

CHAPTER 1

Self and State: A Historical Perspective

The general Enlightenment project was built on (at least) three basic ideas. First was the faith that only reason and common sensibility could be appealed to in the solution of practical problems. This was held to be true both for technological problems and moral ones. Although this criterion is remarkably vague, and various Enlightenment thinkers tended to place varying degrees of emphasis on either reason or sensibility (sometimes to the near exclusion of the other), the principal aim of this tenet was to rule out of court diverse appeals to authority and tradition in the settlement of practical disputes. To attempt here any respectable clarification of the notions of reason and common sensibility would be to recount huge chunks of the philosophy of the last three or four centuries, and so I will leave the whole matter to the side. Nevertheless, I believe it is reasonable to assert that this assumption (or its clarification) occupies center stage in almost all modern and contemporary philosophical disputes.

The second major faith of the Enlightenment was that nature, as a whole, is devoid of any teleological ends; it is brute mechanism, holding no good clues about what we ought to value, and, furthermore, it is generally hostile to our legitimate goals as individuals and societies. This tenet, of course, has played a huge role in the history and philosophy of science. It also played, and is still playing, a large role as regards our ethical attitudes and policies respecting the natural environment. This consequence of Enlightenment thought will be a central concern in Part III of this book.

The third faith of the Enlightenment was specifically political. It was an explicit premise in the political writings of almost all of the major moralists of the time that, although the establishment of the state is necessary in order for humans to have many real freedoms, once we collectively remove ourselves from the state of nature we will, as individuals, constantly find ourselves at odds with governments that seem to have a tendency to require much more of us than is legitimated by the need to maintain a civil society. The aim of this tenet was to deny a principle about the relationship between the individual and the state that appears to

have its origin in Plato's *Republic*.¹ Its effect is evident in most classical and medieval thought, in modern conservatism and monarchism, and in twentieth-century fascism. That principle was the one that claimed an "organic unity" of citizen and state. Just as the value of the individual organs belonging to an organism consists in their contributions to the welfare of the organism, so too does the value of the citizens in the state consist in their contribution to the welfare of the state itself. Of course, the state could not exist without citizens any more than any organism could exist without organs. But, just as organs are useless and without value outside of their functional roles in the organism, so too are citizens who step outside of their functional roles in the state. Moreover, just as a cancerous organ may be sacrificed in order to improve the well-being of the organism, so too a dysfunctional individual's rights must be expendable on behalf of the state.

Despite Hobbes's endorsement of the analogy between organism and state on the first page of the *Leviathan*, and despite the monarchist conservatism of his contractarianism, he usually goes down as one of the first moderns to deny this sort of holism in favor of political "atomism." One need only list the names of a few of Hobbes's heirs in the British and American Enlightenment to make clear the depth of the rejection of organic holism over the next two centuries.

But the rejection of holism is hardly specific to Locke, Jefferson, and Mill. On the first page of *On Liberty*, Mill recognizes his debt to von Humboldt. And, of course, there is another German who is famous for his claim that the state would, in time, "wither away." In the French tradition, the case of Rousseau presents an interesting challenge.

Rousseau's thought is often seen by libertarians as a dangerous prelude to the collectivism that would run amuck in the nineteenth and twentieth centuries. His talk of a "general will" that supersedes "the will of all" and of a need for individuals to be "forced to be free" might even cause a Marxist to pause. But I think there is a way of interpreting Rousseau's ideas so that they are pretty far removed from Marxist collectivism and nowhere near fascist holism.

One ventures interpretations of Rousseau at one's own peril, and I should point out that my intent here is not to give any interpretation that is consistent with the whole of his thought. I am interested simply in drawing out one thread of his work that will place him at least at the edge of Enlightenment libertarianism, and, also, in raising some issues that will be central to remarks that I will make later about more clearly libertarian figures like Mill.

Rousseau's concepts of the "general will," the "will of all," and "forced freedom" must, of course, be understood within the context of his general theory of the social contract. The most useful analysis of the

foundation of Rousseau's contract theory is to be found in an old article by W. G. Runciman and A. K. Sen.² Their analysis starts from a consideration of the prisoner's dilemma (as have many recent analyses of social contract theory). I will not bother to recount the tale that gives the dilemma its name. Prisoners and confessions aside, the following is a prisoner's dilemma:

		B	
		<i>brutal</i>	<i>civil</i>
A	<i>brutal</i>	1, 1	3, 0
	<i>civil</i>	0, 3	2, 2

In this situation, A's payoffs appear first and the numbers simply represent ordinal rankings by the two parties involved over the four possible outcomes. The outcome of both parties acting brutally toward one another is meant to represent the state of nature, that is, the state humans find themselves in before the establishment of a social contract. An easy assumption is that this state of affairs (1,1) is worse for both A and B than the one where they cooperate and form an enforceable social contract that constrains them (under threat of punitive sanction) to be civil toward one another (2,2). However, either party would find it most advantageous to be in a situation where he or she could brutally victimize the other. Thus, the (3,0) outcome is best for A while the (0,3) outcome is best for B. But neither party could bring about the desired outcome without causing the war of all against all that leads back to the state of nature.

The dilemma of this situation is that A and B will not be able to enforce a mutually advantageous contract without appeal to an outside authority. Simply promising to be civil rather than brutal will not bring about the desired outcome. Regardless of B's action, it will be advantageous for A to act brutally and, moreover, for A to break any mere promises made to B that A would be civil. The situation is identical for B. So, left to their own devices, A and B will both wind up being brutal (1,1), a state of affairs inferior for both of them to the one where they are both civil (2,2).

There is a straightforward sense in which A and B are being "forced to be free" when they submit to an enforceable contract to be civil. Given a choice between (1,1) and (2,2), either party would freely choose (2,2), and this freedom exists only after the establishment of a contract. Moreover, there is considerable sense in thinking of the postcontractual situation (2,2) as being a manifestation of the "general will" while the precontractual equilibrium point (1,1) is the result of the "will of all" (the will of each acting individually).

All of this points to the fact that Rousseau seemed to be aware of a subtlety in the relation between state and individual that Bentham (among others) was almost completely insensitive to. Bentham claimed that a community could be no more than a matter of the simple "sum" of the interests of the individuals in that community.³ What the foregoing shows is that the amalgamation of interests in a contractual situation is hardly just a matter of simple summation.

In the first place, the prisoner's dilemma nicely points out that the matter of summation is not simple. There is a clear sense in which the equilibrium outcome (1,1) represents the maximal sum of utility because it is the product of joint action directed under the principle that each individual ought to maximize his or her own expected utility. However, the optimal outcome (2,2) represents the maximal sum of utility *if that outcome can be made available* (and, of course, it can with the establishment of a contract). The identification of the maximal sum, then, depends upon something more than just adding up the numbers; it depends upon the availability of an enforceable contract.

Secondly, we could replace the occurrences of "3" with "5" in the payoff matrix of the previous situation and (under an assumption of cardinality that Bentham would be willing to make) make either the (5,0) or (0,5) payoff the one with a maximal sum, although neither outcome would be an equilibrium one nor would either be practically accessible.

Thirdly, what all of the foregoing ought to make clear is that the manner in which utility is *distributed* over the available outcomes has everything to do with the manner in which the prisoner's dilemma will play out. This consideration is linked to other well-known problems associated with the Benthamian doctrine that the interests of the community can be easily cashed out as the sum of the interests of the individuals in that community. Given three individuals (A, B, and C), two alternatives (x and y), and the following choice situation:

	A	B	C
x	9	9	9
y	0	0	27

a choice principle based on simple summation would yield indifference between x and y. However, all things being equal and all individuals being equally deserving, it would seem that x is clearly better than y. Regardless of the intuitive power that can be generated against Bentham's summation principle by this kind of situation (which isn't much, as we shall see in Chapter 3), the prisoner's dilemma *does* raise some very real

distributional concerns that, again, Rousseau seemed to understand in a way that Bentham didn't.

Nevertheless, there is no reason to suspect contract theorists like Rousseau of holding some doctrine of a mystical organic unity that reigns over individuals. The state is ultimately founded on nothing beyond the thoughtful interests of its citizens. But is it possible to derive more than this simple liberalism from Rousseau? Although I have no intention of making Rousseau a libertarian, something far more libertarian than any idea usually attributed to Rousseau does follow from the present analysis of the foundations of his social contract theory.

First, it must be recognized that the enforcement of the contract is not only a basis for the establishment of state authority, it is the *only* legitimate basis of that authority. Moreover, individuals need not consent to just any contract. Any number of contractual arrangements (ranging from very libertarian to very authoritarian) will, in principle, be able to insure the establishment of some sort of civility. It would seem that all individuals must commit themselves to, and all that any state has an uncontroversial right to enforce, would be a *minimal* contract, that is, a contract that imposes just enough force to secure civility. The establishment of a regime that would do more than this would seem to go beyond the bounds of what can be secured by the kind of unanimous consent essential to the establishment of a genuine and genuinely justifiable contract.⁴ This does not imply that each specific piece of legislation must meet with anything approaching unanimity. However, the general regime under which legislation is derived must be based on unanimity and, thus, any piece of legislation that could not be argued to be essential to the preservation of civility would be unjustifiable to the degree that it was inessential. That a specific regulation would be approved by a majority or be productive of increased welfare for most would not serve as sufficient grounds for the regulation. Even though unanimity need not be guaranteed for each piece of regulation, it is the basis of the contract itself.

Second, a major complication sets in when we begin to wonder about the specifics of the options and outcomes laid out in the preceding table. What, precisely, does "civil" denote? What does "brutal" mean? What do the numbers really represent? Let's start with the numbers. The standard explanation is that the numbers simply represent the raw preference orderings of the individuals involved. In other words, an outcome will be assigned a two for A and another outcome will be assigned a one for A simply because A prefers the former outcome to the latter.

But suppose A likes pain more than pleasure, and, moreover, he likes the suffering of B even more than he likes his own pain. Suppose, in addition, that B is normal, that is, she likes pleasure more than pain and prefers A's suffering to her own. Under these suppositions, how could we

reach any optimal bargaining point upon which a contract could be based? The point here is that there must already be some common agreement about ultimate goods and evils before we even enter into a situation where a contract would be mutually beneficial. On the assumption that the basic values of A and B are as radically diverse as supposed above, no motivation for a contract exists. B would be best off simply by getting as far away from A as possible and, if A ever showed up in her vicinity, to be as brutal as possible toward him.

In the jargon of game theory, this situation is a zero-sum game in which an equilibrium is reached by virtue of mutual individual threat. No prisoner's dilemma arises and, as a consequence, no contract is at all beneficial to anyone; it's just dog-eat-dog.⁵ Likewise if the basic values of A and B are disjoint, that is, A wants apples and B wants oranges, then we have a one-sum game in which, again, no contract is fortuitous for anyone.⁶ It is only when A and B want to maximize their possession of the same sort of good (or minimize the occurrence of a common evil) and, moreover, the bargaining equilibrium is suboptimal that a contract makes sense.

In other words, unanimity is not only a criterion of a valid social contract, it is, at a deeper level (that of basic values), a precondition of even thinking about a contract in the first place. This is not a surprising conclusion, given the history of social contract theory. In Hobbes, Locke, and Rousseau, it is generally made quite clear that there are certain fundamental and universal goods (e.g., happiness and a tranquil state of affairs in which to pursue it) and evils (e.g., pain and violent death) that are to be achieved and avoided by the enforcement of a social contract.⁷

The following, then, opens up as an obvious line of reasoning: If the contract is to be the only basis of *legitimate* social control over the individual, and the only basis of the contract can be found in unanimously shared values then, to the degree that the state acts to restrain the individual for any reason other than that necessary for the optimization of unanimously shared values, its actions are less justifiable. Individuals who can wrangle a better deal for themselves under some other contractual arrangement will, of course, find it rational to work toward the establishment of a contract that guarantees the delivery of their favored benefits (presumably at the expense of others who will not share in those benefits). But this has nothing to do with the *justifiability* of the *regimes* under which various benefits are delivered or not. Anyone can (and probably does) desire special treatment; they just can't *justify* it honestly.

The interesting question now is: How many values can be counted on to be unanimously shared by humans? If the number of such values is small, then the domain of legitimate social regulation is small as well. If, moreover, we place the burden of proving that the number of unani-

mously shared fundamental values is large on those who wish to extend the domain of social regulation, then we begin to approach libertarianism; a substantial private sphere will be created by the lack of good proof that certain individuals' actions are seriously injurious to the maintenance of the social contract. In other words, substantial individual rights will be created negatively rather than positively.⁸

Locke and Jefferson are good examples of theorists who just specified certain "inalienable" rights and thereby delimited, in a positive way, the range of legitimate social regulation. Under the previous analysis of Rousseau, he is viewed as a successor in the Hobbesian tradition of limiting social control by negative means and, thereby, granting individual rights negatively.⁹ In the third chapter I will argue that this sort of attempt to limit social power by granting rights negatively, rather than positively, is central to an understanding of Mill's utilitarianism and his theory of individual liberty.