earlier of Hobbes's use of the word 'law' in this context as being misleading. He himself acknowledges this by referring to these 'laws of nature' as dictates of reason and adding that while men are accustomed to call them by the name of laws they do so 'improperly'. 'For,' he adds, 'they are but conclusions, or theorems, concerning what conduceth to the conservation and defence of themselves; whereas law, properly, is the word of him that by right hath command over others.'² He has already equated these theorems with moral principles, remarking that 'the science of them is the true and only moral philosophy', and he makes a perfunctory attempt to legitimize the popular conception of them as laws by suggesting that they can be viewed as God's commands.

In calling this attempt perfunctory, I am not endorsing the view held

¹ *ibid.*, ch. XV.

² *ibid.*

by some of his contemporaries that Hobbes was an atheist. This is a question that I shall not attempt to decide. It is rather that I consider Hobbes far too acute a philosopher to have been duped by the fallacy, already exposed by Plato in his dialogue *Euthyphro*, that morals can be grounded on authority, however powerful the authority be thought to be. This is not to say that if there were a Supreme Being he could not be good; only that his goodness could not be a logical consequence of his supremacy. A theist would be very foolish if he took the assertion that such and such a state of affairs was good to mean no more than that God commanded it; for then so far from paying a tribute to his deity by calling him good, he would be treating the attribution of goodness to him as a simple tautology. Worse still, if the Supreme Being happened to be daemonic, our theist would be committed to the moral endorsement of his devilish commands.

In fact it appears that Hobbes took the view, advanced in the present century by Moritz Schlick and Bertrand Russell, that morality is yoked with desire. In his own words, '*good and evil are names that signify our appetites and aversions*'.¹ For one who abided in what Hobbes called the condition of nature, that is to say, a condition in which his and other men's conduct was not regulated by the enforcement of civil laws, the criteria of good and evil would be entirely subjective: they would depend on what his appetites and aversions happened at any time to be. The transition from the condition of nature to that of membership in a society would make morality objective only for the reason that the goodness of peace is something on which, in Hobbes's view, all men agree; and what is here meant by peace is the assurance, which it is indeed the sole object and justification of the establishment of civil society to provide, that other men will not be permitted to stand in the way of one's achieving the ends that one naturally pursues. Thus, such 'moral virtues' as justice, gratitude, modesty, equity or mercy earn this title only through their being means to peace, in this special sense. The catch here, as in all theories based upon the fact or fiction of a social contract, is that one has to limit one's self-indulgence by behaving in such a way as to afford others the same assurance as one obtains from them. We shall see that a similar problem confronts the advocates of liberty. One is free to do as one pleases, so long as the exercise of one's freedom does not curtail the freedom of others. And how is this limit to be set?

A well-known difference between the political theories of Thomas

¹ *Leviathan*, ch. XV.

Hobbes and John Locke is that while they both employ the device of a social contract to deliver men from a real or imaginary condition of nature, Hobbes introduces a sovereign, who may but need not be a monarch, to enforce the observance of a contract to which he is not a party. Locke regards the contract as imposing obligations not only on the subjects of the sovereign in relation to one another but also on the sovereign himself. He ceases to be entitled to this obedience when he oversteps the bounds which the social contract sets to the powers of all governments, of whatever form. As Locke puts it:

First: They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at Court, and the countryman at plough. Secondly: These laws also ought to be designed for no other end ultimately but the good of the people. Thirdly: They must not raise taxes on the property of the people without the consent of the people given by themselves or their deputies. . . . Fourthly: Legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have.¹

Notoriously, Locke was concerned to vindicate the glorious Whig Revolution of 1688. The English were entitled to transfer their allegiance from James II to William and Mary, because James II had misused the powers assigned to him by the terms of a contract to which he was himself a party. Since Hobbes's sovereign remained in the state of nature with regard to his subjects, Hobbes exposed his theory to Locke's celebrated gibe:

As if when men, quitting the state of Nature, entered into Society, they agreed that all of them but one should be under the restraint of laws; but that he should still retain all the liberty of the state of Nature, increased with power, and made licentious by impunity. This is to think that men are so foolish that they take care to avoid what mischiefs may be done them by polecats or foxes, but are content, nay, think it safety, to be devoured by lions.²

On the face of it, Hobbes's theory, contrary to Locke's, entails that rebellion is never justified, but this appearance could be deceptive. The

¹ John Locke, *An Essay Concerning the True Original Extent and End of Civil Government*, ch. XI para. 142.

² *ibid.*, ch. VII para. 93.

compact which Hobbes's personae make with one another is to surrender their natural rights to an authority that will see to it that they conform to the moral precepts which, in his terminology, constitute a state of peace. If they continue to find themselves a prey to the inconveniences of the state of nature, whether this be due to the authority's own tyrannical practices, or its failure to protect them from the transgressions of their fellows, then they can reasonably hold the compact to have been nullified. The point was made by John Harington in his satirical epigram 'Treason doth never prosper. What's the reason? For if it prosper, none dare call it treason.' James II was just as vulnerable to a disciple of Hobbes as to a disciple of Locke. The difference was that the Hobbist needed the extra empirical premiss that James lacked the strength or resolution to maintain his authority. It is a lamentable feature of our own time, when we are witnessing a multiplication of tyrannical governments, that the corresponding empirical premiss has in their cases become increasingly hard to satisfy.

This is, however, a digression. The point to which I wish to draw attention is the difference between Hobbes's and Locke's conception of the state of nature. According to Locke, 'The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.'¹ This does not sound so very different from Hobbes, but whereas we have seen that Hobbes's laws of nature are no more than utilitarian, Locke pretends to deduce his primary law from his assumption of man's equality and independence without attempting to show how the conclusion follows. I shall have a good deal to say later on about the dubiousness of this premiss.

Locke's moralizing of the state of nature goes so far that he not only follows Hobbes in attributing to his people a duty not to take their own lives and a right to do everything in their power to preserve them from others, but he accords them a right to avenge any injuries done to them physically and a right, indeed a duty, to punish any infractions of the laws of nature, whether or not they are detrimental to themselves. One is tempted to wonder what purpose remains for the institution of a civil society to serve except that of habituating men to resign the enforcement of the laws, including the adjudication of their grievances, to recognized authorities and the debatable advantage of subordinating their judgement to the voice of the majority, or what in some instances almost comically passes for it.

¹ *Essay Concerning the True Original Extent and End of Civil Government*, ch. II para. 6.

Another significant difference between Hobbes and Locke is to be found in their respective treatments of the question of property. As we have seen, Hobbes vaguely implies that there is such a thing as a natural right to property; but he makes little of this admission, and when it comes to the ends of civil society the preservation of property makes no showing in competition with the preservation of life. In contrast, Locke asserts, in one passage, that 'The great and chief end of men uniting into commonwealths and putting themselves under government, is the preservation of their property'.¹ In another he goes even further to the point of saying that the preservation of property is the sole end of government.

In these circumstances, it is strange and disconcerting to discover that Locke's account of the institution of property is very superficial. Nature, of course, yields everything in common. But a man has what appears to be a natural right to the sole possession of everything he is able to remove from the common store of property so long as he has 'mixed his labour with it'. Among the examples given are those of the gathering of acorns and apples, the drawing of water in a pitcher, the hunting of a deer or a hare, the catching of a fish. A slightly more sophisticated level is reached with the remark that 'the grass my horse has bit, the turfs my servant has cut, and the ore I have digged in any place, where I have a right to them in common with others, become my property without the assignation or consent of anybody'.² We are not told how Locke, in the state of nature, acquired the right to a servant, or a horse, or the capacity to dig ore, but the overall picture is that of an American frontiersman or participator in a gold rush. This is consistent with the further statement that 'As much land as a man tills, plants, improves, cultivates and comes into the product of, so much is his property',³ though the phrase that immediately follows – 'He by his labour does, as it were, enclose it from the common' – is at least historically unfortunate.

Locke considers the objection that he is endorsing the principle, to which moral objection might be taken, of granting men a right to whatever they can grab. His answer is that they are not entitled to retain more than they can consume: it is wrong that the fruits of the earth should simply be allowed to go to waste. The solution is that the surplus should be exchanged; and in this way Locke slyly introduces the concept of money, without however expatiating on the enormous

¹ *ibid.*, ch. IX para. 124.

² *ibid.*, ch. V para. 26.

³ *ibid.*, ch. VI para. 31.

difference that it makes. He treats the subject rather as though it were just a matter of a hunter's, finding himself with more meat than he needs or can preserve, embellishing his cabin with a gold or silver ornament instead. Locke was indeed writing before the Industrial Revolution but not before the rise of capitalism, with the profound alterations, both for good and for evil, that it brought about in civilized society.

In view of the importance which he attaches to the security of property, it is strange that Locke has little to say about the topic of inheritance. For example, he does not enter into the question of primogeniture, in the current sense of this term. What he does assert, quite dogmatically, is that 'Every man is born with a double right', not only 'a right of freedom in his person' but 'secondly, a right before any other man, to inherit, with his brethren, his father's goods'.¹ This does not exclude all forms of primogeniture, since it is not stated that each of the brethren has a right to an equal share. It might appear unjust to deny it to any one of them, merely on the ground that he, or possibly she, since Locke's favouring of males in his terminology was most probably just a matter of convenience, had the misfortune to be younger than at least one of his or her siblings. On the other hand, if the family were numerous, the parcelling out of the property, especially if it took the form of land, could be economically disadvantageous, as in fact has frequently been proved to be the case in France. But how are we supposed to balance natural right against utility? It is to be remarked that if a man's offspring have a natural right to inherit his property, the man must consequently lack, at least to this extent, the natural right to dispose of it as he pleases. So are we to conclude that no man is ever justified in disinherit his children? Not necessarily. Even if we were to accept the theory that the purpose of civil government was to safeguard natural rights, it would not follow that the theory accounted for every moral principle or that there could be no other moral ground for overriding one natural right than that it conflicted with another.

Locke's enlightened view that the transition from natural to civil right is mediated by consent gets him into trouble when he comes, towards the end of his essay, to deal with foreign conquest or that kind of 'domestic conquest' which he calls usurpation. Defying history, Locke is driven to say that 'The conqueror, if he have a just cause, has a despotical right over the persons of all that actually aided and concurred in the war against him, and a right to make up his damage

¹ *Essay Concerning the True Original Extent and End of Civil Government*, ch. XVI para. 190.

and cost out of their labour and estates, so he injure not the right of any other.'¹ But there it stops. The conqueror has no right over the persons or property of the descendants of those who fought against him; the usurper has no right at all. Since the Constitution of the United States owes so much to Locke, it is amusing to note that a whole-hearted adherence to his principles would lead to the conclusion that the greater part of its territory belongs by right to the American Indians. In the case of Great Britain we should need to discover persons who could trace their ancestry to forebears who owned land before the Norman or indeed even before the Roman conquest, and this would leave us with a very small number of lawful proprietors, perhaps even with none at all.

Of course it could be argued that the depredations of the conquerors and usurpers which predominantly account for the actual distribution of property are legitimized by the consent of those who suffer from them. But what does this consent amount to? Seldom anything more than an acquiescence in the existing state of affairs on the part of people who lack the energy, the imagination or the self-confidence to make any effort to change it. England and the United States pass for being democracies, mainly on the ground that they enjoy the fruits of representative government. But voting for or against a candidate, whom one may have played little or no part in choosing, every four years or so, does not give one much power, even if one votes with the majority. Perhaps it is in recognition of this fact that in the United States at least, less than two thirds of the electorate bother to vote at all. The English system is so ridiculous that the deplorable Conservative government maintains itself in power with less than one third of the electorate voting for its candidates. I am not implying that an authoritarian system works any better. On the contrary, I think that, with the possible exceptions of the theocracy of the Incas in Peru, and the rule of the Jesuits in Paraguay, it has always proved itself very much worse. What I do claim is that, once we advance beyond the stage where anarchism is practicable, as in isolated Spanish villages in the 1930s, and in some Polynesian islands, before they were corrupted by American missionaries, all societies display class structures; and the governing classes maintain their ascendancy by what Thorstein Veblen in his splendid book *The Theory of the Leisure Class* described as a combination of force and fraud.

As so often in philosophy, if one is looking for good sense one finds it

¹ *ibid.*, ch. XVI para. 194.

in David Hume. The third book of his *A Treatise of Human Nature* is devoted to Morals and in the second chapter of its second part, where he addresses himself to the question of the origin of justice and property, he makes the obvious point that 'the first and original principle of human society . . . is that natural appetite betwixt the sexes, which unites them together and preserves their union, till a new tie takes place in their concern for their common offspring'. I leave it to anthropologists to describe the various ways in which families combined to form what we regard as primitive tribes. In the present context, it is sufficient to make the point that it was surely not simply a matter of rational calculation. If we are seeking a basis for political theory, we should avoid starting either with a picture of a set of individuals, at a fairly advanced stage of moral development, devising means to safeguard their property, or that of a set of independent savages, acquiring the wit to see that they risked losing more than they gained by the absence of any obstacle to their preying upon each other. Hume was not, indeed, the first to perceive that the presumption of a state of nature, conceived after the fashion either of Hobbes or of Locke, was more of a handicap than an asset in explaining the development of social institutions. Not to speak of Aristotle, who started from the premiss that man is a social animal, Hume's near contemporary Lord Shaftesbury, and in some degree his mentor in the domain of moral philosophy, agreed with Hume in crediting men with an instinct of benevolence as well as of self-love. The disposition to exercise benevolence may, in general, be weaker than the disposition to act in accordance with what one takes to be one's own interest, but it is no less natural, and the attempts occasionally made to explain away benevolence in terms of selfishness are easily shown to be fallacious. From this standpoint it is reasonable to infer, as Shaftesbury does in his *Characteristics of Men, Manners, Opinions, Times*, that society is natural to man and that he never either has existed or could exist out of it.

The distinction between society and government which is obliterated in Hobbes is maintained by other champions of the theory of the social contract, such as Locke and Thomas Paine. According to Paine, indeed, the two 'are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness positively by uniting our affections, the latter negatively by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last a punisher' and as Paine went on to say, 'a necessary evil'.¹

¹ *Common Sense*, opening paragraphs.

Nevertheless, even in Paine's case, the distinction is less important than he seems to consider it. For, whether consciously or not, he follows Locke in making the institution of society artificial, no less than that of government. Moreover, Locke is explicitly and Paine, I believe, implicitly, conscious of the social contract as being buttressed by the moral obligation of keeping promises. They believe also in a natural right to property which government, more or less fairly, and more or less efficiently, protects. It is known that, in his different way, John Locke had as much influence as Tom Paine upon the drafting of the American Declaration of Independence.

All these assumptions were denied by Hume. He did not see much harm in the fiction of the state of nature, so long as it was seen to be a fiction, but he did have strong intellectual objections to the notion of there being rights or duties, which do not arise out of the formation of society. In particular, so far from believing that social contracts are sustained by the obligation to keep promises, he holds that the case proceeds in the opposite direction. There is no natural rule of morality which enjoins the performance of promises; the making and keeping of promises is the observance of an artificial convention, which is set up within an established society to promote the well-being of its members.

Hume's proof that we have no natural obligation to keep promises runs as follows.¹ If there were such an obligation it would have to depend upon 'some act of the mind' attendant upon the utterance of the formula which expressed the promise. But no such act of the mind is conceivable. Neither a resolution nor a desire can impose an obligation, and as for willing an obligation, that is an absurdity. For morality depends upon our sentiments, and the alteration of sentiment which the willing of a new obligation would require is not within our control.

The argument comes out more clearly when it is extended to cover the sense of duty, which was later to occupy a central place in Kant's grim moral theory. I quote the decisive passage.

No action can be required of us as our duty, unless there be implanted in human nature some actuating passion or motive, capable of producing the action. This motive cannot be the sense of duty. A sense of duty supposes an antecedent obligation: And where an action is not required by a natural passion, it cannot

¹ See Hume, *A Treatise of Human Nature*, book III, section V.

be required by any natural obligation; since it may be omitted without proving any defect or imperfection in the mind and temper, and consequently without any vice. Now 'tis evident we have no motive leading us to the performance of promises, distinct from a sense of duty. If we thought that promises had no moral obligation, we never should feel any inclination to observe them. This is not the case with the natural virtues. Tho' there was no obligation to relieve the miserable, our humanity would lead us to it; and when we omit that duty, the immorality of the omission arises from its being a proof, that we want the natural sentiments of humanity. A father knows it to be his duty to take care of his children: But he also has a natural inclination to it. And if no human creature had that inclination, no one could lie under any such obligation. But as there is naturally no inclination to observe promises, distinct from a sense of their obligation; it follows, that fidelity is no natural virtue, and that promises have no force, antecedent to human conventions.¹

It may be objected that it is just not true that people keep promises only from a sense of duty. To revert to one of Hume's own examples, the motive from which a father keeps a promise which he has made to his child may above all be his wish that the child should not be disappointed. And in general there are very many instances in which one's affection for another person which was a causal factor in the making of a promise remains one's strongest motive for adhering to it. There may also be ulterior motives of various kinds, including, for example, the hope of commercial advantages.

The answer to this objection is that these motives do indeed operate, but that they do so within the institution of promising which does not become less of an artifice through the fact of its incorporating them. Because it is common ground between a father and his children that one has at least a *prima facie* obligation to keep one's promises, their disappointment at his failure to do so may slide into resentment: his own regret at denying them pleasure may be sharpened by a feeling of guilt. Even so, all that is natural, in Hume's sense of the term, is the father's affection for his children and their reliance on it. The resentment and the guilt are bred out of the 'artificial' vice of violating a useful social convention.

The question of property is included by Hume in his examination of

¹ *A Treatise of Human Nature*, book III, section V.

what he calls the 'cautious jealous virtue of justice'.¹ As one would expect, he treats the practice of justice as an artificial virtue. If men lived in circumstances of such abundance, that the satisfaction of one person's wants did not preclude that of another's, or in such a state of indigence that one could not afford to forgo anything upon which one could lay one's hand, or if men were wholly benevolent instead of being predominantly selfish, the principles of justice would serve no social function. In fact, as Hume puts it:

The Common Situation of Society is a medium amidst all these extremes. We are naturally partial to ourselves, and to our friends; but are capable of learning the advantage resulting from a more equitable conduct. Few enjoyments are given us from the open and liberal hand of nature; but by art, labour and industry, we can extract them in great abundance. Hence the ideas of property become necessary in all civil society: Hence justice derives its usefulness to the public: And hence alone arises its merit and moral obligation.²

Obviously Hume's concept of justice is narrow. It encompasses no more than the impartial enforcement of civil and criminal laws, and not even all of those. But let us admit this restriction. The enforcement of the law ensures what Hume calls the stability of property. But what about its distribution? Does justice not come into question there? Hume implies that it does, but beyond listing the titles to property, such as occupation and inheritance, which were recognized in his society, his conclusion is indeed sensible but very short. 'Not only is it requisite, for the peace and interest of society, that men's possessions should be separated; but the rules, which we follow, in making the separation, are such as can best be contrived to serve farther the interests of society.'³ I think that Hume was close enough to being a utilitarian for us to be justified in construing 'the interests of society' in terms of the diffusion of happiness.

Admitting, as he did, that all property in such durable objects as lands and houses must in some period have been founded on fraud and injustice, Hume expressed sympathy for the Levellers of Cromwell's time who argued, principally on religious grounds, in favour of an equal distribution of property. The best-known modern advocate of this view

¹ Hume, *An Enquiry Concerning the Principles of Morals*, section III, Part I, para. 145.

² *ibid.*, para. 149.

³ *ibid.*, Part II, para. 154.

is George Bernard Shaw in his *The Intelligent Woman's Guide to Socialism and Capitalism*. His grounds were not religious but moral. Hume's objection to the proposal is that it is impracticable and that the consequences of any resolute attempt to put it into practice would be pernicious.

Render possessions ever so equal, men's different degrees of art, care, and industry will immediately break that equality. Or if you check these virtues, you reduce society to the most extreme indigence; and instead of preventing want and beggary in a few, render it unavoidable to the whole community. The most rigorous inquisition too is requisite to watch every inequality on its first appearance: and the most severe jurisdiction, to punish and redress it. But besides, that so much authority must soon degenerate into tyranny, and be exerted with great partialities; who can possibly be possessed of it, in such a situation as is here supposed? Perfect equality of possessions, destroying all subordination, weakens extremely the authority of magistracy, and must reduce all power nearly to a level, as well as property.¹

Except perhaps for the last sentence, this is good sense. The remark that the authority needed to repress the resurgence of inequality will lead to tyranny is borne out by the melancholy history of Soviet Russia. Not that the Soviets ever seriously aimed at economic equality. It might be said of Communism, what has been said of Christianity, that it has not failed, because it has not yet been tried. In fact, this would not be entirely true in either case. There have been groups of Christians who strictly adhered to their religious observances, and successfully practised Communism. They have invariably been small communities, living in rural districts not closely with their neighbours, and as a rule not maintaining their cohesion for very long. A counter-example is to be found in the Shakers who sustained eighteen communities mainly in the north-eastern sections of the United States, for upwards of a century. Their rule of celibacy, counteracted by their practice of recruiting orphans, preserved them from problems relating to inheritance.

I queried the last sentence of my quotation from Hume because it did not seem obvious to me that superiority in possessions was a necessary condition for the exercise of power. It could be that indigence was a bar

¹ *Enquiry Concerning the Principles of Morals*, Part II, para. 155.

to anything but the display, in certain cultures, of purely spiritual dominance, but there seems to be no good reason why a civil legislator or a judge should be any more wealthy than the average run of those who are subject to his authority. There has, indeed, been a tendency in the more prosperous Western countries during the past century for very rich men to exercise power behind the scenes, frequently by dishonest methods. This is one of the notoriously evil features of Capitalism, and one that threatens to increase. I am, however, not yet convinced that it is inevitable.

The ideals of the Levellers go far back into European history. For instance, the quotation 'When Adam delved and Eve span, who was then a gentleman' dates from Wat Tyler's rebellion in the fourteenth century. Their foremost exponent in the eighteenth century was, or was taken to be, Jean-Jacques Rousseau. I say 'was taken to be', because it is not at all clear, to me at least, what Rousseau's political theory was.

I suppose that everyone who has made even a cursory study of the subject can quote the opening sentence of Rousseau's *Contrat Social*: 'Man is born free, but everywhere he is in chains.' This sounds inspiring. In some fashion of its own it is a cry of protest. It helped to promote the French Revolution; but what exactly does it mean?

Let us concentrate on the first clause 'Man is born free'. Presumably this is not a statement of fact. In the normal way, an infant is free to satisfy his desires, mainly because they are so few in number. To be fed, to be kept warm, to be physically supported; but he has to be assisted to satisfy them, and he is not free from restraint. 'A burned child dreads the fire' is a much touted proverb but parents, unless they are sadists, will endeavour to prevent their infant from burning itself in the first place. As the child grows older he is increasingly impeded from doing whatever takes his fancy. His parents exercise more authority over him, he has to accommodate himself to the actions of other children, school-teachers come into the picture, his being too young to be accounted legally responsible does not put him in a position to defy the police. If he graduates to higher education, he will be subject, at least to some extent, to the discipline of his place of learning, when he finds employment he is unlikely to be his own master or at any rate not from the outset. However powerful he becomes, his freedom of action will be limited by social conventions, such as a code of manners – there are some things that are not done even by the most eccentric of English dukes. Not many married men, or women for that matter, are

altogether dominant in their own households. Only an unbridled dictator can be wholly untroubled by the law.

But is not this subjection to the will of others the very thing that Rousseau is concerned to denounce? He is not saying that it does not occur, he is saying that it ought not to occur, or at any rate not in the forms in which it does. Part of the point, indeed, of saying that men are born free is to imply that all types of government are artificial. This is not, however, even in Rousseau's view, sufficient to condemn them, in spite of his succumbing to the myth of the noble and solitary savage. It is a common mistake to suppose that the second part of the opening sentence of *The Social Contract* is a demand that men's fetters should simply be struck off them. On the contrary, the argument of the book is that men should be in chains; only the chains are required to be of a peculiar sort: they have to be imposed by men upon themselves. For Rousseau, freedom in civil society, which he does not distinguish from a set of persons under government, consists in one's authorship of the laws to which one adheres. This idea infiltrated the moral philosophy of Immanuel Kant, who advanced the view that only in voluntary submission to rigid moral laws did one escape from the causal determinism which reigned in the world of space and time. How Kant contrived, or thought that he contrived, to bestride the gap between our ideal volitions and our actual behaviour, which after all takes place in time, is something that I have never understood.

In Rousseau's case, the feat of excluding even the possibility of one's being socially constrained to conform to a rule which was not of one's own making and might indeed run counter to one's desires, is achieved by the device of the general will. It is through participating in the general will that one becomes a member of a legitimate society. Moreover, in some fashion which Rousseau never succeeds in making clear, the general will incorporates the wills of all the members of the society in question. Whatever it wills is decreed to be willed by each of them. It is for this reason that Rousseau is able to commit himself to the paradox that a thief in such a society who is sent to prison is being forced to be free.

But what is the general will? How does it function? If the actions which it causes are implicitly endorsed by every member of the group which it keeps in being, the process need not be conscious. Not only that, but even if it were conscious, this would not be enough. Rousseau makes a point of distinguishing the general will from the will of all. *A fortiori* we are not licensed to identify it with the will of the majority, though in certain circumstances its course of action may be decided by a majority vote. The only clue that we are given is that

it necessarily wills the general good. Again, we seem to be approaching the notion of general happiness. But I doubt if Rousseau was a utilitarian.

Despite the lack of evidence, I think that I have some inkling of what Rousseau may have had in mind. I suggest that we are asked to envisage a society which has come and remains together for some common purpose; where its members co-operate in their several ways in an attempt to achieve this purpose and where they have a recognized method for deciding what is to be done. Majority voting might be one such method, but it need not be the only one. Discussion without any voting might lead to a consensus. A committee, or several committees, might be entrusted with the management of the society's affairs. Officers might be appointed, and even paid, to preside over these committees. A single person, like the Visitor of an Oxford or Cambridge college, might in certain circumstances have a decisive voice. Rousseau indeed makes provision for a legislator to expound the general will. It is not unkind to suspect that he was thinking of himself.

In fact the Fellows of an Oxford or Cambridge college provide a good example of a society answering to Rousseau's specifications. As things stand, the undergraduates should probably not be included, as having too inferior a status, but this is a situation that could be and to a small extent is being remedied. A better example is a gentlemen's club, where the common purpose is that of enjoying social amenities. Another, on a very small scale, is a rowing eight or indeed any association of sportsmen, where the game is played for pleasure.

It is a common feature of all these societies that while one is not entirely free to join them, since one has to be acceptable to the existing members and in some instances to possess the appropriate skills, one is not compelled to do so, and one is free to leave. Both these conditions are satisfied by the political parties which effectively function in some contemporary societies, but neither by any society as a whole. One does not choose the society into which one is born and it is not universally or straightforwardly true that one can leave it, unless one is prepared to go to the length of committing suicide. Some countries do not allow all their citizens to emigrate; no major country, at least, accepts immigrants unconditionally. Even if someone encounters no legal obstacle in changing his place of residence, he may not have the means to do so. One of the weaknesses of social contract theories is the assumption that by consenting to live in a society, one is bound by an implicit promise to abide by its laws. For this presupposes, what we

have just found not to be true, that one is always presented with a genuine alternative.

Does the concept of the general will apply at all, or even approximately, to any modern State? I think that it may in time of war. There can then be a common purpose: a process of reaching agreement as to the way in which it is to be carried out; an acceptance of one's position in a hierarchy which sets limitations to the exercise of one's personal will. It is true that the society is likely to contain some who oppose the war, perhaps on conscientious grounds, perhaps because their sympathies lie rather with the enemy. I think it important that conscientious objection should be tolerated. In the second case, if those whose sympathies lie with the enemy are actually impeding the successful prosecution of the war, it is to be expected that they should at least be put under restraint. This might be thought to be a blemish on this example of the manifestation of the general will, but I claimed no more than that the concept might apply approximately. For example, I should not wish to say that a young conscript who was shot for cowardice was being forced to be free.

I have allowed myself to envisage a war of which I personally approved: one, like the Second World War, in which I had no hesitation in volunteering to fight for my country, but this is not to say that I was thereby displaying greater loyalty to Rousseau's principles than those who fought on the opposite side. Rousseau is thought of as a friend to democracy because his writings played a large part in fomenting the French Revolution, but among the men whom he chiefly influenced were Robespierre, who was hardly a quintessential democrat, and in this century Mussolini, who regarded himself as the embodiment of Italy's general will. Hitler might have made the same claim, with respect to himself and the Germans, with more justification, if the Jews and other outcasts are reckoned not to have been members of that society, a monstrous assumption but one that the vast majority of Germans and indeed Austrians were content to endorse. The point to be remembered is that the so-called common good at which the general will aims is what the members of a highly organized society collectively aspire to, probably under the direction of a leader with whom they identify themselves, and there is no reason why the aspirations of such a society and its very structure should not seem thoroughly evil to those who view it from outside.

Except in the circumstances of war, and then not always, the conditions set by Rousseau are not satisfied, in my opinion, by any of the Western democracies. Politicians speak of devising measures to

promote the general welfare, but they tailor their advocacy to special groups, they yield to pressure in one form or another by holders of some vested interest, the societies which they aspire to govern are deeply divided in their ways of life and their political beliefs. What appears to be gaining ground at the present time, both in England and in the United States, is the principle of the devil take the hindmost, and the hindmost have become too numerous for their abandonment to count as the verdict of the general will.

If it was Tom Paine's pamphlet *Common Sense* that, more than anything else, induced representatives of the thirteen American colonies to move from the position which they almost unanimously held in 1775, that of having their grievances redressed while retaining allegiance to the British Crown, to their insistence on independence in 1776, the sentiments which are expressed in the Declaration of Independence go back beyond Paine. I wish to end this chapter by examining its famous preamble.

Let us begin with the proposition that all men are created equal. Not wishing to delve into theology, I waive the objection that if the use of the word 'created' was intended as I think it must have been, to imply the existence of a supernatural creator, there is no good reason to believe that men are created at all. What is of interest is the claim to original equality. On the face of it, it is manifestly false. Both physically and intellectually men and women enter the world with very different genetic endowments, not to speak of the inequalities arising from the different social environments into which they are born. These are such obvious facts that I cannot believe that so intelligent a man as Thomas Jefferson was oblivious to them. What then did his claim amount to? It was, I believe, an attack on aristocracy, in the sense that it denied there being any justification for distinctions of rank which depended solely on the accident of birth. On the positive side, it was a plea for equality of opportunity, for what Napoleon was to call '*la carrière ouverte aux talents*'. In contemporary jargon the Founding Fathers were meritocrats. The fact that a meritocratic system, coupled as it always has been, overtly or surreptitiously, with inherited privilege, itself fostered considerable differences in wealth and status did not worry them. It was left to more radical theorists, Tom Paine among them, to seek to diminish, if not to do away with, the social and financial advantages of inheritance. It was their idea also that the government had a duty to provide a tolerable standard of living for the members of society who were not yet, or no longer, or even had never been able to achieve it independently. This idea achieved some fruition in England after the Second World War in

the organization of the so-called Welfare State. In the United States the spirit of charity has had to contend with the legacy of the Puritan belief that material poverty is a mark of God's disfavour.

We come next to the right to life. I had better confess at once that I do not understand what is meant by calling a right inalienable. I note only that it has not been taken to imply that the right, if it exists, can never be overridden. Except for out-and-out pacifists, of whom I am not one, men have always felt justified in killing their enemies in war. I happen not to be an advocate of capital punishment, but most people have been and many still are. The question of abortion admits of more arguments than I can devote to it here; I shall say only that I am not alone in believing that the decision should rest with the prospective mother. As for infanticide, it did not shock the Ancient Greeks, whose civilization we are brought up to admire, but we have gone rather to the opposite extreme, sometimes going to great trouble and expense to preserve a life that is altogether unlikely to be worth living. This is a question which defies attempts at generalization. Undoubtedly many handicapped children can be trained to lead lives of value to themselves and others. Undoubtedly, also, it is injurious, if not to the infant itself, at least to its parents, 'officiously to keep alive' a creature that has no prospect of leading anything more than a vegetable existence, or even one whose conscious life is likely to consist in continuous pain, without the compensation of intellectual achievement. Where the line is to be drawn is a matter for decision in each particular instance.

In the case of the aged, the question is easier because the value to themselves or others of the prolongation of their lives is easier to estimate. I see no good at all in obliging a person who is afflicted with a painful and incurable disease to continue to suffer. There is indeed the complication that their own wishes deserve to be respected, but the difficulty here is that they may have been reduced to a state where they are no longer capable of making a rational choice. I declare now that if I become senile, I hope that someone will do me the kindness of putting me to death. Correspondingly, if I became aware that I was entering the road to senility, I should have no qualms about taking my own life.

On the matter of liberty I have little to add to what I have already said, beyond making the point that it is a question not so much of right as of power. It is idle to tell a man that he has the inalienable right, whatever that may mean, to do what he wants if he lacks the resources to do so, or is physically prevented. Nevertheless the affirmation of the right to liberty is understood to uphold an important set of values:

freedom of speech, due process of law, freedom of worship, with certain restrictions such as the protection of converts from enslavement and the prohibition of human or even animal sacrifice, freedom to choose one's way of life, so far as it lies within one's power, absence of censorship, again with certain restrictions designed to protect children against sadistic pornography and consumers against blatant lies, freedom to unite for the purpose of obtaining fair conditions of employment. Such additions to the list as universal suffrage and the absence of discrimination, in theory if not always in practice, on the score of race, religion and sex, were latecomers to the scene. Until well into the twentieth century England, at least, was far from being a democracy, and the history of the slave trade is highly discreditable both to England and still more to the United States.

What is there to be said about the pursuit of happiness? The subject appears to have much in common with that of liberty, the pertinent question being not whether one has the right to pursue happiness, but how far the achievement of happiness lies within one's power. The parallel with liberty appears also in the proviso that the pursuit of one's own happiness should not unduly encroach upon the happiness of others, the difficulty lying once again in the interpretation of the word 'unduly'. Here too I think that it can often be decided in particular cases, without its being possible to lay down any general rules. As for the question whether one ought to pursue happiness, we have the authority of Aristotle that every human action has happiness for its end. I suspect, however, that Aristotle used the word 'eudaimonia', translated as 'happiness', so broadly that it covered any good whatsoever, with the result that his assertion would be no more than a tautology.

Avoiding this pitfall, let us ask whether it is psychologically possible that men should aim at failing to achieve what they most desire. If this is treated as an empirical question, I believe that there actually are such people, but that it is a fallacy to argue that they find their greatest satisfaction in being frustrated. However this may be, their number is surely small and their example not one to be followed, unless we take the step, which I am deliberately avoiding, of allowing the very performance of an action to count as a proof that it was, in the circumstances, what one most desired to do.

Whatever may be the case with happiness there is no doubt that there often have been and still are enemies of pleasure. I am content in their case to say no more than that my sentiments lie strongly in the opposite direction, with the chilly proviso that not all pleasures are

harmless and the Aristotelian platitude that indulgence in a harmless pleasure can be carried to excess. Since pleasure is at least generally allied to happiness, the presentation of the pursuit of happiness as an inalienable right, whatever its literal shortcomings, was a beneficial slogan at a time and place where too many people were disposed to think of the natural world as necessarily a vale of tears.