Chapter 3

Citizenship

§ 1. The Distinction Between Civil Rights and Natural Rights

The citizen in a republic obtains all his[1] civil liberties and protections from voluntary membership in the body politic of the republic. In exchange, he voluntarily gives up (alienates) his *freedom to exercise* certain natural rights by his agreement to submit to the general Sovereignty of the republic. In exchange for giving up unlimited freedom of action, he is provided with the guarantees: to be at liberty to pursue his own interests, manage his own affairs and conduct his own business, subject only to limitations placed on this liberty by the reciprocal requirement that he is not at liberty to violate these same liberties of the other members; to be secure in the ownership of his property; to have the safety of his person and the security of his property be defended by the combined strength of all the members of the body politic; to be safeguarded from injustices inflicted by the actions of other people; to be assured of fair and equal opportunity to pursue his own goals and ambitions; to be assured of fair and equal opportunity to peaceably voice his opinions concerning all matters of civil governance, or to express verbally or in writing his views upon any subject; to be at liberty in his religious beliefs and to live according to them within limitations imposed by the reciprocal requirement that this same liberty is granted to all others and cannot be infringed, including the liberty to hold no religious views; to be at liberty to associate with whomever of his fellow citizens he chooses; to be at liberty to decline to associate with whomever he chooses, subject again to limitations imposed by the requirements of the Social Contract; to be at liberty to peaceably assemble in concert with his fellow citizens to petition for redress of grievances and corrections of injustices; and to every other civil liberty *without exception* as the body politic may agree upon and express as its general will.

The concept of liberty is often confused with and mistaken for the concept of freedom. Freedom is no more and no less than this: the human capacity to self-determine one's own actions and to take, or refrain from taking, whatever action one might decide upon. A person's capacity for free action is limited only by his intellectual and physical ability to conceive and carry out that action. This *capacity* is never constrained or limited by another person's choice although the *action* can be overpowered. A person's self-determination of his own action can be influenced, even coerced, by his judgment of its consequences, but in the end the action a person undertakes is chosen by no one but himself.

[1] Because it is awkward to continually be writing "his/her" or "he/she" or etc., I choose to follow the custom of using the masculine pronoun and would have it understood that "he" is merely an abbreviation for "he/she" and so on. In regards to all matters in this treatise, there is no distinction to be drawn on the basis of gender, nor on the basis of race, nor on the basis of ethnic background, nor on the basis of previous condition of citizenship. Civil rights and civil liberties apply without discrimination to every citizen of the body politic.

For example, suppose someone sticks a gun in my face and demands, "Your money or your life." Clearly I have no *desire* to hand my money over to him; quite the opposite. I also have no desire to be shot, much less killed. If in my assessment the only means of avoiding the latter is to comply with the former, I might hand over my money. This is no more than a judgment of my own *better self-interest*. If, on the other hand, I should feel deeply dishonored by giving in to his threat, and if I should determine that such dishonor is less acceptable than being killed – "Death before dishonor," as the motto goes – I may throw caution to the wind, elect to take my chances, and attack. The choice is mine, not the robber's.

The term *natural right* means no more and no less than this: that nothing alien to a person's own capacity for self-determination whatsoever can prevent his acting or attempting to act upon his free choice. This may seem at first glance to be a strange misusage of the word "right," and so the meaning of its definition requires further explanation. One dictionary connotation of the noun "right" is "power, privilege, etc. that belongs to a person by law, nature, or tradition." Natural right therefore means a power a human being possesses solely due to *being* a human being. The specific power called *the* natural right is the power of one's self-determination. It is in this connotation, and this connotation only, that the phrase "natural right" has any objective meaning. There are no other objectively valid meanings that can be universally attached to the term. The natural right is utterly inalienable because one cannot choose to refrain from making choices and acting upon them. Such is utterly alien to the living nature of a human being. This *fundamental* natural right is *absolute* because no one else can take it away. From it a person derives *derivative natural rights* to do whatever he chooses.

In a *state of nature*, there is no natural right to life, no natural right to liberty, no natural right to happiness, nor any other *conventional* right, privilege or guarantee. The rattlesnake will not respect any right to life I might claim as a right of nature; the despot will not respect any right to liberty I might claim as a right of nature; the robber will not respect any pursuit of happiness I might claim as a right of nature. These rights are *civil* rights, not rights of nature. This is a point to which we will return in a moment.

The idea of the state of nature is the idea of a *living condition*. In the specific, it is an idea in the context of relationships in which one finds himself in regard to the world around him, and especially in regard to his relationships with other human beings. Boiled down to its essence, ***the state of nature is the condition of living in which there is no distributive justice among humans***. To appreciate the meaning of this, let us review the various connotations of the word justice:

justice [O.Fr., from L. *justitia*, justice, from *justus*, lawful, rightful, just, from *jus*, law, right.]

1. the quality of being righteous; honesty.
2. impartiality; fair representation of facts.
3. the quality of being correct or right; as, he proved the *justice* of his claim.

4. vindictive retribution; merited reward or punishment; as, *justice* overtook the criminal.
5. sound reason; rightfulness; validity.
6. the use of authority and power to uphold what is right, just, or lawful.
7. the administration of law; procedure of a law court.
8. a judge.
9. a justice of the peace.

With the exception of one connotation of vindictive retribution, all of these connotations owe their derivation to a presumption of reciprocal human relationships and a social compact as the foundation of this community, to which the concept of justice is then referred. Even the connotation of *merited* reward or punishment makes this presupposition because to *merit* reward or punishment implies the assignment of culpability, as in "he deserved it in consequence of his action."

To be vindictive means to be revengeful, and vindictive retribution is punishment imposed, for motives of revenge, on one person or several persons by another person or persons who act entirely from the basis of his or their volition. Vindictive retribution can only be called *universal* justice if the form of retribution is sanctioned by a political community of which the punisher is a member. This is because to be universal justice means "to be accepted as just by all," and this clearly presupposes a political community defining who constitutes or comprises "all." The ancient Code of Hammurabi, "an eye for an eye and a tooth for a tooth," was vindictive justice of the universal variety. If a house collapsed and killed the buyer's son, the builder's son was put to death; if a man broke another man's leg, his leg would be broken; and so on.[2] The law was accepted as applying to one and all, and it was in this sense universal.

Distributive justice means *public* justice, where what is just is established by common consent among the members of a political community and secured by an authority established to put into effect the enforcement of law. It is obvious from this definition that there can be no such thing as distributive justice in a state of nature because in such a condition there is no political community to whom matters can be referred for communal agreement and legal judgment. Vindictive retribution in a state of nature is usually called *vengeance*. It is a matter of *private* determination but not a public justice. Vindictive retribution within a political community can never *rightfully* be a private determination.

Now let us turn our discussion back to the civil rights of life, liberty, and the pursuit of happiness. In what sense can these be called unalienable rights, as the Declaration does? These civil rights are often called "God-given rights" by a great many people, and this would seem to be endorsed in the Declaration by Jefferson's phrase, "endowed by their Creator," that precedes the specification of these rights. However, it is erroneous to regard these or any civil rights as religious rights other than the civil right to be at liberty in the choice and practice of one's religion stated in the First Amendment of the

[2] Source: Will Durant, *The Story of Civilization*.

Constitution. Although it is true that most religions throughout history have held that some god or gods created everything – modern examples here include Judaism, Christianity, Islam, and Hinduism – it is equally true that other major religions did not accept this; here two prominent examples are Jainism and Buddhism. A body politic that holds religious freedom to be a civil right cannot also hold the three unalienable rights we are discussing to be God-given rights because this cannot obtain the assent of all its members, although there is nothing in the social compact to prohibit particular members of the body politic from *privately* holding that these civil rights are God-given. The compact merely forbids this view from being codified into law either explicitly or implicitly.

In what sense, then, are the unalienable rights to be regarded? The answer to this requires little more than common sense: *they are unalienable because it can reasonably be presumed no member of the body politic would be willing to alienate any of them as part of a Social Contract*. Thus the Social Contract cannot require this alienation by any of the members of the body politic. We can take this very fine distinction as the mark of the difference between an *un*alienable right and an *in*alienable right. An unalienable right is a right the Social Contract cannot require its members to alienate; an inalienable right derives from natural right such that it cannot be taken from anyone by any decree of law whatsoever. The former is a civil condition of the existence of the body politic itself, the latter sets a limitation on powers of the sovereignty of the political community once that community has formed into a body politic. Life, liberty, and the pursuit of happiness are unalienable civil rights; the right to *practice* a particular religion is constitutionally protected as a recognition of an unalienable right.

It has been argued by some that life and liberty are not unalienable rights because society's legal code recognizes capital punishment and imprisonment as rights of the state. This, however, is an incorrect argument based on misunderstanding of the concept of civil rights. In the body politic, civil rights are accorded universally *only* to those who have freely pledged to be bound by the terms of the Social Contract. This is part and parcel of the *prior consent* in forming the association. A criminal is one who has pledged himself to and then intentionally broken the social compact, and thereby has voluntarily removed himself from its protections. Rousseau put it this way:

> The death penalty inflicted upon criminals may be looked on in much the same light: it is in order that we may not fall victims to an assassin that we consent to die if we ourselves turn assassins. In this treaty, so far from disposing of our own lives, we think only of securing them, and it is not to be assumed that any of the parties then expects to get hanged.
>
> Again, every malefactor, by attacking social rights, becomes on forfeit a rebel and a traitor to his country; by violating its laws he ceases to be a member of it; he even makes war upon it. In such a case, the preservation of the State is inconsistent with his own, and one or the other must perish; in putting the guilty to death, we slay not so much the citizen as an enemy. The trial and judgment are the proofs that he has broken the social treaty, and is in consequence no longer a member of the State. Since, then, he has recognized himself to be such by living there, he must be removed by exile as a violator of the compact, or by death as a public enemy; for such an enemy is not a moral person but merely a man; and in such a case the right of war is to kill the

vanquished.

It is, of course, the prerogative of the citizens of the republic to jointly consent to whatever forms of criminal punishment it deems proper. *Legal* justice is that which all its citizens give *consent*. That obtaining this consent, expressing the general will of the body politic, is often among the most difficult issues of Sovereignty is irrelevant to the point. Here one must note that *consent* and *agreement* are not synonymous. One can consent to something without also agreeing with it. Consent implies no more than *acceptance* and is passive. Consent of the governed is all that is required for a punishment to be just within the social compact, and this holds true for every *just* power granted to government, as the Declaration states. One *agrees* to the Social Contract but *consents* to the law.

Likewise, there is nothing in the social compact dictating that civil liberties or laws of crime and punishment are immutable. Specific civil liberties in place at one point in the history of the political community can be altered or even withdrawn at some later point. The Social Contract does stipulate, however, conditions under which this can be done and conditions *under which it cannot*. We will take up the many and difficult issues and dangers attending this later in the chapter on Justice.

§ 2. Civic Duty

The fundamental *a priori* principle of the Social Contract is the principle of free association by the members of the body politic. Every member entering into this compact voluntarily gives up the exercise of some of his derivative natural rights in exchange for the advantages, protections, and assistances provided by the civil liberties he obtains in exchange. What does it mean to say a person gives up some of his derivative natural rights? That question is the next we must address.

Nothing is more commonplace in the commerce of everyday life in a civilized community than the precept: that which is bought must be paid for. The seller exchanges a part of his stock of goods for a part of the stock of goods belonging to the buyer and vice versa. In every sufficiently advanced civilization the currency of commercial exchange is money. A person's stock is the thing that is assigned value; money is merely the lubricant of commerce. In *Wealth of Nations* Smith wrote,

> Money, therefore, the great wheel of circulation, the great instrument of commerce, like all other instruments of trade, though it makes a part and a very valuable part of the capital, makes no part of the revenue of the society to which it belongs; and though the metal pieces of which it is composed, in the course of their annual circulation, distribute to every man the revenue which properly belongs to him, they make themselves no part of that revenue.

Trade goods, including labor, make up the stock of a person and of a nation. Money is merely a medium of exchange – a currency – that expedites commerce and facilitates the division of labor, upon which the wealth of nations depends. Commerce itself is a *benefit* made possible by the free association of people in a social compact. When the Viking longboats came ashore at Lindisfarne in

793, what followed was, in the eyes of the Saxon community, not commerce but murder and pillage. To the Danes it was a profitable venture involving the manly exercise of sacking the monastery and killing its monks. Such is the character of free enterprise in a state of nature.

In a like manner, the good purchased in entering into a Social Contract is civil liberty, the good exchanged is restriction of derivative natural rights. What is the currency of this exchange? It is, in one word, ***obligation***. Recalling that the term "Sovereign" in the context of the Social Contract means the whole of the body politic in action, let us look at Rousseau's statement of the nature of the Sovereign.

> [The formula of the Social Contract] shows us that the act of association comprises a mutual undertaking between the public and the individuals, and that each individual, in making a contract, as we may say, with himself, is bound in a double capacity; as a member of the Sovereign he is bound to the individuals, and as a member of the State to the Sovereign. But the maxim of civil right, that no one is bound by undertakings made to himself, does not apply in this case; for there is a great difference between incurring an obligation to yourself and incurring one to a whole of which you form a part. . .
>
> As soon as this multitude is so united in one body, it is impossible to offend against one of the members without attacking the body, and still more to offend against the body without its members resenting it. Duty and interest therefore equally oblige the two contracting parties to give each other help; and the same men should seek to combine, in their double capacity, all the advantages dependent upon that capacity. . .
>
> In fact, each individual, as a man, may have a particular will contrary or dissimilar to the general will which he has as a citizen. His particular interest may speak to him quite differently from the common interest: his absolute and naturally independent existence may make him look upon what he owes to the common cause as a gratuitous contribution, the loss of which will do no less harm to others than the payment of it is burdensome to himself; and, regarding the moral person which constitutes the State as a *persona ficta* [3], because not a man, he may wish to enjoy the rights of citizenship without being ready to fulfill the duties of a subject. The continuance of such an injustice could not but prove the undoing of the body politic.

Rousseau was being neither rhetorical nor pious when he called the body politic *a moral person*. Most Americans commonly associate the ideas of morals and morality with whatever their particular religious upbringing has taught them, and in the majority of cases this teaching implies that morals and morality are *essentially* religious in nature. This is not so. Membership in a religious community is one species of human association, and in most churches this association is voluntary once persons reach an age when they are deemed competent to make this choice. Catholicism, for example, has its rite of confirmation – young people *confirm* their allegiance to the church and its doctrines. The Amish community has a similar rite, as does Judaism with its rite of *bar mitzvah*. Baptism is often a confirmation rite. Whatever the rite is called, the act is a pledge of acceptance and allegiance to those doctrines and tenets collectively forming the set of religious moral standards for that church.

Within a political community, these standards are not religious but rather political, and we must therefore speak of *civic* morality. This is what Rousseau means when he calls the body politic a moral

[3] an untrue person; a fictitious entity; something made up that is not real.

person. Now, civic morality and religious morality are species of some more universal genus we would call morality in general or morality *per se*. What is essential to the idea of morality *per se* has been a topic of study and debate among both philosophers and theologians for centuries and would easily command an entire treatise of its own. Indeed, history provides a quite large number of such treatises, not one of which has yet captured the universal assent of all humankind in any age. It is not within the scope of *this* treatise to treat morality *per se* but it *is* necessary to examine what sort of moral doctrine can provide *objective* validity for moral tenets. That task is simpler and more restricted in scope than morality *per se*; it needs only the examination the meaning of the idea of civic morality.

§ 2.1 The Principle of Civic Morality

Because the idea of civic morality springs from the original idea of the Social Contract, questions regarding principles of civic morality must be addressed from this starting point. Because none of these questions would arise or have context without the idea of the Social Contract, all principles of civic morality share a common requirement, namely that every principle of civic morality, as well as everything deducible from these principles, answer to just one standard of judgment. If the idea is to command the respect and assent of the entire body politic, its principles must first be regarded as being in some way necessary principles. This at once raises the corollary question: necessary for what? But this question is an easy one to answer. We would not be considering the question of civic morality at all if we were not concerned with its implications for the nature of the Social Contract. Therefore the *a priori* standard of judgment for all principles of civic morality is none other than that these principles are held to be ***necessary for the Social Contract to be practically possible***.

The Social Contract is not a product of physical nature but, rather, it is a convention and, as it were, a treaty of understanding among those who make the social compact. Principles of civic morality, therefore, are not necessary due to mankind's physical nature but, instead, are *made necessary* (necessitated) by the requirement that they be agreed to by every member of the association. In this context, such a principle is called *universal*. Furthermore, such a principle is empty unless there are consequences stemming from it that can be put into practice by the political community formed by the free association. This is to say nothing more than that these principles be *practical*. Combined, these two requirements tell us that principles of civic morality must be *practically universal* in their scope and character.

Now, every moral theory sets up at a deep foundation two pairs of opposed notions. These are: (1) the notion of good vs. evil; and (2) the notion of right vs. wrong. For a practical principle, both pairs of notions have context only in terms of actions an individual takes. This is because "to put into practice" means "to undertake an action." However, not every action is judged in moral terms. Some actions are

neither universally good nor universally evil; they are neither universally right nor universally wrong. Such actions are called *morally neutral*. For example, within the context of the American Social Contract, if I should choose to eat ham for breakfast my action is neither good or evil nor right or wrong in regard to civic morality. By contrast, this same action might not be morally neutral in the context of religious morality; such would be the case were I a member of the Jewish faith because in that case I am answerable to particular dietary laws, one of which forbids the eating of pork.

Most political communities having memberships comprised of more than a small number of people are in fact communities within which there is ***a diversity of sub-communities*** formed under various types of associations: religious, ethnic, vocational, gender-based, age-based, racial, and geographical to name a few. The political community of the United States is such a community. The Social Contract of such a body politic cannot therefore make or cause discriminations unacceptable to any of the sub-communities comprising the political community as a whole. Furthermore, the sub-communities are usually not disjoint in their memberships. A person can be a male middle-aged Catholic autoworker of Philippine ancestry who was born in Texas, lives in Detroit, is married, has minor children, holds membership in the Elks Club, and coaches Little League. Each of these sub-communities can have – and most do –its own set of rules, customs, or codes of behavior that delimit acceptable and unacceptable actions and behaviors on the part of its members. We can see from this that the Social Contract for a political community like America cannot in general contain conditions and terms generally expressible in terms of specific matters of human associations because such conditions and terms could not be made universal. Rather, principles of civic morality must consist only of *formal* principles universally applicable by any person regardless of the mix of sub-communities to which that person belongs. No other type of principle is compatible with the Ideal of liberty with justice for all.

Next we must take into account that the terms and conditions of the Social Contract must be *binding* on all the members of the body politic else they are not terms or conditions at all. Membership in the body politic, and the Sovereignty that goes with it as an essential element, always demands something from every member as the price of membership. Paying this price is non-negotiable because if it is not, if it were subject to negotiation, the principle *justifying* it could not be universal. Such a principle is called an *imperative*, and if the principle is binding on everyone without qualification it is a *categorical imperative* of the association.

The price of civil liberty is the free assumption of universal civic duties. From this it follows that all civic duties take the form of imperatives. Because one is called upon to fulfill many civic duties only upon the occurrence of particular occasions, civic imperatives *in concreto* will generally be *hypothetical* imperatives – actions required under specific conditions and circumstances. However, fundamental *first* principles of civic morality must be regarded as prior to any specific civic

imperative. This is because only from this character can they be regarded as universal and necessary. Thus, any *first* principles of civic morality must consist of nothing else than *formal* categorical imperatives.

This deduction and conclusion, developed to cover a much broader scope than we are considering here, was first reached by the eighteenth century philosopher Immanuel Kant.[4] Kant's deduction and statement of this was published in 1785 under the title *Grundlegung zur Metaphysik der Sitten* (Laying the Foundation of the Metaphysics of Morals). Kant's moral theory, which he developed from a revolutionary new way of approaching questions of metaphysics, is unique among the various moral theories that have been developed.[5] He wrote,

> There is nevertheless one purpose that we can presuppose as actual for all rational beings (so far as imperatives suit them, namely as dependent beings), and consequently one aim that they not merely *could* have but which we can safely presuppose that they altogether *do* have according to a natural necessity, and that is the aim for happiness. The hypothetical imperative which represents the practical necessity of an act as means for the promotion of happiness is **assertoric**. We may expound it not merely as necessary to an uncertain, merely possible aim, but rather to an aim that we can surely and *a priori* presuppose for every human being because it belongs to his essence. . .
>
> Finally there is one imperative that commands this conduct immediately without, by a certain conduct, achieving any other aim in the role of condition to lay to it as ground. This imperative is **categorical**. It has to do not with the matter of the act and what is to result from it, but with the form and principle from which the act itself follows; and the essentially good in the act subsists in the disposition, let the result be what it may. This imperative may be called that of **morality**.

Kant's categorical imperative is one in which the rightness, goodness, or justice of a person's act derives from the universally necessitated nature of the act itself, without basing its motive on any specific end to be achieved by the action. It is, in other words, a *formula* specifying the general characteristics one should apply in judging the action one is to take. The morality of the act is not in the particular act itself but, rather, in a person's disposition in taking a specific action. Put simply, this moral disposition or intent is found in taking an action simply because it would be right or just to do so, or one should refrain from taking the action simply because it would be wrong or unjust to do so, regardless of whatever else might specifically result from the action. The end does not *justify* the means, nor do the means *justify* the end, in terms of the act's moral character. This is in vivid and stark contrast to other ethical systems in which the moral character is vested in either the result achieved or

[4] In ranking the importance of the various major philosophers in history, it is the general consensus of scholars that the three most important philosophers in history are Plato, Aristotle, and Kant.

[5] Modern philosophers call Kant's system "deontological ethics," which they define as ethics based on the notion of a duty, or what is right, or rights. This is not an entirely correct way of looking at Kant because in fact he *derives* the concepts of duty, right, and rights from the ideas of human freedom and free will. However, it is correct to say that his theory of ethics focuses on the nature and implications of duty and rights. Kantian ethics is quite different from other ethical systems, which are based on the ideas of achieving some good state of affairs (ends-based ethics or "consequentialism") or the qualities of character needed to live well (virtue ethics).

the means taken in realizing an end or fulfilling a purpose. In Kant's system, the moral character is lodged firmly and irremovably in the *motive* of the person who acts.

When we consider the character of human natural rights discussed earlier, this sort of formula is one particularly well suited for tackling the notoriously difficult issues attending the abstract idea of justice for all. It is clear that justice is not an idea that can properly be regarded in terms of the special interests of one or another particular individual because the interests one person has can be and often are in opposition to those of other people. Universal justice cannot be a zero-sum game because in all such situations there is a winner and a loser, whereas the Social Contract is without meaning if by joining in it some members of the political community win at the expense of others. Kant goes on to discuss the nature of imperatives in the following terms:

> When I think of a *hypothetical* imperative in general I do not know beforehand what it will contain; I do not know this until I am given the condition. But if I think of my categorical imperative I know immediately what it contains. For here the imperative contains, besides the law, only the necessity of the maxim to be in conformity with this law; but the law contains no condition to which it would be limited, so that nothing remains with which the maxim of the act is to conform but the remaining universality of the law in general, and that conformity alone the imperative properly represents as necessary.
>
> There is, therefore, only a single categorical imperative and it is this: *Act only according to that maxim through which you can at the same time be willing that it become a universal law*.

A maxim is a person's *subjective* principle underlying the particular action he chooses to undertake (or refrain from undertaking). It is obvious, however, that no subjective principle can be regarded as a principle other people necessarily would hold to. If there is to be any rational basis for the idea of justice, this basis must necessarily be objective rather than subjective – an objective principle or law being one with which everyone else consents. This is what Kant means by the term "a universal law." As a formula, a categorical imperative is a formula for judging *maxims*, not actions. A maxim is a practical rule the individual gives himself; a law, on the other hand, must be a practical rule that applies to everyone. A person's particular maxim is always self-justified but could be either just or unjust in the eyes of a different person; a *law* must be universally just.

Formulas are things of a more or less mathematical character and accomplish nothing until specific material situations and conditions are plugged into them for their application. In the quote above, Kant gave one illustration of how to apply the formula of the categorical imperative in the context of mutual relationships in which a maxim stands with respect to other people. We can paraphrase the way of thinking about a maxim that this statement of the categorical imperative implicates by saying, "How would I like it if someone else were to do what I am thinking about doing in the way I am thinking about doing it?" Other ways of expressing the categorical imperative in differing material contexts are possible. Kant provided several examples:

1. Act in such a manner as though the maxim of your act should be obliged by your will to become a universal natural law;
2. Act so that you take humanity, both in your person and at the same time in the person of every other, always as an end, never merely as means;
3. Act according to maxims which themselves can always have universal natural laws as their object;
4. Act according to maxims of a member giving universal law for a merely possible kingdom of ends;
5. Act so that the maxim of your will always can hold good at the same time as a principle of universal legislation.

It is not without contextual benefit to compare these examples with some drawn from various religious writings. First, we can compare these with the well-known Golden Rule in the Gospel of Luke 6:31, "And as you wish that men would do to you, do so to them." Similarly, they can be compared with the injunction in the Koran 2:147-8, "Each one has a goal towards which he turns. But wherever you are, emulate one another in good works." As a third example from a very different source, we have the following from the Hindu text, Bhagavad-Gita, "Action rightly renounced brings freedom; action rightly performed brings freedom; both are better than mere shunning of action." The quote from Luke compares directly with statement (2) above; that from the Koran compares well with (4); that from the Bhagavad-Gita can be compared, through the concept of freedom, with the idea of a universal natural law in (3) and, indeed, natural human freedom is the underlying natural law to which Kant refers. The point of these comparisons is not to tie the categorical imperative to religious views but, rather, to illustrate the sharp similarities to a common thread found among very different societies. This bespeaks of the possibilities for a system of universal justice consistent with using Kant's categorical imperative as its ***general first principle***.

§ 2.2 The Idea of Duty

For many people the word "duty" evokes feelings of unpleasantness or reluctance, and this is often enough because the word is mistakenly associated, through misuse, with the idea of being coerced into having to do something at the command of someone else. It is true enough that when one acts from duty the action is often enough something a person would prefer not to do. This is not always so, but there is no denying that this is sometimes the case. However, it is a most serious error to think the idea of duty can in any way be based on the idea of coercion. Prudent or pragmatic submission to coercion is a frequent enough action, but defiant rebellion against coercion is also a frequent action. So is presenting a mere facade of submission while awaiting an opportunity to strike back in retribution against the coercer. Being coerced by force, by the threat of force, or by the threat of unpleasant consequences attending refusal to submit never fails to breed resentment in the heart of the person

being coerced because the power to coerce is rightly regarded as despotic power. No one ever freely commits himself to entering into the compact of the Social Contract through coercion.

The idea of duty is something quite the opposite of compliance through coercion. The possibility that there can even be such a thing as duty is grounded solely in the natural right of a human being, that is to say, in his power of self-determination. Kant took up the question of duty in his 1797 work, *Die Metaphysik der Sitten* (The Metaphysics of Morals):

> *Obligation* is the necessity of a free act under a categorical imperative of reason.
>
> An imperative is a practical rule through which an act, in itself contingent, is *made* necessary. It differs from a practical law in that this [a law] represents, to be sure, an act as necessary but takes no regard of whether this is peculiar to an inner necessity of the acting Subject . . . or is contingent to him (as in a human being); for the first is the case where there is no imperative. Hence an imperative is a rule for which its representation makes necessary a subjectively contingent act and hence represents the Subject as one who must be beholden (necessitated) to that in conformity with this rule. . . The ground of the possibility of categorical imperatives lies only in this: that they refer to no other condition of choice . . . than simply to its freedom.

Despots claim the prerogative to force others to unwillingly assume what they call obligations. But this self-styled prerogative is in its inception unjust and immoral. ***No person can impose an obligation on another person***; obligations are only and can only be assumed from within by a person *taking it upon himself* to *make* an act his obligation. Nothing else is congruent with his natural right. It is on this pathway from categorical imperative of reason to the free necessitation of obligation that we come at last to the fundamental idea of duty:

> *Duty* is that act to which someone is bound. It is therefore the matter of an obligation, and there can be one and the same duty (in conformity with the act) although we can be bound to it in different ways.

An obligation is that which is merely formal in human self-determination. By itself an abstraction, obligation presents no specific point of application for an action, and all human actions are actions taken *in the specific*. This is what Kant means by calling duty the *matter* of an obligation. It adds to the purely formal character of obligation the concrete *context* for the act. There are many varieties of duties a person takes upon himself: duties to one's family; duties to oneself; duties to one's faith; duties to one's neighbors; duties to one's country. Every duty takes its point of origin from the same wellspring, namely the human being's natural right – the power of self-determination – from which he can no more free himself than he can choose to stop breathing.

And yet one must also recognize that *conceptualizing* any specific duty in all of its implications and consequences is often extremely difficult, made more so by the fact that what individuals come to conceive as their duties often pass into habit long before *the concept* is confronted with the need to make a choice not anticipated in his original conceptions of his duties. The comfort of habit tends to produce a false self-assurance of the complete correctness of one's maxims. Indeed, philosophers

adopt, as a key part of the pedagogy of teaching philosophy, the posing of hypothetical situations in which one's self-confidence in one's own moral maxims can be severely shaken. The commerce of living does the same thing, except that in living one's life these confrontations are not mere academic exercises. One favorite hypothetical is to theoretically place a person in some proposed situation wherein the problem presented goes something like this: Your two small children are trapped in opposite ends of a burning house; the fire is spreading so quickly that you only have time to save one or the other of them, but not both. Which one, if either, do you choose to save?

There are endless variations on this hypothetical game of the "no-win situation." Such scenarios, both merely academic as well as those actually encountered in life, give rise to the bromide of "choosing the lesser of two evils." The sophism inherent in this way of looking at duty and moral choice comes from transferal of the concept of "evil" from the *basis* of one's act to the *consequence* of one's action. There are irresolvable antinomies easily unveiled in ethical systems based on either consequentialism or on virtue. A person has in his power only the capacity to make good choices within the limitations physically and intellectually imposed on actions he is *capable* of performing. He does not have the omnipotent power to guarantee none but good outcomes. No *culpability* attaches to anyone simply because he is not all-powerful. It is not immoral to not do what one cannot do.

Consequentialism-based and virtue-based theories of ethics and duty quickly run afoul of endless and ever more obscure issues simply because in both cases the groundwork of the ethical system has been divorced from a foundation in a human being's power of self-determination. Their soil is fertile for the sprouting of paralogisms and antinomies. But duty anchored in human nature is far simpler and far less self-inconsistent. In his 1793 essay, *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis* (On the common saying: That may be right in theory but no use in practice), Kant wrote,

> The idea of duty in its complete purity is not only incomparably simpler, clearer, and, for practical use, more readily grasped and more natural to everyone than any motive drawn from happiness, or mixed with it and with the regard for it (which always requires much art and consideration); it is also, even in the judgment of the most common human reason, far more powerful, forceful, and promising of results than all grounds of movement borrowed from the latter, selfish principle if only it is brought in this purity to the will of man, and even more with separation from, and, yes what is more, in opposition to this will.

Far from being obscure, Kant wrote, even a child could recognize what was *contrary* to duty. In 1793 this may have carried no more scientific weight than any other common opinion, but it is notable that this claim by Kant was given support in the twentieth century by experiments carried out by the great Swiss psychologist Jean Piaget. Piaget was able to study the course of development of children's concepts of moral judgments. What he found was that while a child's conception of morality starts off as something quite different from an adult's, the force and impact of these judgments is no less

significant to the child than the most refined of any adult moral sensibility. While it is often difficult to recognize something as a duty and bearing the force of obligation, it proves to indeed be the case that it is far easier to judge something as being wrong – that is, as being contrary to duty.

All of us come to hold strong convictions of right and wrong, although our individual convictions of this vary greatly from person to person and even more from society to society. Even the sociopath holds such convictions, although in his case these are the antithesis of what the great majority of people in any society hold, tend to be utterly centered on antisocial maxims, and exhibit such a pronounced lack of empathy for others and are at such great variance from social norms that we say of him, "He has no conscience." The most common trait found among sociopaths and people said to have an anti-social personality disorder is that these individuals have utterly no commitment to any sort of social compact, although they have no hesitation in taking every advantage they can get from the environment that life in the midst of a body politic affords them the opportunity to seize. They truly live out their lives in a state of nature with no concern for the effect their actions have on others. As police officers often put it, "He's only sorry he was caught." In a peculiarly ironic way, the existence of sociopaths provides what may be the strongest evidence we have that obligations and ideas of duty originate from the human being's capacity for self-determination. Aristotle pronounced a fundamental truth when he wrote that a community's *system* of ethics must be *taught*.

§ 2.3 The Fundamental Civic Duties

It was noted earlier that there are many different species of duties. Duties formulated in the context of the Social Contract are those we call ***civic duties***. All civic duties share one fundamental starting point. When we say that a person entering into the social compact alienates some of his natural rights in exchange for civil liberty, this is to say nothing else than that this person takes it upon himself *as an obligation* to (1) abstain from doing certain things, and (2) commit to doing certain things for the sake of preserving the Social Contract. The specific acts he commits to abjure or perform, being specific, constitute his civic duties.

Although civic obligation stems from the formula of a categorical imperative, all civic duties, in contrast, can stem from nothing but hypothetical imperatives. This is because all duties, being both specific and concrete, involve incorporation of material *conditions*. The *obligation* of carrying out one's civic duties is unconditional, but the particular *duties* are not. Grounding every hypothetical imperative of civic duty is one overall and fundamental ground, without which no civic imperative is possible. This condition is: *that the act constitutes a civic duty if and only if it is necessary to preserve the Social Contract*. The reasons for this are clear: (1) whatever violates the social compact removes the ground of obligation, and without obligation there is no duty; (2) whatever is necessary to preserve

and maintain the social compact establishes the validity of the obligation through connection to a categorical imperative. Thus the act is necessitated, becomes an act of justice, and is thereby *made* a civic duty from the self-imposed civic obligation freely assumed by every citizen in the body politic. In *Die Metaphysik der Sitten* Kant tells us,

> An act is called a *deed* so far as it stands under laws of obligation, and hence so far as the Subject, in doing it, is regarded from the freedom of his choice. The agent becomes regarded through an act like that the *author* of its effect, and this, together with the act itself, can be *imputed* to him if he previously knew the law in virtue of which an obligation rested upon him.

The legal code of a republic is the collection of formal written statements of Sovereign legislation. These are generally called laws but it is obvious and clear that these are not the same things as civic duties, although *obeying just laws is a civic duty*. For example, whether a traffic law mandates driving on the right side or the left side of the street makes no difference to the social compact and is merely a matter of convention. That one side of the street or the other should be designated as the side to be driven on is conducive to public safety and so, regardless of which of the two sides is specified by the convention, the law is a just law.

However, not all acts of legislation are perfectly well thought out – indeed, many laws are far from being well thought out – and, more specifically, some laws are so imperfectly or rashly considered that they do in fact violate the Social Contract. The old Jim Crow laws from fifty years ago provide an example of this. These were *unjust* laws and, because every citizen has made it his obligation to preserve the Social Contract, it is a civic duty to force such laws to be changed or abolished.

Furthermore, because every citizen takes on *a duty to deny consent* to any unjust law, *civil disobedience of an unjust law is also a civic duty*. It has, dreadfully, become an accepted maxim in the American legal system that "the justice system is about the law, not about justice." This wholly reverses the priority of the system and is nothing else than a maxim sanctioning despotism. Any so-called justice system that does not have justice as its *primary* concern and law as a *secondary* concern is no justice system at all. We will discuss the implications for this on the justice system in the later chapter on justice. At this point in the treatise, it is sufficient for now to place the status and nature of law in its proper perspective and in relationship to civic duty.

We have so far identified two fundamental civic duties: (1) civil obedience of just laws; and (2) civil disobedience of unjust laws. Both stem from the same categorical imperative, namely *preserve and defend the Social Contract*. But these two civic duties alone are insufficient for the preservation and wellbeing of a republic. This is because both civic duties presuppose the existence of laws already in place. Civil laws, however, do not write themselves nor come into being spontaneously. In every case, they are the products of persons acting in the role of *lawmakers*. Their enforcement is carried out by persons acting in the role of *law enforcers*. Their standing in regard to justice and injustice, and

their application in particular cases, is evaluated and judged by persons acting in the role of *law judgers*. Furthermore, the culpability of a person, insofar as his deeds transgress the law, necessarily presupposes that person had knowledge of the law *and its justice*, and acted deliberately in a manner contrary to just law. The doctrine of knowledge of just law and civic duties attached to just and unjust laws may be called ***civics***. The dissemination of this knowledge among the people requires that this knowledge be taught, and persons acting in this role are properly called *civics educators*.

Not one of these four civic functions exists in a state of nature. Not one of them ever arises out of pure spontaneity in the body politic. In the state of nature there are no distributive laws, hence there are none to enforce them, none to judge them, and none to teach them. Only when a body politic is formed by the association of persons making a social compact does the need for them arise. To satisfy this need requires action on the part of the membership of the body politic. It is indeed the sum total of all civic action, in all its forms, that *practically constitutes* the word ***Sovereignty***.

The collective body of persons who act in the civic capacity is called **the Sovereign**. In a republic the Sovereign *must* be comprised of all the citizens in the body politic. The Sovereign is never to be confused or, what would be worse, equated with those who carry out the regular functions of the lawmaker, the law enforcer, the law judger, and the civics educator. If the people in a republic abdicate their active role in the Sovereign, then the inevitable consequence is, in the end, despotism in one of its several forms: the tyrant, the oligarchy, or the tyranny of the democratic majority.

Because the functions of law making, law enforcement, law judging, and civics education do not exist in a state of nature but must exist in a republic, the act of social compact brings into being an extra burden unknown to the person living in a state of nature. This is the burden of seeing to it that these four necessary civil functions are created, put in place, and function properly. We may call this burden by the name ***civic responsibility***. It is part of the price each person agrees to pay in exchange for his citizenship in the republic. Thus we have *a third fundamental civic duty*, namely ***fulfillment of one's civic responsibility***.

If laws were perfect in their first creation; if the collective body of citizens were farsighted enough and wise enough to foresee all future contingencies and account for them in the original formation of the civil laws; if all persons were of such unanimous understanding of every law that disputes of law could never arise between honest citizens; if all this were possible, then the citizens of the republic could erect their entire government and all its just laws once and for all in the initial act of association and only the education of the future generations of citizens and the enforcement of the body of laws would remain as on-going tasks of the Sovereign. Clearly, though, this is nothing but a utopian dream. Times change, circumstances change, threats unforeseen arise, threats foreseen are so complex and many-faceted that how to deal with them is uncertain and unclear. Mistakes will be made, omissions

discovered, adaptations required. Civic responsibility requires on-going and regular actions on the part of *all* citizens. Its end goal, the Ideal of liberty with justice for all, is never completely perfected, but it can never be left to wallow in known imperfections or decay through neglect.

It is far simpler to be a serf enslaved to a feudal lord than to be a citizen in a republic. It is also far simpler to be a bullfrog than a human being. But as it is better to be a human being than a bullfrog, so also it is better to be a citizen than a serf. Rousseau wrote,

> The passage from the state of nature to the civil state produces a very remarkable change in man, by substituting justice for instinct in his conduct, and giving his actions the morality they had formerly lacked. Then only, when the voice of duty takes the place of physical impulses and right of appetite, does man, who so far had considered only himself, find that he is forced to act on different principles, and to consult his reason before listening to his inclinations. Although, in this state, he deprives himself of some advantages which he got from nature, he gains in return others so great, his faculties are so stimulated and developed, his ideas so extended, his feelings so ennobled, and his whole soul so uplifted, that, did not the abuses of this new condition often degrade him below that which he left, he would be bound to bless continually the happy moment which took him from it forever, and, instead of a stupid and unimaginative animal, made him an intelligent being and a man.
>
> Let us draw up the whole account in terms easily commensurable. What man loses by the social contract is his natural liberty and an unlimited right to everything he tries to get and succeeds in getting; what he gains is civil liberty and the proprietorship of all he possesses. If we are to avoid mistake in weighing one against the other, we must clearly distinguish natural liberty, which is bounded only by the strength of the individual, from civil liberty, which is limited by the general will; and possession, which is merely the effect of force or the right of the first occupier, from property, which can be founded only on a positive title.
>
> We might, over and above all this, add, to what man acquires in the civil state, moral liberty, which alone makes him truly master of himself; for the mere impulse to appetite is slavery, while obedience to a law which we prescribe to ourselves is liberty.

To sum up, then: the three fundamental civic duties are

1. Civil obedience to all just laws of the republic;
2. Civil disobedience to all unjust laws;
3. Fulfillment of all civic responsibility for the maintenance and perfection of the republic.

The freely given consent to accept as obligation the faithful performance of these duties, and the capacity to carry them out, are the conditions and definition of being a citizen of the Republic.

§ 3. The Ranks of Citizenship

§ 3.1 Entitlement Citizenship

Who is a citizen of the United States of America and are there different ranks of citizens? Many people will be inclined to either brush off the first question or dismiss it as trivial and self-evident. Many people of egalitarian views will be inclined to bristle in indignation at the second. Yet neither question is quite so simple, nor the answer as self-evident, as unreflective presupposition would have

it be.

The word "citizenship" has no comprehensible *just* meaning removed from the context of the Social Contract. A homonym – "citizenship" – can of course be legally defined and, of course, there now does exist such a legal definition provided in the Constitution of the United States. It is perhaps an historical oddity that this definition was not ratified until July 9th, 1868; it is in the Fourteenth Amendment, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Prior to the Fourteenth Amendment there was no uniform code of citizenship in the United States and a person's status as citizen or non-citizen was left entirely to the jurisdiction of the individual states. For eighty-one years after the drafting of the Constitution there were two great populations of people denied citizenship but nonetheless subjected to the jurisdiction of the states and the general government. These were, of course, the slaves and the Native Americans. Lincoln's Emancipation Proclamation, made public on September 23rd, 1862, did not grant citizenship to all African Americans nor, indeed, did it even abolish slavery. The Emancipation Proclamation read,

> On the first day of January in the year of our Lord, one thousand eight hundred and sixty-three, all persons held as slaves within any state, or designated part of a state, the people whereof shall then be in rebellion against the United States shall be then, thenceforth, and forever free.

The Emancipation Proclamation left untouched the status of slaves in those states that had not seceded from the Union. The complete abolition of slavery had to wait until December 6th, 1865, when the Thirteenth Amendment was ratified.

Some today might indeed wonder why Lincoln's Emancipation Proclamation fell short of outright abolition of slavery and left those who were slaves within the North still enslaved. The answer to this is simple: the Constitution did not grant either Lincoln or the Congress the authority to abolish slavery. Lincoln's argument for the constitutionality of the Emancipation Proclamation was that, as Commander-in-Chief of the Armed Forces of the United States in wartime, he had the authority to seize enemy property, and that was how the Emancipation Proclamation was legally justified. A larger question is why two and a half more years passed, the time between the Thirteenth and Fourteenth Amendments, before the citizenship of African Americans was legally established. The answer here is that the abolition of slavery and the admission to citizenship of former slaves were by no means one and the same question. Lincoln and his cabinet, for example, considered a policy of colonization of freed former slaves from both the loyal and Confederate states, with compensation being paid to their

former owners.

In all the turmoil of the Civil War, the citizenship status of Native Americans – some of whom were in fact slave owners themselves – was almost entirely problematic even for those living within the borders of the United States on reservations. Even today the standing of reservations is somewhat confused: reservations are regarded as "sovereign nations" but not "states", are exempt from some, but not all, jurisdiction by the states where they are located, and "sovereign nation" status does not carry with it separate representation in Congress; rather, Native American residents of reservations are officially represented by the congressmen and senators of the states in which the reservations are located. The status of the reservation is a legal peculiarity even today and nothing in the Constitution presently speaks to it. Less ambiguous is the legal status of people residing in unincorporated territories and possessions of the United States. These people are "subject to the jurisdiction of the United States," but as they are not "born or naturalized" within any of the states, they are not presently afforded *constitutional* status as citizens of the United States.

Such is, in broad strokes, the situation in regard to citizenship within the context of the current legal code of the general and state governments. When, however, we properly regard the question of citizenship within the context of the Social Contract, the issue becomes deeper still. Every person born in any one of the current states of the United States is, *legislatively*, a citizen by declaration of the Fourteenth Amendment. This is citizenship by accident of birth, and a great many Americans living today can say with absolute truth, "I never agreed to any social compact or contract." One might argue that there exists an implied consent merely from the fact that most Americans are law-abiding and, if asked, will not hesitate to say, "I am an American citizen." The argument of implicitness would hold that, by so proclaiming, an implied agreement to a social contract exists. It is, however, a weak argument if the citizen making this implied agreement does not know to what he has agreed or even that he has agreed to anything. Indeed, a great many *legislated* citizens look upon their citizenship as an *entitlement*, the title to which is claimed by nothing more than accident of birth. But entitlement carries no *mutual* obligation, hence can ground neither any civic duties nor civil rights *whatsoever*.

It can be argued that agreement to a social compact is more explicit in the case of those citizens who have made a formal declaration, specifically by taking the original Pledge of Allegiance:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation ~~under God~~[6], indivisible, with liberty and justice for all.

The Pledge of Allegiance was first published on September 8th, 1892, in Boston. Provided one does in fact understand that Flag (capitalized) denotes in symbolic form the nation, and not an inanimate cloth

[6] The phrase "under God" was not part of the original Pledge of Allegiance. It was added by act of Congress on June 14th, 1954. Prior to this act, the Pledge was congruent with the Social Contract, although now it is not.

object (flag), it can be argued that by taking the Pledge one is explicitly declaring one's entry into a social compact. However, this too is a weak argument. First, the only time or times most native-born Americans ever take this pledge is as children in primary school (where recital of the Pledge of Allegiance was, until well into the 1960s, a widespread ritual). Does a little child understand this pledge or attach any particular significance to reciting it as part of a classroom ritual? It can be doubted. Even this point is largely moot today because this ritual was abandoned in most schools during the great civil disturbances of the 1960s.

Second, the insertion by Congress in 1954 of the phrase "under God" is itself contrary to the First Amendment clause, forbidding an establishment of religion, if the Pledge of Allegiance is to hold any significance whatsoever in regard to an American Social Contract. The First Amendment does not prohibit the establishment of *a religion* – one state-sanctioned religion – but rather any establishment *of religion* by Congress. The right of any individual to hold his own view of religion, whatever that view may be, is not a right any person is called upon to alienate under the American Social Contract.

And to whose or what God does the Pledge now refer? The God of Abraham? The Christ? All-Powerful-Nature? The Great Spirit? Brahman? Kuni-toko-tachi-noh-Mikoto? The amended pledge requires not merely a pledge of allegiance but also a declaration accepting the doctrine that some godhead reigns over the nation. It is an empty sophism to say "it means whatever God you worship or none at all" because for the pledge to mean *the same thing to everyone who takes it*, it must imply a commitment to either acknowledge "other people's gods" *as* gods – a polytheism many people are not willing to accept – or affirm that all different religions refer to one and the same god – something a great many people find incompatible with the tenets and doctrines of their own faith – or to acknowledge a doctrine that God is a king who reigns over His followers – an affirmation that is not acceptable even to every religious doctrine.

The Social Contract requires every associate to refrain from interfering with the religion of every other associates (including those who hold atheistic or agnostic views). Those who insist otherwise, no matter how elegant the argument, have no more moral ground for this insistence than do those who insist that America's social compact was meant to be the compact of a white-men-only country. Some might argue, "Where's the harm in tolerating a little nod of acknowledge like this that many people are religious if it comforts so many people and does no real harm to anyone?" The question answers itself: It prevents some Americans from being able to take such a pledge in good faith; it is the first step towards a poly-theocracy, and history has demonstrated time and again that poly-theocracies rarely evolve into anything else but an eventual mono-theocratic dictatorship. Religion *tolerance* is a specific civic duty; requiring religion *acknowledgement* is contrary to civic duty.

But, again, the question is on the whole moot simply because very few *legislated* citizens today

have ever explicitly agreed to a social compact bringing with this agreement informed obligation and, thus, any civic duty *as a citizen of a republic*. This cannot be dismissed as mere quibbling over words or as pure semantics. A story is told that Lincoln was once in a debate in which he put this question to his opponent: "If you call a tail a leg, how many legs does a horse have?" The opponent answered, "Five." To this Lincoln replied, "No, four. Calling a tail a leg doesn't make it a leg."

§ 3.2 Civic Citizenship, Outlaws, and Criminals

Your author's intent in the preceding is not to engage a fight over the un-civic act of Congress in inserting the phrase "under God" in a pledge once taken primarily by little children and newly naturalized citizens, although he does denounce it. It *is* to emphasize the extent to which we have lost sight of the *foundation* of liberty with justice in America gradually over the passage of time, though it cannot be claimed there ever was a time in the history of our country when this foundation was in plain sight and visible to all Americans. It never was, and our republic has never yet been perfect.

It *is* to say our political community has regressed from where we were even sixty years ago, when people *did* speak in earnestness about civic duty and civic responsibility and, even though not everyone meant precisely the same thing by these terms, the *sentiment* expressed was held in deep respect. The generation that fought the Revolution did not take their citizenship as an entitlement; they bought it with blood, hardship, and the mutual pledge of "our lives, our fortunes, and our sacred honor." But since the civil war turmoil of the 1960s, disillusionment has devolved into cynicism. Fifty years ago children in junior high school took Civics as part of their education; many young adults today have never heard of Civics and do not know what the word means.

It *is* to say that we have come to the crisis point. This is readily evident to all who will look with their eyes and listen with their ears. We are succumbing to the despotism of faction and we either pull back from the precipice or lose the Republic to a revolving door of banana republic factions. We must act, but effective action will not come forth from entitlement citizens. If we would keep the Idea of the American Republic, we must make ourselves better than mere entitlement citizens.

What is non-entitlement citizenship? That is the key question. We raise it here and will spend most of the rest of this treatise answering it. We begin with the ranks of entitlement citizenship.

When one reflects upon it even a little, it seems incredible that so important a thing as citizenship should have received so little labor of thought. The dictionary definitions of citizen are as follows:

> **citizen** [ME. *citizen*; OFr. *citeein*, a citizen, from L. *civitas*, genit. *civitatis*, a state, city.]
>
> 1. formerly, a native or inhabitant, especially a freeman or burgess, of a town or city.
> 2. loosely, a native, inhabitant, or denizen of any place.
> 3. a member of a state or nation, especially one with a republican form of government, who owes allegiance to it by birth or naturalization and is entitled to full civil rights.

4. a civilian, as distinguished from a person in military service, a policeman, etc.

Definition (3) is the definition practically everyone takes as the definition of a citizen in the political context. It is important to note, though, the stated condition for being a citizen, namely, "one who owes allegiance" to his nation or state "by birth or naturalization." If you were born in this country, you are not a citizen *by choice*, although retaining the citizenship you were entitled *with* at birth *is* a matter of choice for you. You are also "entitled" to vote, although more than 40% of America's entitlement citizens choose to not exercise that entitlement every year.

But on what ground can it be claimed that you *owe* your country your allegiance? If we were living in ancient Sparta, the claim might be made that you owe your allegiance because the officials who came to inspect you for health, fitness, and a body free of birth defects right after you were born allowed you to continue to live. Had you been sickly or weak or malformed, you would have been "exposed" – left alone and helpless in the wilderness to die of exposure, thirst, or simply from falling prey to the first carnivore that happened across you. The authorities let you keep your life and now you owe them for that. Or so the oligarchs of Sparta claimed.

This is not the case for us. This is not Sparta and we are not Spartans. The general body of entitlement citizens can be subdivided into two classes, only one of which consists of entitlement citizens who are also ***civic citizens***. We will begin with the first division, the non-civic entitlement citizen.

1. Do you give your allegiance to your country because if you withhold it your fellow citizens will set upon you and inflict consequences unpleasant to yourself? This is not obligation; it is merely prudent and wholly pragmatic surrender to a bullying coercion. Most of us are familiar with coercion by age twelve or earlier. It is a primary source of sullenness in the teenage years when what Piaget called "the moral realism" of the child and the "unilateral respect" with which the child regards adult authority gives way to what he called "decentration" and the first ideas of equality and distributive justice. Submission to coercion is nothing else than the exercise of natural right in one's own best interests. If this is why you "owe" your allegiance to your country, you are a citizen without duties and without obligation to your country. You have entered into no social compact and, to put it bluntly, you morally owe your country nothing at all. You are an **outlaw**.

You are also a serf. A reasonably well-treated one perhaps, but a serf. You have no civil rights because all civil rights are mutual through compact. Granting civil rights *to* no one, you receive civil rights *from* no one, although you are free to *take* civil liberties for so long as your countrymen permit you to do so. For you there is neither justice nor injustice. Both concepts are without meaning outside of a social compact. For you there is only the protection of law and the threat of law.

You are an outlaw but you are not a criminal, nor can you ever become a criminal so long as you

continue living in your state of nature. A *transgression* is a deed contrary to duty. A ***crime*** is an *intentional* transgression. But you live outside any national social compact, therefore you have incurred no civic duties to transgress, and that is why you are not and cannot become a criminal.

As you owe no duties to anyone and are an outlaw, the rest of us very much hope you are not employed either in law enforcement or the legal system, but we all know some of your fellow outlaws are. There is no barrier to prevent you from being an outlaw police officer, an outlaw lawyer, or an outlaw judge so long as you either choose to live within the laws or, if not, don't get caught and convicted. You may choose to join a band of fellow outlaws in law enforcement or the legal system or in a political party. You and they might decide to form a little community of your own with your own little social compact. Then, at least, you are not outlaws in relationship to each other to this limited extent, though all of you remain outlaws in relationship to everyone else. If you do, it is now possible for you to become a criminal within that outlaw body; the term used in this case is often "rat." However, you are still not a criminal in relationship to the rest of the geographical community; you remain merely an outlaw.

There is, likewise, no barrier to prevent you from becoming an outlaw government official under the same conditions. If you can succeed in being elected, you might become an outlaw legislator, an outlaw governor, an outlaw congressman, an outlaw senator, or an outlaw President or Vice President of the United States. We have had all of these in the past. You live in the jungle of the state of nature, but it is a jungle rich with good hunting and foraging for as long as the present political state lasts. If ever that cover is ended, you cannot expect to receive mercy because no one owes *anything* to you.

2. Perhaps you truly feel an inner conviction that you *do* owe your country your allegiance. One often hears this reflected in the phrase, "This country has been good to me and I want to give something back." This is the case for a great many Americans, although whether it is a majority or not is not possible to say. It means *you have taken an obligation onto yourself* and done so *of your own will*. You *have* entered into a social compact and something vaguely called "allegiance" is part of the matter of the obligation you have freely accepted. You are both an entitlement citizen of the United States of America by Constitutional declaration, and you are *also* a non-entitlement citizen of a mini-republic by virtue of your own free choice. The latter is what is here called a ***civic citizen***.

The question in your case is: which mini-republic would that be exactly? No doubt there are a great many of your fellow citizens who have entered into a social compact similar to your own. If these are similar enough for sufficiently many day-to-day practical purposes, this is your republican community. But does everyone make precisely the same compact? There is hardly room to doubt they do not. Hard core members of the Republican Party and hard core members of the Democratic Party excoriate one another so often and with such rising vitriol that this alone is evidence of a *minimum* of two different

republics in our midst. Of that fraction of our citizenry who actually vote on election days, a large fraction needs to know no more about the candidates for office than their party affiliation in order to decide for whom they are going to vote. One wonders what election results might obtain if it were illegal for party affiliation to appear on the ballot or for candidates to reveal their party affiliation in any way in their campaigns. After all, other forms of antisocial behavior are discouraged in polite society. In the state of Idaho, Republican Party candidates always announce their party affiliation prominently on their campaign signs; Democratic Party candidates rarely do – and, of course, that fact alone would expose them as Democrats were it not for the existence of two or three tiny and powerless fringe parties that operate in the state. Democrats in Idaho do not refrain from advertising their party affiliation out of politeness; they do it to avoid being dismissed out of hand.

Those who have entered into a social compact of your sort have entered into a semiprivate one. The associates acknowledge having duties of some sort or another, but not all acknowledge the same duties even within the same association. You and they are members of a mini-republic, but handicapped by not knowing: (1) who else belongs to the same one; (2) what calls their civil rights can morally make on others in the community; (3) what calls the civil rights of others can morally make on their own civic duties; (4) who is justified in making such calls; and (5) who is not. One can wonder: How many United States of America co-exist within the geographic boundaries of the USA?

If you are such a civic citizen, you can expect to occasionally at least have a seat in the bleachers of sovereignty during those occasions when your mini-republic succeeds in capturing the power of the majority in Congress, or in the state legislatures, or in the state capitols, or at 1600 Pennsylvania Avenue. For a time your side could prevail in the war of the factions. You can also expect to periodically become practically, if not legally, disenfranchised and chased from the bleachers when a different faction succeeds at the polls. You may comfort yourself for a time during these interludes by calling yourself a member of the loyal opposition. But if your mini-republic is barred from the bleachers of power for long enough, you can expect to eventually become part of the Toynbee proletariat – the subjugated members of those mini-republics who have not the least chance to grab the reins of power. You can look forward to the theater of a variety of banana republics as first one, then another, then another mini-republic temporarily occupies the seats of government.

It generally takes some clear and present outside danger, such as the September 11th, 2001, terrorist attack, to unite civic Americans into *one* body politic. It would seem the common defense is still a common cause among us, or at least among those of us who are not outlaws. There *is* one almost-all-encompassing American republic, within which live a multitude of mini-republics. But even this almost-all-encompassing republic is limited in scope, as the sometimes violent civil rights and antiwar vs. anti-antiwar movement clashes of the 1960s proved.

And so what do we really have in the America of today? We have some undetermined number of American civic citizens who have entered into an undetermined number of social compacts. We have some undetermined number of Americans, the outlaws, who make no social compact and who can therefore not at all be called upon to "put his person and all his power in common with the general will." As various factions alternate in and out of political power, all of us who are not outlaw entitlement citizens will regain and re-lose our civil rights but will then be able, like our outlaw brothers and sisters, to purloin civil liberties, provided the ruling faction does not take them away from us during their interlude of power. The United States has become an aggregate of mini-republics.

This is neither a stable nor a safe nor a just state of affairs for any of us. In a speech to the Republican State Convention in Springfield, Illinois, on June 16th, 1858, Lincoln quoted Matthew 3:25,

> "A house divided against itself cannot stand." I believe this government cannot endure permanently half slave and half free. I do not expect the Union to be dissolved – I do not expect the house to fall – but I do expect it will cease to be divided. It will become all one thing, or all the other.

Change Lincoln's words only a little and he could be speaking of our faction-divided nation today.

§ 3.3 *E Pluribus Unum*

When Rousseau wrote *The Social Contract*, neither the American Revolution nor the French Revolution had yet come to pass. Rousseau wrote with all the sanguine vigor, optimism, and idealism that come from having never led or managed any large undertaking involving many people. His writings were theoretical and not always tainted by pragmatic and practical factors that, however much such impurity offends the aesthetics of an intellectual, are nonetheless essential in putting any theory into successful practice. Those of us who have had a bit of experience in leading or managing an enterprise of many people learn to mix a bit of melancholy with the sanguine as a formula for dealing with the inevitable realities of human cooperative efforts.

It is a readily observable fact that, more often than not when faced with resolving a complex issue or solving a complicated problem, even the best-intentioned and talented people forget to keep one eye on the original objective while occupied with the effort to deal with the manifold difficulties encountered in the enterprise. When they fail to do this, they often solve the particular problem but fail to achieve the objective that prompted their effort in the first place. This is known as a Pyrrhic victory: "He won the battle but lost the war"; "The operation was successful but the patient died." American philosopher George Santayana wrote, "Fanaticism consists in redoubling your effort when you have forgotten your aim."

The binding aim of the Social Contract is neither to create a perfect world, nor set right all its

wrongs, nor in the slightest degree set an example for all the world to follow. There is but one aim and objective in our Social Contract: to ensure as much as is humanly possible liberty with justice for all. How are we to understand the concept of the allegiance of a citizen in this context? Let us start by looking at the dictionary definitions of allegiance:

allegiance [ME. *alegeaunce*; *a-* and *legeaunce*, from OFr. *ligance*; L. *ligantia*, from *ligare*, to bind.]

1. the relationship of a vassal to his feudal lord.
2. the tie or obligation of a citizen or subject to his government or ruler; the duty of fidelity to one's ruler, government, or country. Natural or implied *allegiance* arises from the connection of a person with the society in which he is born, and from his duty to be a faithful citizen, independent of any expressed promise.
3. loyalty and devotion in general, as to a church, a political party, a principle, a leader.

express allegiance: that obligation which proceeds from an express promise, or oath of fidelity.

It is not difficult to understand the origin of the idea of implied allegiance in definition (2). This is, after all, the original requirement the first ancient conquerors set on their subjects. We have already dealt with the fallacy that one *owes* allegiance to anything merely because one was born, or that "duty to be a faithful citizen" can be coerced. The *natural* allegiance of every human being is allegiance to himself. The *civic* allegiance of an associate who binds himself to others through the Social Contract is neither to a ruler nor a government but only to the body politic itself, and it is not based on an accident of birth. It is an *express* allegiance in which each member pledges to

> "put his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, receive each member as an indivisible part of the whole."

This is the pledge, but the *purpose* is

> "to form an association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone and remain as free as before."

Will the literal pledge automatically guarantee achievement of the purpose? No, of course not. Rousseau's optimism led him to think that simple common sense prevailing throughout the citizenry would be enough to insure it would. Were this true, there would be no need to obsess on the fine details regarding the "form of the association." Simple informed self interest would be enough. At the time Rousseau wrote *The Social Contract* this experiment in republican association had not been tried and what few "republics" then existed in Europe, or in the pages of history, were republics of aristocrats acting in association with none but themselves. This was not what Rousseau had in mind or he could have simply written, "France should be governed like Holland" and been done with it. A scientist would not even call Rousseau's premise an hypothesis; he would call it a bald speculation.

A century later with the benefit of hindsight from two experiments in this political theory – France

and the United States – John Stuart Mill could write (in his essay *On Liberty*),

> A time came, however, in the progress of human affairs, when men ceased to think it a necessity of nature that their governors should be an independent power, opposed in interest to themselves. It appeared to them much better that the various magistrates of the State should be their tenants or delegates, revocable at their pleasure. In that way alone, it seemed, could they have complete security that the powers of government would never be abused to their disadvantage. By degrees this new demand for elective and temporary rulers became the prominent object of the exertions of the popular party, wherever any such party existed; and superceded, to a considerable extent, the previous efforts to limit the power of rulers. As the struggle proceeded for making the ruling power emanate from the periodical choice of the ruled, some persons began to think that too much importance had been attached to the limitation of the power itself. *That* (it might seem) was a resource against rulers whose interests were habitually opposed to those of the people. What was now wanted was, that the rulers should be identified with the people; that their interests and will should be the interest and will of the nation. The nation did not need to be protected from its own will. There was no fear of its tyrannizing over itself. Let the rulers be effectually responsible to it, promptly removable by it, and it could afford to trust them with power of which it could itself dictate the use to be made. Their power was but the nation's own power, concentrated, and in a form convenient for exercise. This mode of thought, or perhaps feeling, was common among the last generation of European liberalism, in the continental section of which it still apparently predominates.

Mill could not have taken more direct aim at Rousseau if he had called out his name in this passage. He went on to write,

> But, in political and philosophical theories, as well as in persons, success discloses faults and infirmities which failure might have concealed from observation. The notion, that the people have no need to limit their power over themselves, might seem axiomatic, when popular government was a thing only dreamed about, or read of as having existed at some distant period of the past. Neither was that notion necessarily disturbed by such temporary aberrations as those of the French Revolution, the worst of which were the work of a usurping few, and which, in any case, belonged, not to the permanent working of popular institutions, but to a sudden and convulsive despotism. In time, however, a democratic republic came to occupy a large portion of the earth's surface, and made itself felt as one of the most powerful members of the community of nations; and elective and responsible government became subject to observations and criticisms which wait upon a great existing fact. It was now perceived that such phrases as "self-government" and "the power of the people over themselves" do not express the true state of the case. The "people" who exercise the power are not always the same people with those over whom it is exercised; and the "self-government" spoken of is not the government of each by himself but of each by all the rest. The will of the people, moreover, practically means the will of the most numerous or the most active *part* of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently, *may* desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power.

The Framers of the U.S. Constitution were considerably less sanguine about the need to limit the power of even a republican form of government than was Rousseau. Two hundred and twenty years of hindsight demonstrates the remarkable degree of success they did achieve. We are still here. But it is also true that the indicators of the twentieth century and, thus far, the twenty-first tell us unmistakably that they did not achieve perfection or even an adequate degree of perfection from their labors. We must not fault them for this. Could any of us have done better in their time? It seems highly

improbable.

And yet we must not think the cracks and chinks in the Constitutional armor have been exploited by some sinister cabal of would-be despots seeking deliberately to overthrow a democratic republic and install themselves as a new aristocracy. Neurotic spinners of crackpot conspiracy fantasies might dream it is so, but the evidence of history is entirely contrary to this. Our retrograde movement away from the perfection of the Idea of the American Republic has come to pass gradually and through what is, again in hindsight, a perfectly sensible sociological cause. We are wedded to a centuries-old paradigm – the party system – against which the early post-colonial states-driven structure of the Constitution is vulnerable.

The problem is systematic and does not lie with the Social Contract. It lies with the lack of adequate attention to the mechanism of governance needed to keep the compact itself firmly anchored in the purpose of the compact, and with even more inadequate attention to the ideas of citizenship and allegiance. Faction is the root cause; the remedy then, lies in making the system less vulnerable to faction. Our present mechanisms for separation of powers proves inadequate to cope with the predictable result that follows when honest over-enthusiasm for the political party transfers "the interests of the man" from connection to "the constitutional rights of the place" to connection to the party. The system itself must preclude allegiance to party from overcoming allegiance to the Social Contract and its purpose. If in this we succeed, we will also succeed in defeating the newer factionalism of both mob rule by ballot initiative process and rule through the considerably more stealthy mechanisms of the special interest group and the lobbyist.

If one were to paint a broad and generalized portrait of the overall source of the problem, and thereby obtain a sense of direction for its purposive resolution, one could hardly do better than to say the problem is due to a system that promotes, invites and practically guarantees that the geographical community of the United States will become an aggregate made up of a multitude of mini-republics plus a growing Toynbee proletariat of disillusioned citizens beginning to despair of any means of combating the ever mounting breaches of the compact that a community of mini-republics left to itself inevitably produces. An aggregate of mini-republics within one nation is like the aggregate of nations at the United Nations. The U.N. has been called "an assembly of poachers turned game wardens," and there is some large measure of truth in this. An assembly of factions, even when each faction takes the form of a mini-republic, is no less an assembly of poachers.

The chapters that follow will address, objective by objective, the direction and principles needed to counteract factions and bring about a real and robust united Republic. As we address the issues and the changes in the systematic structure of the form of our republican government needed to defeat modern factions, two things will be evident: (1) the changes are not minor; and (2) success depends critically

on doing away with the old, monarchy-inspired paradigm of the entitlement citizen, and putting in its place a new paradigm of the ***civic citizen of the American Republic***.

As to this first point, in his First Inaugural Address Lincoln said,

> This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember and overthrow it.

We shall need to amend it because if we do not the day will come when we must overthrow it. If that comes to pass, none can foresee the outcome. As to the second point, in a 1961 speech to the Massachusetts State Legislature President-Elect Kennedy said,

> For of those to whom much is given, much is required. And when at some future date the high court of history sits in judgment on each of us, recording whether in our brief span of service we fulfilled our responsibilities to the state, our success or failure, in whatever office we hold, will be measured by the answers to four questions: First, were we truly men of courage . . . Second, were we truly men of judgment . . . Third, were we truly men of integrity . . . Finally, were we truly men of dedication?

In the American Republic there is no higher or more honorable office than civic citizen and no more important responsibility and service than the participation of each citizen in his or her corporate capacity as Sovereign. We shall each be measured by this same yardstick.

§ 4. The Child Citizen

§ 4.1 The Ambiguous Circumstance of Child Citizenship

We will define a political child to be a person whose age is less than some specified number of years called the voting age. Currently in the United States this age is fixed by the Twenty-sixth Amendment to be eighteen years. We will define a political adult to be any person equal to or older than the specified voting age. For the convenience of brevity, we will use the word "child" to mean political child and "adult" to mean political adult.

Age-based legal discriminations of any sort always present special difficulties in regard to a person's standing and civil liberties as a citizen. This is because such discriminations are always based upon arbitrary and stereotyped decisions of when a person is to be regarded as competent to make certain decisions and carry out certain acts. However, the age when specific individuals exhibit the mental maturity for making prudent and wise decisions of various kinds differs from person to person. Aged-based legal discriminations of every kind ignore such individual differences.

Permission to vote in elections implies a person is mature enough and mentally competent enough to participate in Sovereignty. This in itself means a person is regarded as possessing sufficient maturity of judgment to participate in the most important decisions the citizens of the political community are called upon to make. Yet, for example, current state laws make it illegal for persons

less than twenty-one years of age to consume alcoholic beverages[7] or smoke cigarettes, while these same acts are not forbidden to persons twenty-one years of age or older. In effect, age-based legal discriminations establish restricted classes of citizenship, i.e. declare certain classes of adults to be, in effect, less than full citizens. However, our present concern in this treatise does not lie with this debatable situation, and we will confine ourselves to treating only the citizenship issue of the child.

There is good and just reason to accord at least some restricted degree of citizenship to children. By according a child citizenship status of some degree, the child then comes under the just protection of law and acquires recognition as having certain specifiable civil rights. If no degree of citizenship were accorded a child, a child would not have any civil rights whatsoever and could enjoy only indirect protections under law through civil rights accorded to the child's parents or legal guardians. This in effect is to regard the child as property, a legal distinction wholly unworkable in a republic[8] because it is wholly incompatible with the child's possession and exercise of its natural right, and because such a law can not accord justice (or injustice) to the child. Justice and injustice are moral terms applicable only to members of the body politic.

At the same time, it is clear that any citizenship status accorded to a child is entitlement citizenship because citizenship status is accorded the child merely by birth. It is obvious *prima facie* that an infant is incapable of making any informed agreement entering into a social contract and is incapable of free choice in binding itself in compact with the other members of the republic. The only ambiguity is in how it is to be determined that a person *has become* capable of such an informed agreement and of making a morally binding commitment in entering into the Sovereign. Age is merely a convention of convenience and really has only limited relevance to whether or not a person is capable of moral commitment and of understanding that to which he is committing himself.

We have already discussed the problem of entitlement citizenship in the context of the adult. It is essential to the establishment of justice that every citizen in a republic *make a compact of association* in the Social Contract, and *just recognition* of this commitment by the body politic is possible only if this compact is formally made. We require this already for according naturalized citizenship – new citizens formally take an oath before a judge pledging allegiance to the United States and foreswearing all foreign allegiance – and there is good reason to require this from native-born citizens as well.

[7] It should also be remarked that state drinking age laws are uniform because the general government essentially coerced the states to set age twenty-one as the drinking age by threatening to deny federal highway funding to any state that refused to pass such laws.

[8] Here we must take note that non-republican forms of government historically most often regard the child as a special form of property, a kind of slave-class distinction. In ancient Sparta, for example, children were property of the state and their parents were merely custodians until the child reached seven years of age. At age seven male children were taken from the custody of the parents and began their military training. In ancient Rome a father could legally put his children to death if he so chose.

Otherwise the only members of the political community who can be *known* to have entered into the compact of the Social Contract are its naturalized citizens. Considered from the context of *the possibility of justice*, requiring a formal pledge from *every* citizen is an imperative. This also has the clear social advantage of a psychological effect on the individual, who then becomes necessarily and specifically conscious that citizenship is a *commitment* involving civic duties being assumed in exchange for civil liberty, and is not merely an entitlement. A person should always be permitted the *liberty* to choose to become a citizen[9], but citizenship in the American Republic is not to be simply handed out *gratis* as if it were something with no real worth; in the Republic, nothing is worth more.

Alternately, an *implied* commitment might be used for native-born people; rather than making a formal affirmation of citizenship, a person who does *not* make a formal affirmation of *non-citizenship* can be declared, legally and justly, to have entered into the compact. This is more convenient for the population, but less satisfactory and less advantageous psychologically. It somewhat lessens the issue of the outlaw person discussed earlier because now failure to carry out one's civic duties and law breaking are *justly* imputable as crimes. Both methods eliminate entitlement citizenship for adults with either civic Republic citizenship or *declared* outlawism. However, by either method *justice* still requires that *all* adults be specifically informed of the nature and significance of the compact they are asked to make; otherwise there can be no basis *in obligation* through informed and deliberate alienation by each person of certain ones of his derivative natural rights.[10]

In the case of the child, it is altogether in the best interest of the Republic that the *rite of passage* from entitled child-citizen to adult civic citizen of the American Republic be both formal and positive, by which I mean requiring specific affirmation by the individual of a free choice to enter into the Social Contract. Such an affirmation could be as simple as a formal pledge of allegiance before an official in front of witnesses provided that, *while still in childhood*, the child has received *an adequate civic education* on what citizenship in the Republic means and understands this meaning.

It is already a generally accepted maxim of long standing that it is in the best interests of both the child and of the community that every child receive some form of primary education to prepare the child for adult life. Some elements of this education – for example, reading, writing, and basic arithmetic – are generally agreed to by all. It is also generally agreed that the child's education should

[9] Likewise, the Sovereign can choose to deny citizenship to a person under specific conditions, such as previous conviction of a felony. Specification of citizenship conditions must, however, be carefully weighed because this is easily liable to abuse. A racial condition for citizenship, for example, is contrary to the Declaration.

[10] It is possible, even probable, that, upon learning what specific civic duties will henceforth be regarded as duties of the citizen and conditions for continuation of citizenship, some significant number of people might vigorously protest specific clauses. I can think of no better kind of citizen activism for *exposing* existing despotic and unjust laws factionalism has already produced and causing their speedy repeal. It may be true, perhaps even likely, this could spark a civil crisis – the grip of despotism is firm – but it would be a *healthy* crisis.

include instruction that either prepares the child for some trade or for entry into higher education in pursuit of qualification for professional practice of some sort, or for occupations generally recognized as requiring more in-depth knowledge than a high school education can provide.

Children grow up to become adults and full citizens of the republic. What could be more important to the health of the Republic and the preservation of liberty with justice than preparing future citizens to become part of the Sovereign of this nation? What could be worse than failing to do so?

When the Patriots were faced with the urgent task of setting up new state governments in the midst of a shooting war with Great Britain, there was no other single individual whose advice was more sought and more respected than John Adams. Although nowhere was Adams' advice completely followed, no one person had a greater influence on how those state governments took shape. His most influential essay on the topic, "Thoughts on Government," appeared in 1776. In it he wrote,

> Laws for the liberal education of youth, especially of the lower class of people, are so extremely wise and useful that, to a humane and generous mind, no expense for this purpose would be thought extravagant.

Different state governments have managed to disagree with Adams about no expense for public education being extravagant, but universal access to public education is now an institution of every state government in the United States. Different states have gone their own way in the particulars and details of how this education should be offered and administrated, wrangled over how much of it is the responsibility of the state government and how much the responsibility of local governments, how it should be funded, how much funding it should have, and so on; but universal public education for children is now mandated by law in every state, both in terms of access and in terms of mandatory attendance.

There is today a current sentiment that there should be better education provided to children on the topics of reading, writing, mathematics, and science. Some have called this "our most urgent need." While agreeing with the vital importance of better education in these areas, your author does not agree these constitute the nation's most urgent need. Our most urgent need is ***citizenship education***. We have too long neglected it, and the republic is now paying the price of that neglect.

§ 4.2 Child Citizenship Education is a Direct Interest of the General Government

There are a great many Americans who will react to the thesis stated in the heading above, not with mere disagreement, but with heated, passionate disagreement. There is probably nothing else more likely to stir up vehement opposition within the general public than the merest hint of "government interference with the parents' right to determine the upbringing of their own children" (other than perhaps the merest hint of government interference with the individual's right to practice religion). The more tender the age of the child, the more heated the reaction tends to be. The current ultra-

conservative leadership of the Republican Party goes so far as to flatly deny there is *any* legitimate excuse for the general government to be involved in any way whatsoever with the upbringing of young children. This includes the denial of any legitimate role of the general government in public education, although rather hypocritically this denial does not seem to include the power of the general government to dictate how educators conduct their professional practice or what they should or should not teach. That the relationship between these two political stances is contradictory is something they somehow manage to conveniently ignore. The ultra-liberal wing of the recent, and perhaps still current, Democratic Party leadership tends to take a diametrically opposite stance in regard to the first question and a sometimes more extreme stance in regard to the second.

Like all extreme and ideologically "pure" positions, both party leaderships are wrong in their stances and, what is worse, harmfully wrong. Taking each opposing viewpoint to its polar extreme, it is absurd but venial to claim the general government has *no* just interest in the education of children, and it is absurd but venial to claim the general government has a just role as a *dictator* of education. I call these two extreme poles "venial" because they are only the natural consequence of the sort of Hegelian absolutism that seems to naturally occur everywhere when amateurs meddle in matters in which they have no practical knowledge or experience. A pure ideologist is a person who would try to journey to God in a taxicab while behaving as a backseat driver. It is little wonder that against *their* encroachment parents will stand in the doorway with rifles in hand.

To say that the none-or-all extremes are ill considered and wrong is to say at the same time there is a limited mean somewhere in between that is both true and just. If *no* interest of government is wrong *and* an *omnipotent* interest of government is likewise wrong, it is merely simple logic that some finite, therefore limited, interest of government is *ipso facto* right. How shall we understand its role? Again we come back to the underlying purpose of making the Social Contract in the first place.

In "Thoughts on Government" Adams wrote,

> We ought to consider what is the end of government before we determine which is the best form. Upon this point all speculative politicians will agree, that the happiness of society is the end of government . . . From this principle it will follow, that the form of government which communicates ease, comfort, security, or, in one word, happiness, to the greatest number of persons, and in the greatest degree, is the best.

But what, in more concrete terms, must the government accomplish in order to "communicate happiness to the greatest number of persons in the greatest degree"? What, in other words, are the *specific objectives* of good government? The Founding Fathers found six of these, and they stated them in the Preamble of the Constitution:

1. To form a more perfect union;
2. To establish justice;

3. To insure domestic tranquility;
4. To provide for the common defense;
5. To promote the general welfare;
6. To secure the blessings of liberty to ourselves and our posterity.

It is in meeting the sixth objective where we encounter the interest the general government must take in the nature of children's citizenship education. Our next and final task for this chapter is to explain the nature and specific reasons why it is necessary *for the good of the Republic* that the general government take a direct interest in children's citizenship education.

§ 4.3 Government Cannot Avoid Having a Moral and Educational Impact on the Citizens

In *Representative Government* Mill wrote,

> If we ask ourselves on what causes and conditions good government in all its senses, from the humblest to the most exalted, depends, we find that the principal of them, the one which transcends all others, is the qualities of the human beings composing the society over which the government is exercised.

Mill went on from here to explain what he meant by "the qualities of the human beings":

> We may take, as a first instance, the administration of justice; with the more propriety, since there is no part of public business to which the mere machinery, the rules and contrivances for conducting the detail of the operation, are of such vital consequence. Yet even these yield in importance to the qualities of the human agents employed. Of what efficacy are rules of procedure in securing the ends of justice, if the moral condition of the people is such that the witnesses generally lie, and the judges and their subordinates take bribes? Again, how can institutions provide a good municipal administration if there exists such indifference to the subject that those who would administer honestly and capably cannot be induced to serve, and the duties are left to those who undertake them because they have some private interest to be promoted? Of what avail is the most broadly popular representative system if the electors do not care to choose the best member of parliament, but choose him who will spend the most money to be elected? How can a representative assembly work for good if its members can be bought, or if their excitability of temperament, uncorrected by public discipline or private self-control, makes them incapable of calm deliberation, and if they resort to manual violence on the floor of the House or shoot at one another with rifles? How, again, can government, or any other joint concern, be carried on in a tolerable manner by people so envious that, if one among them seems likely to succeed in anything, those who ought to cooperate with him form a tacit combination to make him fail? Whenever the general disposition of the people is such that each individual regards those only of his interests which are selfish, and does not dwell on, or concern himself for, his share of the general interest, in such a state of things good government is impossible. . . Government consists of acts done by human beings; and if the agents, or those who choose those agents, or those to whom the agents are responsible, or the lookers-on whose opinion ought to check all these, are mere masses of ignorance, stupidity, and baleful prejudice, every operation of government will go wrong.

Reading this passage, published in 1861, one cannot help but feel that, if Mill were alive today and writing on the subject of the governments of the United States, he would not change one single word.

Gathering up Mill's various illustrations under general headings, they all come down to two basic

concepts: civic morality and civic duty. Without the general promotion of these human commitments throughout the political community, representative government eventually and inevitably fails. But the *failure* of this government is not at all the same thing as for that government to *fall*. When republican government fails, the government institutions do not cease to be, save only in the case of revolution that overthrows the government outright. Instead they quietly turn into institutions of despotism.

Again, civic morality is separable from, and not dependent upon, religious morality. One could wish that the moral doctrines of every church contained civic morality as a subset of what they teach. But this is not the common case nor is it either sensible or wise to think that, after centuries of brutal and vicious historical examples, this will change. Throughout history, all churches have preached tolerance while they are in the minority and practiced intolerance when they gain the majority. No church or sect owns a monopoly on morality. Civic morality is not a matter to be left in the hands of religious organizations, which are all by nature exclusionary of infidels, and most of which practice coercion (fear of God, fear of hell, promises of rewards in an afterlife, etc.). *Civic* morality belongs to the general common cause of the body politic as a whole and it requires personal courage.

A child on its natal day does not enter the world equipped with a ready-made instinct of civic morality or civic duty. We, every one of us, come into this world in a state of nature. A baby is the most innocent of outlaws, but is still a little outlaw nonetheless. Any child born anywhere at any time is, on its natal day, as equal in potential to become a Viking Berserker as to become a Mahatma. The person the child will grow to become is the person *that child makes of himself* because this is the character of his natural human freedom. The child's choices along the way are influenced, sometimes coerced, by others but cannot be *determined for him* by anyone other than himself.

It is uncontested that the first and principal influence over the child is the influence of its parents or primary caregivers. If only they were themselves perfect citizens of the Republic, nothing more would need to be done to provide the best chances of the child becoming likewise a good citizen of the Republic. But this is an empty example. Parents and caregivers, even the very best, have their own finite human capacities, their own blind spots in their knowledge, their own limitations in their social skills. There is only so much they can accomplish by themselves and it is less than the compact needs.

It is undeniably true that one source of communal assistance available to many parents and care-givers is the religious community to which they belong, if they belong to one. Churches exert an extremely powerful influence on the general moral upbringing of children. Often this is a beneficial influence, direct or indirect, and sometimes it is not. An overzealous mob calling itself a church assembly can be the most cruel and vicious of all mobs, just as a pious and humble church assembly can, through ministrations of love and care, be one of the best influences on a child. But as the first business of any church is religion, this is where its efforts are most focused and its competency most

keen. Like individuals, churches have their own finite capacities, their own blind spots in knowledge, and their own limitations of social skills. Their influence is at its most potent in matters of religion but their competence in matters of broader community, where contact is made with the other sub-communities within the overall political community, is often at its least. In matters of *civic* morality and *civic* duty, any church can gain as much from the broader body politic as can any individual. This is the *civic* moral lesson to be had from Matthew 22:21, "Render therefore unto Caesar the things which are Caesar's and unto God the things that are God's." In a republic, "Caesar" is the Sovereign.

To increase what each of us is able to accomplish is one of the fundamental incentives in forming the body politic in the first place. It is furthermore in the collective common interest of the body politic that every person in its ranks become the best citizen of the republic it is possible for that person *to make himself to be*. This is the *just interest* the Sovereign itself has *by right* in the civic upbringing of the children of the Republic.

Furthermore, the Sovereign and the institutes of its government *will exert a civic influence*, whether the people wish it or not. The child must live within the political community; there is no way to shield the child from its influence short of locking him up and, as it were, forcing him to live as a hermit. The absurdity of this ludicrous sole recourse is all too obvious to need any discussion. Even the far less drastic and not-absurd recourse of a sub-community that keeps itself as isolated as it is able from the broader community cannot shield the child from all influences of the broader community. The Amish know this and they take it into account as a part of the rite of passage for their children.

Above we saw that the civic morality of the citizens in a republic affects the nature and quality of the instruments of government. The reverse is also true: the nature and quality of governance affects the civic morality and even the intelligence and activities of the governed. Mill wrote,

> We have now, therefore, obtained a foundation for a twofold division of the merit which any set of political institutions can possess. It consists partly of the degree in which they promote the general mental advancement of the community, including under that phrase advancement in intellect, in virtue, and in practical activity and efficiency; and partly of the degree of perfection with which they organize the moral, intellectual, and active worth already existing, so as to operate with the greatest effect on public affairs. A government is to be judged by its actions upon men, and by its actions upon things; by what it makes of the citizens, and what it does with them; its tendency to improve or deteriorate the people themselves, and the goodness or badness of the work it performs for them, and by means of them. Government is at once a great influence acting on the human mind, and a set of organized arrangements for public business; in the first capacity its beneficial action is chiefly indirect, but not therefore less vital, while its mischievous action may be direct. – *Representative Government*

Every citizen in the republic desires at the minimum the maintenance and preservation of what he already has, and most desire to improve their private situation. The crushing disadvantage of illiteracy and lack of access to knowledge, as prejudicial to both these desires, is too obvious to need discussion. If a person could be totally self-reliant, no association in a body politic would be needed. But no one is

totally self reliant; no one hauls himself up by his own bootstraps. There are limits to self reliance and every person at some times relies on the help and support of other people. But if every person in the body politic is handicapped by ignorance, devoid of civic concern and civic morality, and inactive in the common cooperation that was the object of the association in its beginnings, the individual has no recourse. *Government is the institution established to provide, insure, and empower the mutual aid and protections each citizen provides the others*. The merit of government is found nowhere else than in its ability and success in fulfilling this role. Mill wrote,

> The difference between these two functions of a government is not . . . a difference merely in degree, but in kind. We must not, however, suppose that they have no intimate connection with one another. The institutions which ensure the best form of management of public affairs practicable in the existing state of cultivation tend by this alone to the further improvement of that state. A people which had the most just laws, the purest and most efficient judicature, the most enlightened administration, and least onerous system of finance, compatible with the stage it had attained in moral and intellectual advancement, would be in a fair way to pass rapidly into a higher stage. Nor is there any mode in which political institutions can contribute more effectually to the improvement of the people than by doing their more direct work well. And, reversibly, if their machinery is so badly constructed that they do their own particular business ill, the effect is felt in a thousand ways in lowering the morality and deadening the intelligence and activity of the people. But the distinction is nevertheless real, because this is only one of the means by which political institutions improve or deteriorate the human mind . . . – *ibid.*

Simply put, bad government handicaps everyone, good government enables and empowers the mutual cooperations through which every citizen has the opportunity to better his condition. Mill wrote that there are two distinguishable means by which the operation of governance accomplishes its purpose:

> Of the two modes of operation by which a form of government or set of political institutions affects the welfare of the community – its operation as an agency of national education, and its arrangements for conducting the collective affairs of the community in the state of education in which they already are – the last evidently varies much less, from difference of country and state of civilization, than the first. It also has much less to do with the fundamental constitution of the government. . .
>
> It is otherwise with that portion of the interests of the community which relate to the better or worse training of the people themselves. Considered as instrumental to this, institutions need to be radically different according to the stage of advancement already reached. . . The state of different communities, in point of culture and development, ranges downwards to a condition very little above the highest of beasts. The upward range, too, is considerable, and the future possible extensions vastly greater. A community can only be developed out of one of these states into another by a concourse of influences, among the principal of which is the government to which they are subject. In all states of human improvement ever yet attained, the nature and degree of authority exercised over individuals, the distribution of power, and the conditions of command and obedience, are the most powerful of influences, except their religious belief, which make them what they are and enable them to become what they can be. . . And the one indispensable merit of a government, in favor of which it may be forgiven almost any amount of other demerit compatible with progress, is that its operation on the people is favorable, or not unfavorable, to the next step which it is necessary for them to take in order to raise themselves to a higher level. – *ibid.*

Again, ***the primary purpose of republican government is not to rule***. It is ***to liberate*** the mutual

and just cooperations among citizens required for each to preserve what he has, better his condition, and, most importantly, accomplish these things *while remaining as free* as he would have otherwise been in the state of nature. The most important point Mill is making here is the government and its institutions will have an education effect on *all* the people *whether that government intends to or not*. This effect will come straight out of the government's normal functioning in dealing with the public business. If it does this badly, it will create or exacerbate problems in the community and drag down the civic spirit (activity) and eventually the intellectual and civic moral character of its people. Its demerits will lead to its people devolving into a lesser people. On the other hand, if government performs its functions well, efficiently, and economically, it eliminates or reduces problems in the community, promotes greater civic spirit, and, in turn, uplifts the intellectual and civic moral character of the people. There is an innate, if unintended and secondhand, educational effect of government that has nothing whatsoever to do with whether or not government becomes formally involved in *academic* educational institutions. The corollary to this is obvious. Since government is going to have an educational effect on the citizenry at large *no matter what*, it is better for the institution of government to recognize and acknowledge this and find ways to ensure the effect is beneficial.

How is it that government has such an unavoidable effect? Mill explains:

> What, for example, are the qualities in the citizens individually which conduce most to keep up the amount of good conduct, of good management, of success and prosperity, which already exist in society? Everybody will agree that those qualities are industry, integrity, justice, and prudence. But are not these, all these qualities, the most conducive to improvements? If so, whatever qualities in the government are promotive of industry, integrity, justice, and prudence conduce alike to permanence and to progression; only there is needed more of those qualities to make a society progressive than merely to keep it permanent.
>
> What, again, are the particular attributes in human beings which seem to have a more especial reference to Progress, and do not so directly suggest the ideas of Order and Preservation? They are chiefly the mental activity, enterprise, and courage. But are not all these qualities fully as much required for preserving the good we have as for adding to it? If there is anything certain in human affairs, it is that valuable acquisitions are only to be retained by the continuation of the same energies which gained them. Things left to take care of themselves inevitably decay. Those whom success induces to relax their habits of care and thoughtfulness, and their willingness to encounter disagreeables, seldom long retain their good fortunes at its height. . . Whatever qualities, therefore, in a government tend to encourage activity, energy, courage, originality, are requisites of Permanence as well as of Progress. – *ibid.*

Here Mill states an empirical truth encountered so universally in human affairs that it seems to be a law of social nature: *Things left to take care of themselves inevitably decay*. Your author has seen this phenomenon in action so many times over the course of his lifetime that he can attest what Mill states here is much more than mere opinion. It is a keen empirical insight, unexplained as of yet by science, not provable or deducible from any presently known principle. If to the reader this seems not rational, that is merely because rationalization requires a theory and we as of yet have none for this empirical

phenomenon. It is nothing more and nothing less than *a fact of practical experience*. In consequence, young people, and people who lack practical experience or rely too much on academic speculation, almost always commit the error of thinking once something is solved, set up, or otherwise "taken care of" then "that is that; no more need be done." This is true only for impermanent things such as eating breakfast; it is not true for anything of desired permanence in business, in husbandry, in industry, or in government. This is something few politicians and very few business managers or corporate directors seem to know these days, and that apparently no *young* people know.

Thus it is that it is both just and necessary to consciously acknowledge the necessity of the interest of the general government in the civic education of the citizens of the Republic. That this necessarily, and perhaps most importantly, involves an interest in the civic education of children is, hopefully, now clear and evident. In closing, it is also needful to remark that the same arguments apply not only to the general government but to government at all levels. To the extent that government at different levels, state and local as well as general, perform different direct functions for the citizens, there too will be distinguishable differences of direct interest in child civic education attending them.

These differences can and should be reflected in the way in which government is instituted at different levels. Consider, for example, the most immediate point of contact between the institution of public education and the citizens, namely the local school systems. Whose *most immediate interest* is served here? It takes no great reflection to see that this interest is that of the parents and the children themselves. Citizens without children in school likewise have an interest – their taxes help pay the cost of public education. Is this interest in any way *higher* than the direct interest? The answer to this can only be "***yes***." But is it justice if a publicly elected school board exercises absolute power over a well-organized and active parent-teacher association? The republican principle of the Social Contract can only lead to the conclusion this is *unjust*. It is equally unjust for the parent-teacher association to be in no way answerable to the larger community. Here we have another example of an inherited imperfection originating in the monarchy/aristocracy-based paradigm of power structure originally erected by the states during the days of the Revolution. It is well past time for this to be set right.

§ 5. References

John Adams, "Thoughts on Government," in *The Portable John Adams*, John Patrick Diggins (ed.), NY: Penguin Books, 2004.

Aristotle, *Nicomachean Ethics*.

The Constitution of the United States of America, 1787.

Will Durant, *The Story of Civilization*, part 1, *Our Oriental Heritage*, NY: Simon and Schuster, 1954.

Thomas Jefferson, Declaration of Independence, 1776.

Immanuel Kant, *Die Metaphysik der Sitten*, Berlin: *Druck und Verlag von Georg Reimer*, 1914.

Various English translations are available from a number of publishers. Kant quotes in this treatise were translated by the author.

Immanuel Kant, *Grundlegung zur Metaphysik der Sitten*, Berlin: *Druck und Verlag von Georg Reimer*, 1911. Various English translations are available from a number of publishers under the titles *Foundations of the Metaphysics of Morals* or *Groundwork of the Metaphysics of Morals*. Kant quotes in this treatise were translated by the author.

Immanuel Kant, *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*, Berlin and Leipzig: Walter de Gruyter & Co., 1928. An English translation is provided in *Practical Philosophy*, Mary Gregor (tr.), Cambridge, UK: The Cambridge University Press, 1996. Kant quotes in this treatise were translated by the author.

John Stuart Mill, *On Liberty*, 1859.

John Stuart Mill, *Representative Government*, 1861.

Jean Piaget, *The Moral Judgment of the Child*, NY: The Free Press, 1965.

Jean Jacques Rousseau, *The Social Contract*, 1762.

Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, 1776.