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## **The Egalitarian constitution: modern identity in three moral values**

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### **Citation**

Price, J. D. (2018, September 18). *The Egalitarian constitution: modern identity in three moral values*. s.n., S.l. Retrieved from <https://hdl.handle.net/1887/65565>

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Cover Page



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**Author:** Price, J.D.

**Title:** The Egalitarian constitution: modern identity in three moral values

**Issue Date:** 2018-09-18



Universiteit  
Leiden

# **The Egalitarian Constitution: Modern identity in three moral values**

**Jonathan Price**



# **The Egalitarian Constitution: Modern identity in three moral values**

PROEFSCHRIFT

ter verkrijging van

de graad van Doctor aan de Universiteit Leiden,

op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,

volgens besluit van het College voor Promoties

te verdedigen op dinsdag 18 september 2018

klokke 16.15 uur

door

Jonathan David Price

geboren te Poughkeepsie, New York, USA

in 1981

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## **Introduction: ‘the immovable keystone’**

Imagine you, an ordinary member of a contemporary North Atlantic democracy, are installed on a long flight. The man in the seat next to you is Jewish and quite observant—with simple black attire, a skullcap, the curls dangling by his ears, and tassels at his side to remind him of the Commandments. You begin chatting, and after a while you get to talking about ‘religion’. You ask him, ‘So, why are you religious?’. His answer is that his parents had him circumcised into the Covenant and instructed him in ‘the Law’. He is observant of the Law because he trusts the words of his fathers. He sees his life patterned on the ways of those fathers. He hopes his children’s lives will be similarly patterned. It is because of that hope that he has so many children, seven in all.

You might think that such trust is an odd reason for ‘being religious’, for ‘choosing an identity’—a demanding and ‘archaic’ identity such as Hasidic Judaism, to boot. You notice how different his choice is from your own experience with what is called ‘faith’ (or ‘faith traditions’ when one is trying to be very politic about it). ‘Faith’ in the common sense involves personal ‘religious experience’ and personally-justified conviction in truths, which are purportedly your own witnesses to the veracity of that experience. Looking at the man in the seat to your left, you are struck by the total claim on his being that his religion makes, as well as by the total gift of his loyalties that he gives to Hasidic Judaism.

In all this, you are struck by how ‘unmodern’ his whole way of life is. He is more like a traveller from somewhere unrecognizably long past than like a compatriot of modernity.

Nevertheless, what do you mean that he is ‘unmodern’? After all, he *is* travelling willingly in an airplane, presumably taking advantage of modern sanitation and medicine, and he speaks a contemporary language that you understand. Well, you could mean that the man’s religion—meaning, his whole way of life—is in some important sense ‘unfree’. Forget for the moment the etymological irony of ‘*religio*’ (perhaps from ‘*ligere*’, implying ‘unfree’ *per definitionem*), and recall that ‘personal faith’ is what is now commonly implied by a phrase like ‘he is quite religious’. For this Jew, someone else determined the contents of his religion for him. He gets no vote—not then, not now, and not in the future—that is, besides the vote of his continued adherence. He follows the decisions of ‘patriarchs’ long dead, and some still living, all the while understanding such following to be morally

obligatory. Consent is still present; meaning, he is not forced to remain in this severe tradition. But it is a particularly passive form of consent, more like assent or submission, much less robust than what you understand to be an active, free choice. It might remind us of the contract-law principle that ‘silence implies consent’. Freedom of choice is not obliterated within his religion, but neither is it highly prized.

But there is more than just curbed consent that makes this observant Jew seem unmodern. The relation between him and his religio-social order is heteronomous. He is looking to others, certain long-dead men, for his guidance. He calls them his ‘fathers’. Inseparable from this is the great inequality endemic in his religious practice. One need not even mention the fact that ‘fathers’ are looked to rather than ‘mothers’. That fact places one half of the historic community beneath the other. One hundred percent of the living is also subservient to a few chosen dead, from whom *they* (namely, the men of the community) receive instruction. Such instruction is then used to channel, train, and discipline the community. It is always ‘they’ that do this, rather than any single ‘he’. For, in determining identity, the community is also set above the individual person. And ‘they’, the fathers, are constitutive of the community.

In short, that which sets such traditionalist Judaism apart from a ‘modern’ faith is at least threefold. First is its deficiency in consent as *the only* legitimate basis of moral obligations. Second is the lack of any leading role for personal autonomy as the goal of (moral) life. This presupposes the lack of the autonomous person as the guiding principle and cornerstone of human moral life. The absence of equality of persons as the purported starting point of human relations, and destiny of mankind, should, thirdly, go without saying. That is chiefly what disqualifies it as ‘modern’.

These differences not only set forms of traditional religion apart from modern religion, but they also divide traditional ways of life throughout the world from what could broadly be called the ‘modern’ way of life. The ‘modern way of life’ is a basic and general cultural identity shared by most persons in contemporary North Atlantic lands. It also has many hundreds of millions of adherents—perhaps a couple of billion—in the rest of the world. These persons are culturally modern insofar as they are consensualist, autonomous, egalitarians. Insofar as they are anything else, they are unmodern or non-modern, as the case may be.

## **Persons, natural and corporate**

Consent, equality, and autonomy are essential to the modern cultural identity of persons, whether natural or corporate. Both psychological self-understanding and institutional self-understanding, as the case may be, are mapped onto these values. Natural and corporate persons aspire to fulfil these values as standards of what is good and right, naturally *mutatis mutandis*; and as examples of the Right and the Good, insofar as relevant. They also measure success against standards derived from these values.

As with any moral values, some persons fulfil them better than others. But even bad actors attempt to bill their activity in terms of these values. Hence, the official name of certain modern countries. ‘The Democratic People’s Republic of the Congo’ (DPRC, henceforth) declares itself to be a modern form of autonomous corporate personhood, the democratic republic. Republics themselves exist as peers among other nations, that is, as sovereign moral equals, even as some are smaller, some larger, some richer, some poorer. Nevertheless, each counts for one vote in international institutions and treaties or contracts in international public and private law. This could be otherwise, and it was very different before the modern sovereign nation-state became the model of corporate personhood. Think of the model of the empire or of the satellite (client) state that is in orbit around another superior political communist. In each case, the peerage of political communities, which includes the sovereignty of states, would be denied—meaning that equality would be precluded, consensual relations rendered unnecessary (i.e., a decline in contractualism), and sovereignty (i.e., political autonomy) denied.

With corporate persons, the knock-on effect of their modern self-identity is the promise of a modern constitution for the natural persons who are citizens. Declaring that the DPRC is ‘democratic’ is a byword for government of equals. It is often also shorthand for government within the bounds of human rights. Much of the content of contemporary human rights is meant to bolster the autonomy of natural persons, by instilling equality and consensual relations in place of inherited hierarchies and ascriptive statuses that had been formerly given by society, religion, family, clan, or government, and often recognized in law (or at least not forbidden by law).

I will not directly defend the implied claim of the previous paragraph, namely that corporations are persons, although below I do point the reader to other authors who defend the claim. But, here, I should dispel the most common criticism of corporate personhood: that corporations cannot be moral, since they are mere ‘artifices’ or ‘constructs’ without minds (centres of

consciousness) of their own. Personhood is both a natural and a social category. As a social category, it attaches and is attached to individual human persons and to corporate entities *that are deemed to be personal* for any number of reasons. These might include holding moral or legal obligations, or being a responsible actor in the world. We treat other human beings of a given level of maturity as if they are moral agents, whether or not we have seen evidence of that fact. As a result, if a person offends a law or moral imperative, we call her to account. We do not regularly say ‘her brain did it’, unless there is really something wrong with her brain that overwhelmed her will or her reason. We are comfortable with personhood that consists in parts, but that is exercised ‘corporately’ (literally ‘through the head’ atop the shoulders) of the natural person.

Similarly, when a chemical corporation poisons one’s river, one does not say ‘Damn you Board of Directors of So-and-So Chemicals’. One says, ‘Damn you So-and-So Chemical Corporation’. We can identify the part that routinely makes the decision, for instance the CEO, but we do not confuse that part with the whole. Just as with the defective brain in a natural person, a corrupt CEO can be identified independently of the corporate person as the cause of a grave ill. However, when one goes to the store to buy toilet cleaner, one might think, ‘I am glad So-and-So Chemicals still make these great solvents’. One is appealing to intention, reason, will, activity in the world, toward a known end, and with some good in mind: one is referring to what persons do. Other creatures or machines might be able to do some combination of these activities, but only persons do them all together as one discrete act. Only persons act for discernible ends in the world as the *reason* of their action (rather than just the *cause* of their action). This is so whether the action be a man agreeing to a loan, or a corporation promising to build a factory according to planning ordinances.

Thus, the sort of language that identifies a corporate actor as the doer should be taken to indicate the speaker’s real apprehension of a moral person in the corporate form. I shall take it to mean just that. For now, I begin with the position that modern moral values are possessed by persons in natural and corporate forms. These are possessed similarly, but with the necessary variations made for the form. For instance, personal autonomy is spoken about as ‘sovereignty’ when considering the activity of the modern political corporate person called the (nation-)state.

## Modern values

The term ‘values’ has a thinness to it that belies the importance of autonomy, equality, and consent to modern persons. More than functioning merely as ‘values’, in a constellation of other possible values, they are transformed in the daily life of modern persons into dispositions, practices, law-like structures, and beliefs about proper and right behaviour. They come to function as virtues, *nomoi*, first principles, and dogmas. In this way, these core values provide the very contours of the world that modern persons inhabit, both collectively and individually. Since I do not have one perfect term for all that they are and do—‘values’ is a catch-all term—I will use the term that seems most appropriate for the function of the value in each case. Sometimes it will be spoken of as a virtue and at others as a *nomos*.

Autonomy, consent, and equality illustrate for all attentive persons what it is like to be modern. They also direct action toward realizing the Good, namely, the thriving of the modern personhood as an autonomous, consensual, egalitarian. Thus, they function as both means and ends.

Because of their range of usage, clear and stable definitions of these values are hard to come upon. This is especially the case as the same terms or concepts behind them are routinely invoked in ordinary personal interactions as well as in scholarly discourse. The range of use and meaning of, say, ‘equality’, is both deep and wide. These are values for persons, which introduces a further complication to defining them. The underlying theories of the self on offer are often both diverse and unclear. That holds whether the theory forms a sophisticated ‘philosophical anthropology’ or is one of the mundane ideas of the self that are deployed in daily life.<sup>1</sup> *Omnis definitio est exclusio*, there is no way round it. Nevertheless, ‘the belief that we can somehow step outside the stream of history and furnish a neutral definition of such words as *libertas*, freedom’, or autonomy, equality, consent, person, ‘is an illusion well worth giving up’. For terms that are so normative, indeterminate and, as the same commentator puts it, ‘so extensively implicated in such a long history of ideological debate, the project of understanding them can only be that of trying to grasp the different roles they have played in our history and our own place in that narrative.’<sup>2</sup> One of my tasks in this book is to limit the definitions to uses of the terms as modern moral values of persons.

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<sup>1</sup> Martin Hollis, *Models of Man*, 13.

<sup>2</sup> Quentin Skinner, ‘A Third Concept of Liberty’, 265.

We might still ask ourselves how we know when we have reached the ‘real reading’ a definition that is not manifestly untrue. In some ways, we will never know for sure. But the ground can be cleared of many misreadings, beginning from as good a starting point as can be discerned. For instance, that which is convincing to those who self-identify as ‘modern’. From there we can work to clarify what is meant by their core values. Such a method mixes a phenomenological and conceptual approach to modern values. The question of how we know what these values are means: 1) how they are routinely come upon, and (2) how one can discern their boundaries once they are come upon. My implicit position is that both the genealogical and the conceptual, as well as the experiential aspects, are more usefully studied together, insofar as it is possible. The success of my analysis turns on this being so.

Thus, knowing where to place limits on a shared approach is key. One example is the difference between natural kinds and artificial kinds, which can make all the difference in some analyses, but which is of very little interest to others. If, say, a value is experienced as a natural kind, it often makes slight difference whether that factual for the analysis of it as experience. Another is the truth that taxonomic and conventional divisions of things tend to diverge. The convention of moderns will be the route into my analysis. Once the convention is sufficiently established (description), say in a high valuation put on a specific understanding of autonomy, that understanding will be interrogated on standard philosophical accounts of it (explanation and analysis). Finally, interpretation. That is where I will test the substance for its strength: What is the value of these values for persons? Can they be relied upon as a constitutional order? Does the centre hold?

### **The alter-conscience**

This anthropology of the present begins where persons are most present: in their self-conscious experience. Being also a phenomenology of the present, I start *in* the axiological experience of self-consciously ‘modern’ persons. From that ‘place’, ‘[t]o be modern is to find ourselves in an environment that promises adventure, power, joy, growth, [and] transformation of ourselves and the world’.<sup>3</sup> Here and now, the new is good. But some parts stick out as self-evident goods, without which we could not have such transformative hope.

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<sup>3</sup> Marshall Berman, *All That is Solid Melts into Air: The Experience of Modernity*, 15.

Equality is the key that unlocks all that potential. So, the highest hope is placed in the value of ‘equality’. This hope persists—and at times becomes synonymous with ‘modern liberty’, either politically or socially. It informs ways of life that are *broadly* egalitarian (although not always equalitarian), rather than ‘ancient’ or ‘aristocratic’.<sup>4</sup> Our freedom in equality is compared positively to the ‘slavery’ of all who came before us, who were in some way bound to polity, family, or Church.<sup>5</sup> There is obviously much more freedom for more persons, overall, to enjoy individual self-determination under the conditions of modern values. This gives individuals more reason to flee toward the bosom of modern values and away from the angry pitch forks of the patriarchy.

Nevertheless, to be modern also ‘threatens to destroy everything we have, everything we know, everything we are.’<sup>6</sup> How so? Firstly, it threatens to destroy all that has been passed to us by way of history—all, that is, which is not reconcilable with the totalizing value of equality. Any cultural practice, institution, custom, habit, thought, or prerogative that impedes equality must be reformed or removed. Corporate and natural persons are in no way excepted from this purging of history. Hyper-equalitarian regimes of national and international socialism have put paid to the lie that ‘equality’ is a respecter of persons.

Equality, secondly, threatens to extinguish prerogatives of personal identity. Excellence, unicity, biography, honour, merit—all must go, unless they can be made compatible with the perfect order and ordering of relations that equality is establishing in the world. Equality sometimes extends to extinguishing the persons themselves who have some such prerogatives. That is, when a class of persons is considered by their very existence to threaten equality, they must go.<sup>7</sup>

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<sup>4</sup> For political equal liberty, see Benjamin Constant, ‘The Liberty of the Ancients Compared with that of the Moderns’ (1819), in *The Political Writings of Benjamin Constant*, 309-28. For the social reception of this sort of egalitarian liberty, see Tocqueville on the women of America, *Democracy in America* (1899[1835/1840]), Vol II, Sec. III, Ch. XII.

<sup>5</sup> Hegel’s analysis of the master-slave dialectic looms large. But Marxists and liberals imported implicit suspicion of established authority into the analyses of the broad transformation from what we were to what we are.

<sup>6</sup> Berman, *All That is Solid Melts into Air: The Experience of Modernity*. 15.

<sup>7</sup> Since Rousseau, ‘bourgeois’ has been an insult in Western intellectual circles, and with the reception of Western socialism abroad, it became a global term of contempt. Marxist socialists, taking the hatred of the bourgeoisie as an article of faith, proceeded to attempt to extirpate that class wherever they came to power; the goal was a ‘dictatorship of the proletariat’. Their ostensible

This very imperative to equalize has become the alter-conscience of modern persons. It is constantly sharing the moral knowledge—the scandal—of inequality. Now, how could one not be outraged that life’s goods, liberty, and property are realized differently in one place than another?<sup>8</sup> The alter-conscience points to the most efficient ways by which said inequality can be purged. It is a well-directed urgency derived from a pure vision of moral order, and applied to perfect social, political, and personal orderings. That moral certitude in the service of ‘equality’ shows the final recurring danger. For, ‘equality’ is an empty set. ‘Equality of...’ all turns on what follows the ‘of’. Is it equality of resources or equality of torture, of love or of death, that are meant to be evenly distributed? This itself has warned some off overreliance on ‘equality’, particularly in political life.

For, equality is discovered to be the fire that provides the warmth and light in the modern soul. It is also the flame that can consume nearly all the furniture of the self or society as fuel. Equality is not only no respecter of persons, but it is not allied to any person’s interests, no matter how modest or lowly she might seem. The modern person is thus left in a suicide pact with the value that, she is told, is at the heart of her identity. That which guarantees her freedom could cost her life. Thus, the ‘egalitarian problem’.

### **The egalitarian mind**

So, she might ask: How can I channel the force for change that equality brings into the world, so that we might also maintain the moral, social, and political gains that equality brings? One answer is to contain the alter-conscience. The egalitarian problem is resolved for the time being in the formation of the ‘egalitarian mind’. It is: (1) a habit *preferring* equality before any other moral considerations, but not (2) to the exclusion of the prerogatives of the person. Those prerogatives include values which contribute to individual, life-long well-being of body and mind, as well as to the realization of harmless (to others), self-chosen desires. The egalitarian mind is in no small part a bulwark against the over-extension of the imperatives of equality. By encompassing the alter-conscience in personal considerations, it keeps that exacting moral knowledge from attempting to equalize at all costs. The egalitarian mind functions so that modern persons

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goal—and Rousseau’s before them—was ‘equality’. See *The Black Book of Communism*, ch 21, for more than four score pages on Mao’s bloody-soaked levelling.

<sup>8</sup> I owe this insight to Hans Eicholz.

might enjoy equality in good (alter-)conscience, while remaining unmolested by the fruits of the never-ending urge for its ever-greater realization.

### **The egalitarian constitution**

The egalitarian mind is, in turn, the personal aspect of the ‘egalitarian constitution’ (and the answer to the question: What is it like when many egalitarian minds try to live together in a political community?). A ‘constitution’ is a form of government and governance of political, personal, and social life. It is based in shared claims about the Good, and the Right, goods, and rights, among other things. This primarily involves how that the Good should be implemented in the daily lives and shared life of persons, corporate and natural. Classical types of constitutions are: democratic, monarchical, and aristocratic. Thinkers from Plato and Aristotle in the ancient world, to Rousseau and Tocqueville nearer to the modern end of history, have made use of these terms to describe the matched social and psychological orders and orderings that together form a ‘constitution’ (‘regime’ or *‘politeia’* are other words for the same thing). Ideally, the souls or selves, who are ruled by a group with, say, a democratic constitution, also share the same constitution in their own self-rule and regulation. Constitutional commonality inclines toward peace.

‘Constitution’ is a recurring theme of this introduction, as well as a motivating theme of the entire book before you. For the ancient science of politics, ‘constitution’ was a conceptual tool used to analyse the political community, how it and its members were constituted, and the relation between all those so constituted, as well as their individual and group-based relations to the political community so constituted. I take a lead from Jean-Jacques Rousseau in beginning with a more limited sense of constitution, which broadens to most areas of life upon reflection.

Rousseau presents constitution as a form of law within a political community, with branches that stretch above and roots that extend below the ground of that community. Of the four kinds of law, the final and ‘most important of all’, according to Rousseau, is:

not graven on tablets of marble or brass, but on the hearts of the citizens. This forms *the real constitution of the State*, takes on every day new powers, when other laws decay or die out, restores them or takes their place, keeps a people in the ways in which it was meant to go, and insensibly replaces authority by the force of habit. I am speaking of morality, of

custom, above all of public opinion; a power unknown to political thinkers, on which none the less success in everything else depends.<sup>9</sup>

For Rousseau, the constitution is in the heart. But it is not limited to personal psychology. Much of the general sense in which Rousseau—and in following him, I too—will use ‘constitution’ implies the ever-present material extensions of what is cherished in the heart. This involves habits, custom, public opinion, morals, values, and evaluations of the world in line with what the heart loves. In actual constitutions, ‘feeling rules’, in the sense that when one is well socialized into a given constitutional order, one will feel what one should—one values things properly and judges accordingly. And one then acts in accordance with that ‘line of feeling’ without needing another law. This is the unenforced that is nonetheless heeded. This can never be absent from the actual governance of a people or society.

However, it is rarely part of the science of politics (or the art of politics for that matter) to elucidate it. Nevertheless, in actual politics, those whom we call statesmen, just as those whom we call prophetic, operate with a sense of that shared feeling. Rousseau says, ‘the great legislator concerns himself in secret [with the constitution], though he seems to confine himself to particular regulations; for these are only the arc of the arch, while manners and morals, slower to arise, form in the end its immovable keystone.’<sup>10</sup> The study that follows could just as well have been billed as ‘the immovable keystone of modernity’. But that would have taken the image for the thing itself. I am here to describe, explain, and interpret the egalitarian constitution. Visions are for the poets, prophets, seers, and, notably, charlatans.

## **Division of the study**

In order to describe and explain and interpret what it is like to be modern, the conceptual chapters rely on a comparative analysis of three elements or partitions of modern cultural identity to their ancient counterparts. So, there are three conceptual divisions: autonomy, consent, equality. I lean heavily on the argument that personal autonomy is in fact the most important of the three. It is the lynchpin, if you will, providing the logic (moral reasoning) and

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<sup>9</sup> Rousseau, *On the Social Contract* (1920 [1782]), 2.12. [emphasis mine]. Also of interest is Leo Strauss’s commentary on why *politeia* is routinely translated as ‘constitution’, when ‘way of life of a society’ might be a more fitting rendering of its full meaning at *Natural Right and History* (1953), 136-138. He, however, prefers ‘regime’ as the rendering.

<sup>10</sup> Rousseau, *On the Social Contract* (1920 [1782]), 2.12.

content for what can become consensual moral obligations. Since equality itself is an empty set, autonomy also determines just which goods are subject to equalization. Equality and consent get a substantive chapter each.

Autonomy ultimately gets the lion's share of the attention. But I track towards autonomy, beginning with equality and then adding consent, which, when missing from equality, leaves it to become dangerous to persons. I finally add autonomy, which completes the set. Modern personal identity cannot be sustained in a world of persons based only on its own exacting standards of consent, equality, and autonomy. Since autonomy is both the lever and the lynchpin, the success of modern personal identity will turn on it. But it must remain fixed in order to be a lynchpin.

The reasons for affirming personal autonomy in this role are not self-evident in the concept of 'autonomy'. It is easily betrayed by the other two values, if not carefully construed and enacted. I demonstrate this, anyway, with examples that push each other value *toward* its logical conclusion. From there each betrays its own purported ends, requiring a return to reliance on a particular kind of personal autonomy to secure the moral system.

Modern values might be sustainable if some extra-systemic actor—God or a very powerful alien—had set some boundary conditions for autonomy (and to a lesser extent for equality and consensualism). Unfortunately, it was mostly Rousseau (and Locke) playing God in this romantic narrative.<sup>11</sup> Modern human-rights regimes have attempted to make up for this failing of modern values. They were too little, too late. The values had already shown their teeth.

## **Structure of the argument**

The structure of the argument that leads to that negative assessment of modern personhood runs as follows. The concepts of equality, autonomy, and consent explain the experience of 'being modern'. They answer the question: 'What is it like to be modern?' as a cultural identity for persons as a constitutive way of life. 'Persons' are understood to be both natural and corporate. Hence, individual human beings and certain groups. States, companies, non-profits, or other such groupings, each of which acts for unified ends in the world, are moral persons. This matches our legal and

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<sup>11</sup> Successful regimes of rights always assume an extra-systemic actor: an 'endower' that gives humans the privileges of rights. Cf. *Preamble* to the UDHR and the *US Declaration of Independence*.

moral understanding of those entities. Nevertheless, natural persons remain the type and model of personhood.

Equality, autonomy, and consent, when rightly understood, comprise both the values and an evaluative framework that is self-consciously ‘modern’. This evaluative framework manifests itself in society and personality as: modern virtues, dogmas, first principles, customs (*nomos*), and habits (*habitus*).

Equality, autonomy, and consent are shorthand for universal equality, personal autonomy, and consensualism. The three values imply one another in practice. For instance, personal autonomy is unrealizable outside of conditions broadly based in consensual moral obligations, which must be those of universal equality of persons (try to have one of these values while denying any other). The implications lead from each of the three to the others. They do so for many reasons, including an underlying philosophical anthropology.

Taken together, a phenomenology of the present is presented, wherein ‘being modern’ is a way of life for persons, both natural and corporate. Within that culture, certain things obtain, and others are precluded. Universal equality provides the single shared status of persons; consensualism determines the sorts of relations permissible between equals; and personal autonomy provides the content. It does not do this *qua* personal autonomy. Each person fills in the content as an autonomous agent, within the limits of consensualism and equality. This provides the dynamism and the limits of modern personhood.

### **A note on pronouns**

The cold civil war about pronouns rages on, with many ugly and grammatically incorrect phrases replacing the traditional ‘he’, ‘his’, ‘him’, which although grammatically male, was democratic and large enough to ‘contain multitudes’ in Walt Whitman’s famous phrase. That tolerance to ‘otherness’ has not saved it from the levelling impulse; and now it is all but *verboten*. In this study I hope to skirt round the issue by employing grammatical gender in the service of the distinction I am hoping to draw between that which is modern and traditional ways of life. When I speak of the generalized modern person, I shall use ‘she’, ‘her’, ‘hers’; in speaking of the generalized traditional person, I shall use the male equivalents. All newer pronouns that attach to other ways of being in the world are foregone in the single-minded goal of clarifying the main point of this study. However, the romantic personhood that I argue to be the basis of the value of personal

autonomy has recently fully flowering in ‘trans’ issues, preferred pronouns, and in the mainstreaming of performative understandings of gender. Those are merely extensions of latent possibility in the doctrine of the ‘true inner self’ that is at the heart of self-understanding. Thus, in themselves, they warrant less mention than their ultimate source. The reader can perform the extrapolation.

### **Ancient vs Modern**

As to the question of the *historical* division between the modern and everything else that came before, I reject the tripartite division of ancient/medieval/modern, wherein the Renaissance is the breach in the ancient and medieval consensus that brings about the modern.<sup>12</sup> I hereby also reject the conceptual pattern as normative, namely, that these are the stadia that cultures, say, Islamic ones, must pass through in order to modernize. The Renaissance cannot be ignored. But it plays a leading role only under Whig interpretations of history, wherein one ‘studies the past with reference to the present’.<sup>13</sup> Or even more, where the value of the past is indexed to the present. Telling the story of historical movement as a progressive flight from ignorance and the ‘dark ages’ to the enlightened modern age – the grand *now* – is untenable and generally to be avoided. It does violence to the character of history in order to ensure that it all *had* to lead to now. And ‘now’ is conveniently indexed by the person making the argument. For instance, when the Bad Old Days are decried in contemporary social commentary, it is often with the division of 1968. *Now* women have liberty, blacks have the vote, etc.; *then* it was all dark and wicked. Before 1968, the progressive historian looked perhaps to 1789 or 1848 or 1948, when Eleanor Roosevelt invented human rights. One literary example is from Bram Stoker’s *Dracula* (1897), which illustrates that this indexing is nothing new: ‘It is the nineteenth century up-to-date with a vengeance. And yet, unless my senses deceive me, the old centuries had, and have, powers of their own which mere “modernity” cannot kill.’

The bipartite distinction between the ancient and the modern seems to align better with the continuance of the classical and Christian inheritance in intellectual life, until relatively recently, than the tripartite distinction would.

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<sup>12</sup> Heinz Heimsoeth, *The Six Great Themes of Western Metaphysics and the End of the Middle Ages*, wherein he presents the bipartite division.

<sup>13</sup> ‘The Underlying Assumption’ in Herbert Butterfield, *The Whig Interpretation of History*.

For example, in the uninterrupted education of elite boys in classical military history from time out of mind until the generation immediately following the First World War. Lately, that education was aimed at producing ‘Homeric Christians’.<sup>14</sup>

The bipartite division also aligns with the self-conscious experience of being modern, as compared to the unselfconscious experience of being any of a variety of pre-modern existences. For, pre-modern Europeans would have understood themselves through many other categories, none of which maps directly onto the geography that is ‘modern(ity)’ or any other ‘meta-’ way of being in the world. Being Christian or being Jewish, being the servant or master of a person, being a descendent of a family, tribe, denizen of a region or land, farmer, baker, knight, or wife—none of these are corollary to ‘being modern’.

Much like early Protestantism, the modern age—and the modern wherever it appears—should be characterized as a protest movement. In that it is also a *reactionary* movement, and one that helped to (re)define the thing it is reacting against, ostensibly by adhering to the roots. ‘The modern’, rather than being an aspect of the world that is always eventually found by those who would but seek, or a long-intended destination finally arrived at after nearly interminable suffering and toil, is a negation. In its rejection of the ancient – wholly or partially – it is a rejection that usually includes at least the older cosmological and epistemological orders. In taking this attitude toward that which comes before, modern partisans help turn ‘the ancient’ into a distinct body of doctrines with its own Canon. Otherwise, what constitutes the Canon would perhaps have (always) just remained a common, ever-evolving, cultural inheritance of a certain civilization, in this case North Atlantic Christendom. Instead it came to be seen as an ossified collection of sources.

The bipartite historical divisions into modern and pre-modern, or modern and ancient, coincides with conceptual binary divisions of modern and non-modern culture, or, in the same way, modern and ancient culture. When modernity is understood not only as an epoch but also as a culture, either post-modern or non-modern cultures can be opposed to it. It can float

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<sup>14</sup> A. A. M. Kinning, *Aristocracy, Antiquity and History: Classicism in Political Thought*, details not only the role of Classical patrimony in education up to the cultural watershed of the First World War, but also how guiding political notions were by-and-large Classical in their make-up. ‘Homeric Christian’ was William Gladstone’s personal ideal. See Melvin Schut, ‘The Homeric Christian: Gladstone’s Politics of Prudence’, *The Clarion Review*.

independently of the age it defined. Such opposition may be in the character of one or the other culture's self-understanding. But a given culture need not be 'post-modern', just because its forms are defined in reaction to modernity. Think of the Amish in this respect. Many non-modern cultures have nothing whatsoever to do with modernity: for instance, uncontacted tribes of the Brazilian Amazon. So, there is the historical division of ancient/modern, and the standing division between modern and everything else. To be clear, it is not only the party of the modern that has set up this opposition, but also the character of the content of modern values, which, when taken together, are exclusive, exacting, and incommensurate even with the values that gave birth to them. More on that in the following chapters.

Direct opposition in a bipartite division is most useful to this study in defining what it is like to be modern. Having two terms to compare simplifies the discourse, making differences easier to spot. It should therefore allow for better understanding of them, than if I were trying to compare three general forms. There is precedent in this sort of didactic and dialectical simplification. Louis Dumont's *homo hierarchicus vs. homo aequalis*, Henry Sumner Maine's status vs contract, Alexis de Tocqueville's democratic and aristocratic regimes. All of these are shorthand for changes that could be described just as fairly as civilizational, epoch-making, constitutional, and anthropological.<sup>15</sup>

The comparative approach operates at the level of the leading conception, but it will also be carried down into the chapters about the cardinal modern values. To know the nature of something, one ought to know what specific difference makes the thing what it is. Knowing what sort of thing it is helps one to look for the appropriate types of differences that might indicate its nature. Culture, ages, identity, values: these are all notably fuzzy areas of discourse. Philosophers do not venture into them expecting to emerge with great clarity. However, they do hope to clarify and distinguish what they can. In that hope, I present in each section a composite of modern understandings of equality, autonomy, and consent. I have also chosen a composite description of a non- or un-modern corollary—usually an opposite in some way—of consent, equality, autonomy, in order to come to what is distinctly modern about them. Whenever the concept was anachronistic as applied to

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<sup>15</sup> Louis Dumont, *Homo Hierarchicus: Essai sur le système des castes*; Maine (1966), *Ancient Law, Its Connection with the Early History of Society and Its Relation to Modern Ideas* (1861); Tocqueville, *Democracy in America* (1835). Steven B Smith, in the chapter abstract to *Modernity and Its Discontents* (2016), makes a bipartite division, with modernity as 'a mentality that celebrates scientific progress, constant change, and universal ideals of national sovereignty and human rights'.

antiquity, for instance in the case of ‘autonomy’, I have chosen a near-equivalent opposing concept, such as ‘the virtuous citizen’. Sometimes a concept such as equality does not have conceptual opposites that function as values. There is no culture that treats inequality or hierarchy as a value per se. Ancient Romans did not argue for its intrinsic goodness in the way that contemporary egalitarians argue for the intrinsic goodness of equalized relations between persons. The Romans would argue from tradition, appealing to values of nature, service, duty, and so on. But when composed as a vision of order, they do form an appropriate opposite to that which moderns mean by equality, including all that they imply.

### **De-sociologizing the conversation**

There is only one academic discipline dedicated to understanding what modernity is. It bears the misleading name of ‘sociology’. Making sociological sense of modernity is thus a tautology.<sup>16</sup> It could be said that sociology is distinguished from other disciplines by asking (or at least answering) the questions: ‘What are the salient notions of inequality and why do they exist?’ and ‘What are the salient notions of social change and why do they exist?’<sup>17</sup> A discipline could also be set apart, perhaps uncharitably, by the questions which cannot be asked. Those set one-sided boundaries on enquiry, and thus serve to define the blind spots of the discipline. ‘Can sociology address the reality of the person as moral entity?’ is one such question. If not, why should its terms and concepts, obsessions and blind-spots, taboos and fetishizations, stand in judgment and condemnation of the rest?

Our age is heavily politicized, ever more so since we were told by a generation of cultural Marxist scholars that the ‘private is political’. We are political, but we do not generally obsess over constitutional principles such as the *Trias Politica* or the proper role of executive power. Rather, we have

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<sup>16</sup> Representative books are: Max Weber, *The Protestant Ethic and the Spirit of Capitalism*; Peter L. Berger, *The Sacred Canopy*, *The Homeless Mind*, and *Facing up to Modernity*, which combines sociological essays and personal reflections on preserving traditional institutions in spite of modernity, esp. ‘Marriage and The Construction of Reality’; Daniel Bell, *Cultural Contradictions of Capitalism*; Jacques Ellul, *The Technological Society*; Philip Reiff, *The Triumph of the Therapeutic*.

<sup>17</sup> From my private conversation with American sociologist Michael Kennedy in Warsaw. Robert Nisbet’s *The Sociological Tradition* (1966) invigorates the view of the golden age of sociology between occurring 1830-1900 with the main areas of interest being community, authority, status, the sacred, and alienation. That would partially counter Kennedy’s understanding of the problematizing of inequality by sociology. The distinction could be between a golden age and the eventual decadence of the discipline.

learned to think about all human relations by borrowing notions of human relations from Marxism, and late nineteenth-century social thought, especially ironic borrowings from Nietzsche. Weber, Durkheim, Freud, and Mill, as well as a separate set of, now long-forgotten, second-rate thinkers' ideas fill our heads. When feminists of the 'Second Wave' tried to make the private/personal political/public, they were inserting borrowed language from sociology and social theory into the conversation, which had been passed into our time by the likes of Jean-Paul Sartre and Herbert Marcuse. Feminists also introduced their own neologisms for relations which they were interested in destroying: 'the patriarchy', 'the problem that has no name', the 'male gaze'.<sup>18</sup> In politicizing our age, we have taken into our various and sundry relations the language and concepts of a discipline obsessed with the causes of inequality and social change. Now, like a soldier whose damaged ears permanently hear the ring from the blast that damaged them, we find it hard to hear anything else, no matter where turn our ear. In doing so, we have over-sociologized our understanding of change, power, the sources of (in)equality, identity, and human motivation. We measure everything with a ruler, even the sea.

This sociological language has played well with modern values of consent, equality, and autonomy, for it shares most modern anthropological assumptions. But it has been expressive of our prior convictions to those values, rather than indicative of a new way of organizing social life and society. Take hyper-sensitivity about inequality. It comes out of the dogma that equality is the original position. Equality should thus be the default position as far as possible. A theory of social order that promises to (re-)enforce equality or decrease inequality is a fitting friend of egalitarians. And much of the sociology and social theory has been just that, a complement to modern values, firmly held. Sometimes it serves as a more sophisticated statement of what the world should look like when autonomous egalitarians form societies and governments (in its Marxist forms, it excludes consent during the transition to the stateless state). But usually it is a mere handmaiden of modern values.

Modernity teaches particular ways of being a person. I stand against Leo Strauss's interpretation, that modernity has meant positivism, historicism, and

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<sup>18</sup> Cf. Simone de Beauvoir, 'Myths', in *The Second Sex*, esp. 163ff for her Marxist *mythos* about patriarchy. See also Betty Friedan, 'The Problem That Has No Name', in *The Feminine Mystique* (2013 [1963]), 57-78.

nihilism (i.e., that all is power), a complete fact-value distinction.<sup>19</sup> Modernity is bound up with the values and virtues of autonomy, consent, and equality, as what Voegelin would call a ‘political religion’, which is political but also really a religion.<sup>20</sup> Sociology informs us of some of their outworking; however, it has so far failed to provide us either with an account of how they emerged (preferring ‘salient notions of social change’ to psychological or nomadic change), or with an account of why they continue to compel and obligate modern persons (preferring instead to focus on ‘salient notions of inequality’ and their genealogies). Said differently, sociology lacks a sound philosophical anthropology. It does not even realize its need of one in order to explain modernity. That its categories are still the go-to ways of understanding our age is an unfortunate historical by-product that I seek to help overcome. In the conclusion of this study, I offer a modern anthropology based in the three values, which applies both to natural and *mutatis mutandis* corporate persons. This is a philosophical answer to the received culture of sociology, which imagines it has explained all of Shakespeare after having lopped off the final scene of *Hamlet* and examined it. The person of modern values is another way of speaking about the modern constitution. And once it is exposed for examination, its relative merits can be assessed.

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<sup>19</sup> Leo Strauss, *The City and Man*, 6-11.

<sup>20</sup> Cf. *The Political Religions*, in *Modernity without Restraint*, 7, wherein the editor, Manfred Henningsen, claims Voegelin ‘rejects the conceptual nominalism that equates religion with the institutional churches and politics with the modern secular state...all political order is justified and legitimized through symbolic narratives that connect the respective society or movement with a larger order of things.’

## **Part I: What is it like to be modern?**

This part of the study expands on the introductory remarks by: locating, in Chapter 1, the axiological analysis that follows in the life of modern persons; offering, in chapter 2, initial definitions of the core modern values as well as their relation to universal values, and, in Chapter 3, explaining that ‘values’ implies much more than the common use of the term suggests.

### **Chapter 1: Taking the ‘internal point of view’**

Not so long ago, part of humanity woke up having become ‘modern’ sometime during the long dark night. Now, in the clear and certain light of day, they found themselves living in ‘modern’ ways, with distinctly ‘modern’ attitudes, habits, and institutions, in properly ‘modern’ cities. They were *being* modern and *becoming* more modern by the minute. It was wonderful. Earlier generations, who also used cognates for ‘modern’ and ‘modernity’, tended to associate the term with decadence, a fall, and an inferior place from that which came before. The new usage saw good both now and in that which is to come. The further away we got from the past the better.

Something had changed, perhaps irrevocably. When ‘modern’ became a way of life for individuals and institutions, it also became a habit of mind for individuals and institutions. ‘Modern’ could now be a compliment, carrying values and evaluations: ‘What a modern idea!’, one man now says to another. Another warns: ‘We can’t do that, we’re moderns!’. ‘Those nations and men (or races) are not yet *modern* like us’, one says, about the yet-to-be civilized, the colonies and the enslaved pagans overseas, or even slaves at home. (This division helped ease the modern conscience which routinely betrayed its own values by continuing even to tolerate slavery). When reform is needed at home one says: ‘Our law is not modern enough! It must keep up with the times.’

It was certainly not everyone or even most of the inhabitants of North Atlantic lands who had become modern. And reactions—including violent reactionary movements—kept many from taking up the modern mantle. There were periodic Luddite protests resenting ‘modern machines’. There were discontents reacting to the ‘modern pace of life’. There were reactionary cranks lamenting a lost age of knights bringing their ribbons to ladies-in-waiting. But enough of the population did embrace the changes that the age became named after their way of life.

What happened? Did the time just change? That is a common enough way to speak about it. And it is also vacuous of meaning. Even our best writers have been guilty of ascribing such power to time. In *The Winter's Tale* Shakespeare tells us that it is in Time's power to overthrow law, 'and in one self-born hour / To plant and o'erwhelm custom.'<sup>1</sup> Time itself, of course, has power to change nothing. Things do change 'in' time, or better, 'with' or 'over' time and, culturally (and in another sense altogether), 'with the times'.

Although a measure of change, time is not very adept at measuring the sorts of changes that matter most to persons. These include changes in ways and modes of life, culture, custom, mores, law, governance, constitution and regime, self-understanding, obligations, the source of obligation itself, the identity of God or gods, goods, the good, right or rights, and nature. Even though they cannot but occur 'within time', these changes are caused by means independent of time's strictures. This is so, even as they are intractably bounded by time. For, they are *caused* by human action and activity, rather than by the movement of time.

These causes consist in countless activities, compiled and averaged by the seemingly spontaneous ordering that emerges within any exchange amongst rational creatures, acting on their understanding of their own self-interest rightly or wrongly understood. These are creatures who act for *reasons*, rather than being merely 'caused' in a deterministic sense. Unless otherwise indicated, throughout this book, I will use 'dialectic' and 'dialogue' loosely to mean just this sort of relation between and among rational beings, rather than, respectively, the more limited sense of a Platonic or Hegelian dialectic, or the general sense of a mere exchange of words on a given 'stage'. And I shall assume that changes happen because of activity in the world, much of which is caused by persons. 'Person' will mean an individual being with powers of will and reason, as well as a centre of responsible moral agency. The position that persons are metaphysically central to any account of history or philosophy is here uncontested.

Returning to the emergence of 'modern', and the role of 'time', already in the twelfth century *modernitas* was being used by historians to refer to one's own time as part of a succession of ages.<sup>2</sup> So, there was precedent for marking 'now' as 'modern'. But this new 'modern' was wholly different. It involved more than just the juxtaposition of the ancients and us, the

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<sup>1</sup> Shakespeare, *Winter's Tale*, 4.1.7-9.

<sup>2</sup> 'The distinction between "ancient" and "modern" times...became common in the literature of the papal party.' H. J. Berman, *Law and Revolution*. vol 2 112.

moderns. It laid certain particular claims. ‘Modern’ now became more than a description of ‘our time as opposed to all others before’. It was an assessment: for, now ‘[i]t was the best of times’. Even so, more than half a century before Charles Dickens popularized that phrase in the opening lines of *A Tale of Two Cities* (1859), modernity had shown the lesser angels of its nature in building ‘dark Satanic Mills’ and engaging in international chattel slavery.<sup>3</sup> It was also ‘the worst of times’. I am concerned here with interrogating the sense of ‘modern’ as ‘the best of times’, the optimistic vision of the changes and hope for the future—the proud position of being a person who is free, and self-directing, amongst other beings who are also free and self-directing.

What then is ‘modern’? First, that which is apparently a simple temporal demarcation for most speakers of modern languages, masks an anthropological claim about the world we inhabit and come to shape, as it always already shapes us. More poetically: ‘We fill pre-existing forms, and when we fill them we change them, and are changed [by them].’<sup>4</sup> Plato and Aristotle spoke—sometimes approvingly, sometimes not—of the ways of the ‘men of old’ as opposed to ‘those of today’. ‘Modern’, when interrogated, now denotes less a fixed historical period than a set of conditions that are constitutive of the way of life of the present generations, and the type of person well-suited to that way of life.<sup>5</sup> Since it has been dominant for so long, all other ages dominated by different ideologies are ‘time out of mind’. In our minds, our own cultural ancestors are as culturally far away from us as Maori tribesmen. And so ‘modern’ also becomes synonymous with being an ordinary person.

Self-consciously modern persons are everywhere but they are known not to be ubiquitous. One needs to be self-aware enough as a modern person to know that one’s cultural identity is not synonymous with ‘the way humans have always been’. Most moderns know that at least some people are not like us. They inhabit the dark past or far-flung tribal places of the world with unpronounceable and unpronounced names. This general sense of ‘modern’ as ‘us’ becomes a particular idea(l) in context. At *any* given time in our age we look at our collective achievements and failures and works of culture, or those

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<sup>3</sup> William Blake, ‘And did those feet in ancient time’ (1808).

<sup>4</sup> Frank Bidart, ‘Borges and I’.

<sup>5</sup> Aristotle, *Metaphysics* I, 5, 986b8, and *Generation & Corruption* I, I, 314a6, commenting on the pre-Socratics; Plato often criticizes the forgetfulness of the present generation, as, e.g., through the mouth of the Egyptian priest teasing Solon in *Timaeus* 22b-25d.

of recent generations, and we establish a relation between them and us by calling one or both of them 'modern'. Sometimes this is a relation of approbation, and at others of censure.<sup>6</sup>

In establishing such relations, we also draw a distinction (that I shall take advantage of in my analysis): everything 'modern' has a counterpart, and probably an opposing part, in that which came before, in 'ancient' times, or in 'middle' or 'dark' ages. Those are either contributors to that which finally came to fruition as 'modern' (precursors, allusions, foreshadowings, e.g. 'the first human right', 'the earliest democracy'), or they were hindrances to modernity's development. 'Modern', then, is a shorthand way of communicating 'the way we have been lately'. This is both yet another demarcation of our age and a deeply anthropological sense of 'modern'. The latter is my ultimate concern, the anthropological sense. However, it is usual in discussion of the former to come to identify the latter.

### **Whence 'modernity'?**

There is a popular enough debate in intellectual circles about when modernity began. The way the question is answered usually indicates that which the author assumes modernity is, and whether he judges it a good or bad thing. Two schools of interpretation on the identity of modernity should be mentioned here, for each commits an error I try to avoid. My understanding stands directly against the first but only obliquely against the second; often I move in the same direction as the latter. Both seem to confuse the age in which modernity dominates, and the accidents of that age, with the definition of 'modern'.

The first school includes Alexis de Tocqueville, Max Weber, and Karl Marx. It sees the roots of modernity stretching back much further into the past than is commonly assumed. Ideas of democracy, capital, ownership, right, are found to have prior provenance, as did practices like bourgeois city life and free trade. Thus, modernity began where those first emerged, at various points identified as sources. This 'long view' of modernity finally culminates in the 'modern age', perhaps coming into its own sometime in the seventeenth-century reformations, the French Revolution, or with America's advent, or perhaps with industrial capitalism. That was when 'we all' became

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<sup>6</sup> Leszek Kolakowski, 'Modernity on Endless Trial' in book of the same name (1991) discusses the difficulty of defining the term especially within the age that fits the definition, 3-13.

modern—or at least ‘most of us’. Whether the thinker assesses its advent positively or negatively is, as of yet, beside the point.

The second school understands modernity—in the cultural sense and *broadly received*—to have begun much later, as late as the First World War. It sees modernity as a great break from the Classical inheritance, especially in education and statecraft.<sup>7</sup> There were inklings of modernity before that, but one cannot really speak of modernity until it becomes a great cultural habit and overtakes the older customs and habits that would come to be called ‘pre-modern’. The change was sudden but not total. It affected the elites first and most, but eventually trickled down to affect everyone else. This watershed did not finally inundate traditional culture until the generation of 1968 grew up and began its long march through the institutions, beginning with their *almae matres*. They were the first generation raised without a non-revolutionary generation parenting them. Their grandparents had seen or were raised in the great disruption of World War I. Their parents were products of World War II. Their goal was to escape a culture, nay, a civilization, that could produce such destruction as trench warfare and death camps at its highest levels of sophistication and development.

I neither deny any such break nor its civilizational significance. And I am inclined to throw my hat in with the latter school on most accounts. But I am less concerned with *when* the modern age came about, than with that which makes up modern identity, or ‘how we are now’ or ‘how we have been lately’, no matter where it emerges or will emerge. Focusing on the content of that which we consider modern allows us to treat it on the level of principles, ideas, and the like. We are then prepared to find it active in nascent and partial forms in times and places where it might otherwise be unexpected or impossible, that is, if it were deemed to be the possession of just one age. We might find it in remarkable persons in Periclean Athens, Cicero’s Rome, Celtic Britain, Ming Dynasty China, or yesterday’s Mumbai. One might be taken for a madman rather than a ‘modern’ in such contexts.

I contend that is possible to have been ‘the way we are now’ before the modern age, on a personal level or in small groups, such as the *philosophes* of the Enlightenment salons. So long as we define our age in terms of the values it prizes and the virtues it practises, there were moderns before modernity. In fact, there had to be moderns before modernity. Otherwise, how did it begin?

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<sup>7</sup> A. A. M. Kinning, *Aristocracy, Antiquity, and History: Classicism in Political Thought*, ‘Classicism, Romanticism, and Modernity’, 303ff.

One would have then been modern in terms of valuing consent, equality, or autonomy as core moral values, and attempting to live according to them.

However, one could not have had the egalitarian constitution. For, to be a constitution requires an entire form of government and governance, both political and moral, social and personal/psychological. Said differently, the modern age begins when the constitution becomes 'egalitarian'. What that means I describe in terms of a specific 'mind' becoming dominant. This mind has a conscience that is committed to realizing equality of persons, coupled with a sense of its own unicity (autonomy), and the unicity of all other persons. So that these unique persons can realize themselves in the world, and so that they do not destroy one another in the process, this mind demands consensual obligations from other similar minds rather than command. Thus, contract becomes the preferred manner of organization of social and political life. The connections go on, and I explain their outworking in the final section of the book.

## **Open questions**

The 'modern age' has been our own age for several hundreds of years. We are not wholly ignorant of it. In no small part that is because the ink, spilled in trying to tell us what and who we are, is immense.<sup>8</sup> Yet we still lack definitive answers to definitional questions: What is modernity? What is modern man? What divides the ancients from the moderns? What divides the moderns from everything else? These are all questions homing in on the 'nature' of modernity.

But they also include normative questions about modern life as that which moderns call a lifestyle. Their predecessors might have called it a culture or constitution. Is this lifestyle defensible as a good way of life? Is it synonymous, even, with the good life? Is it justifiable on its own terms? These questions bridge the epochal and anthropological senses of 'modern'. For, they ask not only about the modern age, but thereby about the values that dominate and define that age—questions which could presumably have quite a different life if they were instantiated in another age, with its own historical contingencies. Said differently: modern values do not constitute all that has made modernity.

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<sup>8</sup> There is a literature in all the human sciences as well as literary criticism. For a short sociology list, see: Introduction, notes 15-17.

For that reason, interesting as answers would be to those questions, they might not be answers to the most germane questions about modern values. For, those questions preclude the most existentially relevant area of inquiry for modern persons. This area also forms the problematics of modernity, opened up in the question: What is it *like* to be modern? The answer in the experience of being modern is the least often generalized sense of ‘modern’, even as evidence for that sense is closest at hand. Exceptions exist in the fine and popular arts. The modern novel and theatre are two places where the fine arts routinely depict what it is like to be modern existentially. Think of Albert Camus’s *La Peste* (1947) or Arthur Miller’s *Death of a Salesman* (1949). In popular culture, (confessional) folk music has also gone a long way in this direction (e.g., Leonard Cohen). But on the whole, moderns learn about themselves from a third-party perspective, by way of answers to academic, scholarly, or popular forms of the questions above. Third-party answers necessarily miss the most striking change that modern values have brought about, namely, the revolution in what it *means* to be a person.<sup>9</sup>

To answer the third-party questions, one does not actually have to be modern. If Aristotle were dropped into our midst, he could begin to draw up answers by empirical methods and careful taxonomies and definitions. Since he, too, believes that ethics is anthropologically anchored (rather than cosmologically or theologically anchored), he could find easy inroads into understanding modern individualism as social, psychological, and political phenomena. And we might imagine that a subtle mind like his would present a clear *definition* of ‘modern’, in its many senses, that was both precise and accurate.

The experiential question, ‘What is it *like* to be modern?’, however, turns on the verb ‘to be’, and on beings who exist in just that manner, or ‘like that’. In a certain sense, it could fit within the ‘how’ of the Aristotelians. Yet, it also demands an answer from a *subjective* point of view. It is almost to ask how it *feels* to be modern, where ‘feel’ would include the whole affectual repertoire, and the normative understanding of that which one *should* feel in given situations.

Modern life has individual persons—and their lived experience—at its metaphysical centre. In a very modern way, the question as to what it is like is

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<sup>9</sup> I appreciate the shared space occupied by existential phenomenology and Wittgensteinian philosophy, exemplified in sociology by Anthony Giddens, *Modernity and Self-Identity: Self and Society in the Late Modern Age*, on the meaning of modern personal identity. Cf. ‘The Self: Ontological Security and Existential Anxiety’, esp., 36-42.

addressed to and answerable by an individual modern person himself—and, indeed, *herself!*—namely, by you and me. It is also a question which Aristotle would *in principle* initially have no way to answer, not in the chief sense that it asks to be answered. Aristotle would most assuredly be both non-modern and un-modern. Perhaps soon enough he would become anti-modern. His entire disposition, his constitution, is otherwise.

However, if he were to ‘convert’ to modern cultural identity (and presuming such conversion is possible), he could then eventually describe it from within, explain its contours, and interpret the world from its purview. What would it mean to *become* modern? That is another tack towards the same answer, namely, to the leading question of this part of my book. This question is answerable by all kinds of persons.

It is also answerable on behalf of corporate modern persons, be they groups or nations, tribes or (academic) communities, but only from *within* such collectives, or *as* them, meaning, on their behalf—speaking *in persona*... ‘What is it like to be a modern polity?’ is one such variation on the question at hand. And again, it would not be possible to have enough inside knowledge properly to answer that question without the experience of being a (part of a) corporate modern person.

### **Not a genealogy of values**

There are many books that describe ‘how we got here’ anthropologically.<sup>10</sup> Although a fascinating topic in itself, it is not the topic of this study. I begin ‘here’ and attempt to describe and explain what it is like. I have tried as much as possible to address the provenance of values with which this study is concerned, namely, those attaching to personhood in its historical development in the West, and consent, equality, and autonomy as broadly received. But I have paid attention only to those historical and genealogical elements minimally necessary to alert the reader to relevant phenomena. Meaning, I want to provide the philosophical tools with which one can distinguish ‘being modern’, at the level of persons, from being anything else.

Such differences are revealed to be ‘modern’ habits of mind and valuation, and action in kind, personally, socially, and institutionally, rather than the fact that modern persons tend to drink pasteurised milk and use pencil sharpeners; and that they are organized and regulated in their milk-drinking and pencil consumption by a corporate and governmental

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<sup>10</sup> E.g., Charles Taylor, *Sources of the Self: The Making of Modern Identity; A Secular Age*.

management class, so much that ‘in modern society there is no other leadership group but managers.’ The knock-on effect is that ‘[i]f the managers of our major institutions, and especially of business, do not take responsibility for the common good, no one else can or will.’<sup>11</sup> Again, ‘modern’ is understood as a culture more than it is as an epoch, age, ideology, or set of ideas – even as it is the dominant culture of our modern age.

Like classic social theorists, my effort is to present a comprehensive view of man and society which is ultimately inseparable from my ‘interest in understanding the condition and the prospects of [my own] age’. The old lesson that ‘all deep thought begins and ends in the attempt to grasp whatever touches one most immediately’ is my touchstone, as it similarly was of those whose names I cite as authorities along the way.<sup>12</sup>

### **What of the ‘post-modern’?**

Some have called our more recent decennia ‘post-modern’, to the point where the words have fused into the neologism ‘postmodern’. Personhood, values, literature, and art are all now analysed in terms that are supposedly consonant with this epoch.<sup>13</sup> I reject the claim that ‘post-modern’ is a discrete identity, either of persons or of this (or any) age. It is undeniable that there is a discernible and shared phenomenon in literature and cultural criticism, literary theory and even popular culture that is referred to as ‘postmodern’. Nevertheless, ‘late’ or ‘mature’ or ‘crisis’ modernity would be better names for it.

In the ‘postmodern age’, modern realities, values, evaluations, habits, and practices, still obtain, albeit sometimes in accentuated or extreme forms: a ‘radicalising of modernity’, which is ‘unsettling’.<sup>14</sup> In any case, ‘modern’ is still the point of reference for its own reflexive analysis; and its purported cultural content is still the point of departure. Insofar as consent, equality, and autonomy are essential to anything calling itself ‘postmodern’, they are extensions of modern values. I shall make this clear in the chapters that follow.

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<sup>11</sup> The main proponent of understanding management culture as modern culture, Peter F. Drucker, in *Management: Tasks, Responsibilities, Practices* (1973), 28.

<sup>12</sup> Roberto Mangabeira Unger, *Law in Modern Society: Toward a Criticism of Social Theory*, 38.

<sup>13</sup> For a careful analysis of the basic meanings of ‘post-modern’, which I follow, see Anthony Giddens, *The Consequences of Modernity*, ‘Modernity or Post-Modernity?’, 45-54.

<sup>14</sup> Anthony Giddens, *The Consequences of Modernity*, 52.

From the point of view of the self-consciously modern, it appears that we have arrived at ‘the end of history’, ‘the last men’. For them, there is indeed nowhere else to progress to. We are told as much with similarly-titled books in the Hegelian or Nietzschean traditions.<sup>15</sup> Even the postmodern itself does not posit anything *necessarily*—i.e., logically—‘after’ the modern. That which is ‘post’ either *arrives* after or extends ‘beyond’ the ‘various institutional clusters of modernity’.<sup>16</sup> And it could be many things or indeed *anything* that fulfils that criterion. Postmodernity, too, is light refracted through the lens of the modern.

### **Aren’t these just Enlightenment values?**

What we *actually* are is not ‘post-modern’ but ‘post-Enlightenment’. Although the two are often conflated, ‘modern’ is not reducible to ‘Enlightenment’ in any straightforward way (nor is the reverse derivation possible). Yet, the ordering of the concepts would seem still to need to be the other way around. Their relation is not one of derivation but extension. Enlightenment is an extension of some of what is modern. The most commonly understood forms of Enlightenment rationality, for instance, involve intense adherence to modern values of personal autonomy of enquiry, even to the exclusion of other values such as universal equality and consensualism. Think of Galileo as the secular martyr for the cause of autonomy of enquiry that Descartes and Bacon were later to champion (each in their own philosophical idiom). While equality is present in the doctrines of many children of the Enlightenment, the elite cadre of thinkers who outlined that which Enlightenment was to become found it hard to include humans who were blind to reason in their own class. Thus, slavery was routinely permitted even in the homes of leading Enlightenment figures. Slavery is almost the epitome of a non-consensual relation. But Enlightenment thinkers were also not always friends of consensual government, for instance, as democratic self-governance. For, the common man is unwise and unlearned, and needs to be guarded against. Universal values reify and promote the common man. It is he rather than the *philosophe* who is able to answer the question: ‘What is it like to be modern?’

There is a second divergence between Enlightenment and modern ideas that prevents us from talking about them as coterminous. Modernity

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<sup>15</sup> Most famously by Francis Fukuyama, in *The End of History and the Last Man* (1992), which has as its premise that the fall of competitors to liberal modern values represents the triumph of liberalism, and the end of the dialectic of political development.

<sup>16</sup> Anthony Giddens, *The Consequences of Modernity*, 49, 52.

overtook an older philosophy of freedom from Christianity. The Enlightenment was much more beholden to determinism. It was actually reaction to some Enlightenment materialism that reinjected spiritual freedom into the discourse. Not only had both Luther and Calvin purged natural spiritual freedom from parts of the theological and philosophical discourse, but the natural sciences had also removed it from discourses about the material world. Rousseau is a case in point of the reaction against both theological and scientific determinisms. Amongst some Enlightenment philosophers, the former was denied since the latter was thought to account for everything: only material determinism was needed. Compare Rousseau's essentializing of liberty in the definition of man, standing nearly *contra mundum*, to 'the human mechanism' of La Mettrie.<sup>17</sup>

It is difficult to see how one gets logically from a mechanistic and deterministic account of the world to 'free and equal citizens' of the modern constitution. Both freedom and equality are precluded by material determinism. The scientific discourse begun in a coarse form in the seventeenth century was eventually to result in an all-encompassing theory of evolution, published in 1859. Modern values, unlike their Enlightenment forbears, have always avoided affirming the psychological and social consequences of the natural sciences in their Newtonian and Darwinian idioms. In 1859, the work that would be a capstone on Rousseau's theory of autonomy, preserving it in a curbed form for liberal democratic men, was *On Liberty*. Enlightenment science was not denied in that work or others like it. The purported implications were just ignored by moderns.

Moreover, looking at the last two hundred years, political programmes with terms like 'evolutionary' or 'Darwinism' in their names were not the driving forces in freeing the slaves, emancipating women, extending the franchise, and replacing status with contract in the market and society. Changes that are distinctly modern, in the sense in which I am using the term and in its common moral sense, have not been in line with nature. For, consent, equality, and autonomy are not values that can be found in nature. The badger did not survive its less well-adapted near-ancestors because it was more autonomous. Modern values are set up in direct opposition to at least two pillars of the Enlightenment that descend from its materialism: determinism and a hierarchy of capacities that has resulted from material history. Radical feminism, a very modern movement, denies 'essentialism'. That chiefly means essentializing the incidental. Nature is incidental;

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<sup>17</sup> La Mettrie, *L'homme machine*, translated as *Man a Machine* (1748) and *Machine-Man* (2009).

autonomy is essential. Thus, ‘biology is not destiny’. Women are free to forego genetic fitness and species-selves as their chief virtue and way of belonging. It is not only *contra mundum* but deliberately *contra naturam* on an Enlightenment understanding.

The third divergence between Enlightenment and modern ideas is in philosophical anthropology. This is related to the anti-determinism just discussed. Rousseau’s ploy for a free community of equals was based in a general sense that our morals have not been improved by sophisticated, scientific accounts of our nature. Quite the opposite. These accounts have led us away from our more intimate knowledge of how to be self-sufficient in the world, both as individual animals and as a species. They have annihilated our autonomy through their false authority. We cannot exercise self-rule, because we no longer know ourselves—again both individually and as mankind. Casting man as a mechanism in a world devoid of divine intention, the Enlightenment had to deny the unicity of the individual. Said differently, each man is not a person but an example of a kind of sophisticated animal. There is no ‘deep self’ inside you, besides your illusion of that self. There is no ‘personal’ identity that cannot be explained (away) in terms of material causality. Modern values, and the constitution that rests on them, are set up in Romantic opposition to the de-personalization of the world that the Enlightenment brings on. It bases this opposition on the experience of the self as real, personal, unique, and dignified. Whereas the modern constitution is an instantiation of modern values, which have as their immediate predecessor Christian humanism, Enlightenment values are explicitly anti-humanist.

This theme and those that brought me to it recur below. But I do not argue the point further. I will proceed as if the status of modern values outside of the Enlightenment project is *arguendo*. I hope that in the process of explaining modern values I can imply a stronger case for that which I have adumbrated here.

## **Of bats and men**

I have cannibalized my leading question from Thomas Nagel’s classic article ‘What is it like to be a bat?’.<sup>18</sup> Nagel’s black box problem of the bat begins with the observation that no one involved in the discourse about bats is now or ever could have been a bat. There is no information available across that

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<sup>18</sup> Thomas Nagel, ‘What Is It Like to Be a Bat?’.

epistemic divide; no ‘subjective character of the experience’ is knowable. Even a full description of the bat in all other forms of knowledge would fail to contain the very thing that it is to be a bat.

That problem is absent from my question. My question is in principle answerable, and thus ultimately a different type of question from Nagel’s. For, most readers of this paragraph (and perhaps even its author) are ‘modern’ in important ways. Or we have been modern at one time or another and have a living memory of it. Chief among our epistemic benefits is that we have (had) conscious experience of being modern, and we might even self-identify as ‘modern’. Or—even if willy-nilly—we understand(-stood) the world by way of ‘modern’ values and categories of thought, especially about the person and his place in the world. This allows us to adopt the ‘internal point of view’ or ‘adopt the hermeneutic’ quite easily, to understand the ‘intention, plan, purpose’, and ‘the reasons for acting, of acting persons’. We are able to have practical knowledge of the way it is to be that sort of person.<sup>19</sup>

Whether we like it or not, most of us interact constantly with many modern persons, natural and corporate, and are surrounded by many others. We self-understand as persons. Some of us have never met a person who is not (self-)descriptively modern. In all this we have the ‘subjective character of the experience’ of being modern, from which, and with which we (can) communicate something of being modern to one another. We could refine and perfect it, as iron sharpens iron. Or we might try to dull its sharpest parts so that they do not damage us.

This ‘something of being modern’ may even approach knowledge. Such knowledge would be in principle epistemologically inaccessible to non-modern humans. But in the hands of the philosopher it could prove invaluable to understanding the sustainability of modern personhood—and thus the modern constitution—on its own terms. That is a goal of this book, which I return to in the concluding section.

### **Constitution, regime, *politeia***

Below I answer, ‘What is it like to be modern?’, by way of three chief moral values of those who are self-consciously ‘modern’. These form the *terra cognita* for moderns, their values, and their virtues. They are universal equality,

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<sup>19</sup> See ‘Social Theory can Describe ‘Internally’ in John Finnis, *Aquinas: Moral, Political, and Legal Theory*, where he claims Weber, Collingwood, and H. L. A. Hart all called this ‘adopting the hermeneutic or internal point of view’, 38.

personal autonomy, and consensualism. The first two have obvious meanings that do not distract too much from their meaning for moderns. But the last, consensualism, should be explained. It is the position that moral obligations can only be acquired by means of consent, or as conditions that increase the likelihood of consensual obligations being the standard of moral obligations.

These three values and their lived realities arguably form a large part of that which motivates modern politics and everyday life. Our government and governance, personally and politically, socially and psychologically, are according to their strictures. Whatever they might be called in common language, these values form that which political philosophers would call the modern 'regime' or 'constitution' (to use both a Tocquevillian and Aristotelian descriptor for what amounts to the same thing).

As such, modern values, when transmuted into dispositions for human action, cannot easily be decoupled from their dealings in interpersonal life. That is, one cannot really be modern alone. They are thus enmeshed in expectations of personal moral behaviour, including law, both broadly construed. The latter includes not only positive law but our shared *nomoi*; whereas the former involves not only outward behaviour but one's inner moral life. Put simply, consent, equality, and autonomy do a lot of definitional and regulative work in modern life.

In that way, these values become dispositions for certain types of action (virtues), based in first principles (often also dogmas), resulting in law-like structures of relation (*nomoi*). It is all those, rather than merely a set of beliefs about the world. They also result in a regime of law and governance, set up and perpetuated for modern 'persons of law'. 'Being modern' as a cultural identity is embodied in a constitution, that is, a form of governance and government for moral persons.

Already, by using 'constitution' and 'regime' in this manner, I am appealing to a tradition that goes back to Plato's *Republic*. His soul-state analogy is appealed to throughout in this book, *mutatis mutandis*. The attendant truth is affirmed that public governance and private character type hardly ever diverge on a large scale, or hardly without great turmoil. Democratic ages have democratically-minded persons as their common and expected constituents; aristocratic ages have aristocratically-habituated persons as theirs; and so on... One *can* always be at odds with the constitution of one's age, but then one is also seen as at least a bit odd, perhaps as a pariah, or worse. The soul-state analogy will mostly be implied in other arguments, rather than argued for. I am taking it for granted. Thus, terms such as *politeia*,

constitution, and regime should be understood to refer both to a form of government and a way of governance, say, ‘a democratic constitution’. That is shorthand for ‘a democratic way of life’. Let that stand, unless the context clearly indicates a specific reading of, say, ‘constitution’, meaning a foundational law of a particular nation.

### **Modern culture**

The argument in this book is that, if one can recognize the modern creature by his habits, to be modern is to be founded, formed, and informed *at least* by the three values of consent, autonomy, and equality. Each of these produces those habits of life, ethics, culture, belief, and politics that are necessary to self-understanding and the formations of our moral imperatives as ‘modern’ persons.

Inflected in the modern idiom as universal equality, personal autonomy, and a prejudice for consensual moral obligations, these values are constitutive of what it is to be modern. Moreover, to be modern is to expect others to value these likewise. It is to feel oneself to be good—morally righteous—when one heeds their call in daily life, or when one *fights* for their extension in(to) political life. It is to want to announce them as the Good News to the dark and evil places where they are not the norms.<sup>20</sup> It is to make them and their children the judges of reasonableness of action. It is all this and much, much more. But I argue that they serve *at least* as a convincing description of a way of being a good modern person, natural or corporate.

The best word I have for that which they ultimately are is ‘values’—and thus the constitutional axiology before you. They are the core values for modern persons, which determine the cardinal virtues, and so on. A name for this type of valuing and evaluation, with social forms following on, on a large scale, is a ‘culture’. I will employ the term ‘modern culture’ to mean just that, often as a byword for the modern constitution, but more under the aspect of a lived reality. Those persons who participate in modern culture as members are acculturated, meaning they are constituted, to its egalitarian ways. They

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<sup>20</sup> Cf. Michael Walzer, ‘Just War and Holy War: Again?’. In this (to my knowledge) unpublished paper, presented in Warsaw, Walzer lays out the thought of the medieval Polish anti-crusader and just war theorist Paul Wladmiri. He draws parallels between Christian ‘crucifiers’ (Wladmiri’s term) who displaced the peaceful pagans of the Baltic states (to this day, I am told, Latvians resent those oft-forgotten ‘Northern crusades’), ostensibly for the sake of their souls, to modern Islamists *and* to those who are willing to dispose of relatively peaceful regimes today that do not meet the evolving standard found in democracy and human rights discourses.

share in the egalitarian constitution as their ‘man-world’, which they were ‘[b]iologically deprived of’, and so had to make for themselves. Man ‘constructs a human world. This world, of course, is culture.’—in the broadest sense where it can be opposed to ‘nature’.<sup>21</sup> I name modern culture, in its formal aspects, the ‘egalitarian constitution’, including what some have meant by ‘world’ or ‘age’, such as in the Christian prayers that end or ‘world without end’<sup>22</sup> or ‘unto ages of ages’<sup>23</sup> when translating ‘*in saecula saeculorum*’.

### **Bounds of the egalitarian constitution**

As values, evaluations, and virtues, consent, equality, and autonomy set the bounds of modern cultural identity and negotiate the relations of the persons so bounded. Equality provides the universal status of persons; consent provides the ideal procedures of relation between those equal persons; and autonomy, self-direction of said consenting egalitarians, provides the content of said relations—and thus the moral limits of that which is ultimately permissible.

At the level of natural persons, these values help both to discern and to set the boundaries of being modern, which becomes synonymous with being a decent, good, upright human being. The same obtains at the level of groups and even nations. Demonstrating that a nation is modern involves at least that it: treats other nations consensually, say, by doing foreign policy by means of treaties rather than threats of invasion; negotiates as equal parties to said treaties, in other words understanding that both parties are ‘sovereign’ over their own public person; and respects the integrity—autonomy—of the cultural or national life of the state with which it interacts, i.e., ‘self-determination’ as it is called in modern politics. When a corporate or natural person is said ‘not to be modern’, the claim is that it fails to meet at least one of the standards set by those values.

As values, each of these is prized more in some places and times than in others. But both wherever and by whomever they are greatly prized could properly be called ‘modern’. Those who prize these values are ‘being modern’,

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<sup>21</sup> Peter Berger, *The Sacred Canopy*, says that culture is participated in as a society, made up of individual humans. For Berger, world ‘is here understood in a phenomenological sense, that is, with the question of its ultimate ontological status remaining in brackets’, 187. For anthropological application of the term: cf. Max Scheler, *Die Stellung des Menschen im Kosmos*. For application to the sociology of knowledge, cf. Max Scheler, *Die Wissensformen und die Gesellschaft*, Alfred Schutz, *Der sinnhafte Aufbau der sozialen Welt*, and *Collected Papers*, vols. I–II.

<sup>22</sup> Since Thomas Cranmer’s *Book of Common Prayer*, 1549.

<sup>23</sup> A common way to render it in the Anglosphere.

or thinking, reasoning, and feeling like moderns, where moral reasoning is understood as an admixture of thought and of affect. Wherever they are, one is seeing modern culture and practice—the *habitus* of the modern. This is not meant to exclude the various and sundry other things that are also modern. As values, they serve in the evaluation of where the good is to be found. As virtues, they become part of the identity—habitual activity that forms ‘ruts’—the common go-to actions and responses of modern persons. These are often ethical ruts, where ‘ethics’ is understood as norms that distinguish between acceptable and unacceptable behaviour.

As *nomoi* they characterize our way of being in the world in law and law-like relations, customs, and practices. Taken together with other modern persons, both natural and corporate, they form a way of being in the world. This forms a ‘we’, including an in-group of ‘our sort of people’ and the institutions that facilitate association between us; and an out-group of ‘them’, the others who are not (yet) like us. The nation-state has been the political model for moderns of just that sort of ‘we’.<sup>24</sup>

### **Constitution as culture**

Implicit in all of this is that I am arguing against the notion of modernity as merely a set of ideas. ‘Modernity’, ‘the modern’, and their cognates are being used in this book as stand-ins for a cultural phenomenon that has historical precedence. But it is not merely an historical occurrence or an historical age. It could be called the ‘culture of modernity’, as Charles Taylor sketches in his article ‘Two theories of modernity’.<sup>25</sup> Modern identity as ‘culture’ is distinguished from modern identity as ‘natural’, as that which one gets when all the cultural accretions are removed: the individual, naked ape, ready to socially-contract his way into more utility, and eminently procedurally rational.

Taylor proposes a ‘cultural’ and an ‘acultural’ understanding of modernity. The argument toward a cultural understanding of modernity says that modernity is not that which one gets when the human is stripped of local culture, history, particularity, and loyalties. It is rather a unified vision, or a ‘constellation of understandings of the person, nature, society and the good.’<sup>26</sup> This vision is not some final destination of mankind, but rather one among

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<sup>24</sup> Nigel Biggar offers a theological approach to understanding the importance of this modern home(land). *Between Kin and Cosmopolis: An Ethic of the Nation*, ‘Loyalty and Limits’, 1ff.

<sup>25</sup> Charles Taylor. ‘Two theories of Modernity’, 24-33.

<sup>26</sup> *Ibid.*, 27.

many ‘metaphysical dreams of the world’.<sup>27</sup> Perhaps because it is by and large also our own dream, it is at times hard to tell that it is a dream—even a very good one—but not the only one possible.

Speaking of modernity as a ‘culture’ takes us out of the anodyne historicist framework. It also removes us far away from the sterile world of ideas, where ‘modernity’ is a sort of artefact in the lab, chemically tested to see of what it is composed. Rather, we enter into the cantankerous life of faction, parties, the half-apprehended social cues of who is with us and who is against us: namely, the world of belief and belonging. To be modern is to associate with moderns. Man is always tribal, sometimes he gets to choose his tribe but usually his tribe claims him. It claims him in his whole person. Both his body and his soul are meant to come into line with the tribe’s way of life. His loves and his hates are meant to be aligned to the tribe’s ends. Daniel Defoe, who lived in England astride the late seventeenth and early eighteenth centuries, is said to have said ‘that there were a hundred thousand stout country-fellows ... ready to fight to the death against popery, without knowing whether popery was a man or a horse.’<sup>28</sup> ‘Popery’ was a stand-in for those in the know for a well-defined set of beliefs and practices (another tribe), namely, the Roman Catholics. But for the man on the street it was either the image of the devil, an excuse to let off some steam, or a way of dispossessing those whom he envied of their livelihoods.

‘Modernity’ can be that for some—and it brings about the best and worst in critics. It certainly has the insider-outsider feel about it. Countries that are not yet modern like us are called ‘third world’, with at least one world safely separating them from us. And it is much easier to justify the moral segregation between beings who are modern and beings who are anything else, if modern values are posited to be acultural, natural human values—the real people. We get equality, and they get left with their own culture.

Cultures are not merely a set of accidental values and practices, thrown into a pot and stirred. There is an inner relation and logic to much of that which comes to be integrated and to that which is left out. This is especially true of any culture’s cardinal values. Those are culture-specific, and sometimes culture-bound. They are neither universal nor universalizable. But there are implications that tend in the other direction in ordinary thought and consideration. By that I mean how adult human beings tend to reason about morals and ethics, irrespective of cultural formation or background. Some of

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<sup>27</sup> Richard Weaver, *Ideas have consequences*, 18, 21, 33-36.

<sup>28</sup> As quoted in William Hazlitt, ‘On Prejudice’.

the examples below appeal to this ‘universal moral grammar’. It, like actual grammar, functions in any and all acquisition of moral language.

For example, if you tell humans that they are equal in a given context, such as with fifty of them stranded on a desert island, we imagine that a similar set of thoughts, feelings, and actions would tend to follow; whereas others would be precluded or excluded. Try then to divide some good unequally; what might happen? Some of what that which follows would be derived from the analytical analysis, based on what ‘equal’ means as a value and measure of goods in social life. If, again, you communicate that the denizens of the desert island are personally autonomous, and then begin requiring them to obey the commands of others at every turn, you will likely be met with resistance. And, once more, if you tell them that their consent is required before they are morally obligated, then handing out moral censure for breach of non-consensual social rules would seem to be an injustice. So, some of this is basic to humans; whereas some is basic to the concepts.

There is an in-baked ethical reasoning that is based on what the terms mean *in any context where human language is the means of communication*. That cannot be taken for granted, or relativized away as ‘merely cultural’, especially if such values are definitional of a meta-cultural reality. Modernity is both cultural and stable in its practices, and the values that define it precede it historically. In arguing that modernity is a culture, Taylor particularizes modernity too much; he locates it too narrowly in the recent past of ‘North Atlantic civilization’.<sup>29</sup> In arguing that modernity is human nature rightly understood, his enemies, the ‘aculturalists’, essentialize it unnecessarily and without warrant. That which modern persons themselves call ‘modern’—with consent, equality and autonomy as its cardinal moral values—is fundamentally the same wherever it is found and whenever it is found. But neither is it synonymous with human nature, as the aculturalists want it, nor is it merely the over-hyped province of a small, proud part of the human race who just happens to have been wildly successful lately, as Taylorian culturalists imagine it.

In the chapter that follows, I begin to describe the constituent parts of the egalitarian constitution, beginning with modern values of consent, equality, and autonomy.

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<sup>29</sup> This is Taylor’s coinage. It stands in variously for Christendom, the West, Europe, and many other concepts with overlapping meaning, within the (cultural) geography about which he writes.

## Chapter 2: Three constituting values

‘Values’ is the most general way in which I speak about the three parts of modern cultural identity. But they are only sometimes found in the wild as ‘values’. Persons variously experience and enact these values as *nomoi*, dogmas, first principles, ethics, and virtues. Tracking modern cultural identity will thus be a kind of ‘art of fugue’ in which the impersonal elements of the modern trinity reappear in different forms and manifesting various aspects when subjected, in turn, to being viewed under different lenses or in different conditions. Like the Trinity of old, sometimes I will look at them in their ‘economy’, active in the world, and at other times in their ‘essence’, as concepts of values.

These three values are chiefly claims about the individual human person, the self, and by implication about others and the political community itself. They can provide the beginnings of modern ethical reasoning at multiple levels: the individual, societal, or political. One can, say, write a new constitution by beginning with universal equality, moving to personal autonomy, and ensuring that consensual obligations are the go-to form of moral obligation between such autonomous equals. One could, similarly, work out an ethics, how to act, in a world of autonomous persons just as oneself, moving toward idealizing consensual relations among equals as the fulfilment of its grounding ethic. In either case, and no matter with which value one begins, it would be hard to avoid bringing the other values to bear on the project. When one imagines the world made in the image of one, the others are swiftly come upon, and make sense, for they seem to complement each other, and to stand in want of each other. Without the other values to fill them in or tie them down, they remain shells of themselves or get carried away with themselves.

In fact, consent, equality, and autonomy, as defined below, imply each other to such a degree that they create a ‘metaphysical dream of the world’. Richard Weaver’s famous phrase was about nominalist constructs of the world that supplant realistic metaphysics, but it can equally be applied to modern values. As he says, ‘[m]an created in the divine image, the protagonist of a great drama in which his soul was at stake, was replaced by man the wealth-seeking and consuming animal.’<sup>1</sup> Inhabiting this dream of the world, one can ‘be modern’, have modern hopes and dreams, envision a modern

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<sup>1</sup> Richard Weaver, *Ideas Have Consequences*, dream phrase explained at 18, 21, 33-36.

heaven, with a modern, voluntaristic Hell, and so forth. One can believe in a modern ‘God’ who respects individual choice, so much that any evil is explicable based on that sincere respect for our authenticity. Such modern theodicy is based in the anthropology of freedom, that is, in personal autonomy and consensual obligations. God would never want anyone in heaven who really did not want to be there and had not freely chosen it (although this new theology rarely extends universal equality to include God as first among equals; God does, however, function as author and referee, ensure universal equality by having created us all as ‘brothers and sisters’ and working out this brotherhood in charity, which sees no distinctions of status).

It has been said that ‘only by imagination can the world be known’, but there are many ways of imagining. And the modern moral imaginary lopes on to another field of enquiry, moving through its dream world as if it were the real world. It has made its dream world into the modern man-world.

### **Consent, equality & autonomy, briefly defined**

Following some recent thinkers such as Hart and Rawls, I concede that concepts and conceptions can be usefully distinguished. Concepts are abstract notions that can be filled out by many different conceptions, that is by different content. For instance, the concept of autonomy as self-determination is present in many conceptions of autonomous life: liberal, existential, romantic, post-modern, even Thomistic.<sup>2</sup> Immediately below I describe the concept. Then in the chapters that follow I illustrate the conception that typifies the modern value

#### ***Consent***

There is no perfect word for the many denotations and connotations of ‘consent’ as a value. Each also assumes a myriad of relations and states that need mentioning in order for consent to be ordered properly. I demur from a full definition of the value, and for now restrict myself to its doctrinal statement in ‘consensualism’. ‘Consensualism’ teaches that agreement of some kind needs to be given, preferably by clear, external signs of the persons concerned, before *moral* obligation arises for those concerned. Thomas Hobbes was the first to announce the consensual nature of all moral obligations: ‘there being no obligation on any man which ariseth not from

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<sup>2</sup> Gerald Dworkin, *The Theory and Practice of Autonomy*, 9-10.

some act of his own; for all men equally are by nature free', and moderns followed his lead.<sup>3</sup> Consensualism is the prejudice against inherited obligations, which could have been based either on the individual history of the person (son of so-and-so who was bankrupt, and so now you have [moral] debt), or on status (since you are female, you bear some moral obligation to procreate). Rather, the signal consent of the person is the source and (the chief) cause of all legitimate moral obligations. It should go without saying that the existence of self-direction—understanding oneself both as a self among other selves (namely, as a person), and directing oneself as such a self—is a prerequisite for consent. Autonomy in the descriptive sense is required for consensualism.

Sometimes the sign of consent can be the conspicuous absence thereof, such as the principle in contract law that 'silence implies consent'.<sup>4</sup> If someone takes your hand and walks into battle with you, it is assumed that you're going along is as much a sign as one needs that you are a compatriot. In private relations, consent could be as simple as a 'yes' to a question, suggestion, gesture, or meaningful silence. In politics, consent often involves enfranchisement, and seeking the will of the people through their votes. In international relations it is the forging of peaceful affairs (or even orderly war, e.g. a temporary non-aggression pact) by the signing of treaties between equal parties that brings about international agreements.

In all such cases, the tendency is to think that power exercised over any person, natural or corporate, is only legitimate if consented to, whether in a perfect form when formal consent is gained, or less perfectly when informal consent is gained. It is a contractarian approach to moral obligation. It stands against any ideas that, within nature or before negotiations begin, there are already prior obligations.

Sources of non-consensual moral obligation once were thought to be the natural law, or inherited status within society, or from God, from facts such as biology or those accessible by way of reason, say, according to a principle of the Good. Or they were thought to arise from any other means of acquiring an obligation, aside from consensual means. That would include that which the law called delict or tort, where obligation is based in harm caused, whether intentional or not. Consensualism precludes moral obligations arising from mistake or error, or without intention; and neither

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<sup>3</sup> *Leviathan* (1651), XXI 'On the Liberty of Subjects'.

<sup>4</sup> P. W. Young, *The Law of Consent* (1986), introductory remarks.

from history, status, society, family, God, nature, culture, or law.<sup>5</sup> Obligations must be intended; such intentions must be chosen; such choices must be indicated by signs (or the meaningful lack thereof). And all must be done only by a person that is considered *compos mentis*, a cornerstone of what is meant by autonomy. None are to be set below others *a priori* of consenting to their lower position. So, there is a presumption of natural equality of moral status.

As the chapter below, ‘What is it like to be consensual?’, details, the relevant opposite of consensualism is an understanding of inherited and ascribed obligations. Ascriptive obligations can arise from many sources, and they can similarly be justified by many means; in both cases, the self is not the source either of the obligations or of their justification. A concept such as *noblesse oblige* is a case in point. It is only said, in its true meaning, of those who have a privilege that they did not choose for themselves. As a result, some form of perfect or imperfect moral obligation arises for them. It does not arise from personal dealings as say, Suzy van Liechtenstein, but rather from Suzy being an instance of a kind, the aristocracy, which has enjoyed benefits and is not enjoined to benefit others.

### ***Equality***

As a value, equality, like consent, is difficult to discuss without involving far too much in the conversation—much that is external to equality—and thus saying very little of use. One could talk of equality of welfare, of resources, of liberty, political equality, equality and capability, equality and the good life, etc.<sup>6</sup> Equalitarianism is an ugly word for the sense of equality that I am spelling out here. I locate this levelling impulse at the centre of moral life of modern persons. But it is not at a centre that functions like a magnet with a magnetic field. Rather, it is at the centre like a strategy for victory is at the centre of a military campaign. It requires other actors to judge its proper implementation, and to manifest it, while it always remains an ideal, as the plan for victory does, no matter the outcome of the campaign.

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<sup>5</sup> This has been the most residual of the ancient notions of non-consensual moral obligations. Say I learn that I ran over a child playing in my field with my tractor. He was hiding and there was no way to see him. He dies. I decide not to apologize to the family, insisting that ‘it was an accident’. Very few modern persons would imagine that my lack of consent to the deed removes my moral obligation to offer help to the aggrieved. Even if it is hard to say just what I must do. Doing nothing is still a moral failure based in a social obligation, and ultimately deriving from *some* intentional action: I chose to harvest the field when I could have done anything else.

<sup>6</sup> All are chapter titles in the ‘Theory’ section of Ronald Dworkin’s *Sovereign Virtue: The Theory and Practice of Equality*.

‘Equality’, as a value, is the universally-valid *principle* (think: *principium*) that there is nothing *a priori* setting one person<sup>8</sup> over another.<sup>9</sup> Meaning that neither political, nor moral, nor social, nor theological, nor natural, nor name your area, nothing that prejudices us to favour one over another can find a home in our moral dealings. Moral inequality is denied by disconnecting equality from any sense of natural merit.<sup>10</sup>

Setting aside certain physical and developmental facts, such as that children, because of their weakness and extended period of development, cannot yet participate in all of the rights and privileges of equality, all are equal in dignity (status). And setting aside the fact that some faculties and capacities are distributed differently by the lot of birth (think of ambulatory skills and mathematical acumen), all are equal in moral consideration. Those differences should be mitigated as much as possible to return to some approximation of the purported ‘natural’ status quo ante of (near) equality.

That, according to moderns, was the condition ‘then’, and ‘before’, but before what? Before ‘now’, namely, the present time when things *are always* unequal in unjust ways. This is a normative claim that sets the moral bearings

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<sup>7</sup> ‘For principle, adequately conceived, is not merely a matter of general normative propositions; more fundamentally, it retains its connotative link to *principium*, a starting point and source. And the source of normativity, in legal or moral schemes of right, is value, purpose, point—in short, common good.’ John Finnis, ‘Nationality and Alienage’ (2013 [2011]).

<sup>8</sup> The limitation to persons is being breached in favour of a broad sense of ‘universal’: See [www.AnimalEquality.org.uk](http://www.AnimalEquality.org.uk). The reasons for this also relate to sentience, and (those to) autonomy. Sentient beings are being denied something by our industrial use of them that we owe them as sentient beings: not only autonomy of body, which would remain unmolested by us, but also integrity of their ‘narrative’, that is, their self-direction and self-authorship. See chapter ‘What is it like to be autonomous?’ below. Peter Singer, *Animal Liberation*, esp. ‘All animals are equal’, 1-25, using utilitarian rather than deontological reasons, says we owe them everything we owe ourselves (as ‘persons’), relative to relevant circumstances: ‘the ethical principle on which human equality rests requires us to extend equal consideration to animals too’.

<sup>9</sup> Ronald Dworkin speaks of ‘the principle of equal importance’, which although ill-defined, amounts to a similar statement of liberal *apriori* non-distinction. *Sovereign Virtue*, 5-6.

<sup>10</sup> Often following Rousseau in his *Discourse on the Origin of Inequality* (1992[1755]), wherein he recognizes the undeniable, namely, that natural inequalities exist. He then proceeds to discount the necessary relation of natural inequalities to the inequalities found in every human society. He purports that the latter were originally—mistaken and harmful—extensions of the former from nature to culture. Those cultures transmuted insignificant and perhaps surmountable differences in natural capacity or endowment into sundry statuses, distinctions, divisions between and among men. Many of these cultural constructs (my word, not his) then became heritable as honourable or dishonourable classes, such as ‘rich’ and ‘poor’. As cultural artefacts they seem to be intractable, unless a new political order is constructed based on a correct, naturalistic anthropology. As Rousseau says in the opening lines of *Emile* (1979 [1762]): The Author of Nature ‘makes all things good; man meddles with them and they become evil.’

away from ‘here and now’—or ‘then’ and ‘there’—and toward the future, which should be a less unequal order and ordering of the world. It is also the anthropological claim that ‘man is originally good, society corrupts’.<sup>11</sup> None meriting unequal treatment, all thus deserve equal moral consideration.

That is, unless there are good reasons standing against it, hopefully reasons relating to increasing universal equality.<sup>12</sup> Those who cannot (yet) function amongst other equals are entitled to protections and/or education and removal of handicaps insofar as possible for (the sake of) approaching real (moral) equality. In a given community that is dedicated to universal equality, it is not hard to justify the removal of impediments to equality by means of curbing the liberties—or equal access to certain liberties—of others.

Equality is also a principle of political justice. It states that there is not an *a priori* better distribution of goods or services, honours or rewards, than equal distribution. Furthermore, reason must be given for betraying equal distribution. That reasoning cannot fly in the face of the value of equal moral consideration. It could be a reason that is inequalitarian in its means but equalitarian in its (purported) ends.

Equality does not require autonomy or consensualism in order to be what it is as a value. However, its tendency is to take over the discourse and snuff out other considerations. Consensualism saves autonomy from imposing too much of itself as moral obligations on those seeking a more egalitarian way of life. Autonomy, however, provides equality with its much-needed content, the identity of the goods which it is meant to equalize.

As the chapter below, ‘What is it like to be equal?’, details, the relevant opposite of universal equality is an understanding of status, which then involves ‘likes being treated alike’ and ‘unlikes being treated unlike’. ‘Proportional equality’ carries with it no conceit such as ‘all men are created equal’. However, it does affirm a shared humanity, ‘all men are created human’. That is the only reason that they can be measured on a scale of more or less likeness. Dogs and human beings are incommensurate, just as rocks and men are incommensurate. Man and man are commensurate, no matter how different. Included here in ‘man’ is always woman, for men have usually been generous in the universal application of their collective pronouns.

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<sup>11</sup> A paraphrase of Rousseau’s repeated doctrine. Concerning the moral education of children, he says ‘A child is naturally inclined to benevolence... [...] ...what makes man essentially good is to have few needs and to compare himself little to others; what makes him essentially wicked is to have many needs and to depend very much on opinion [of others].’ *Emile*, 213-214.

<sup>12</sup> John Kekes, *The Illusions of Egalitarianism*, 1-3.

## **Autonomy**

Autonomy is the most fraught of the three values, the most contentious, and the most important. The autonomous person is the inscrutable, metaphysical anchor of the egalitarian constitution. For, in its billions of subsisting forms—living persons—it provides the content and reason for all egalitarian action in the world. This brief attempt at defining the value will be a grab-bag of ideas that are later sorted and explained, first regarding the core concept, in the chapter on what it is like to be autonomous, and then in terms of the favoured modern conception in the chapter on being an end in oneself.

‘Autonomy’ means that one is ‘self-sovereign’. But what does that mean? Originally autonomy was ‘a right assumed by states to administer their own affairs’.<sup>13</sup> It was about the quintessential secular corporate person. The term was lately applied to natural persons in more or less the same meaning. But autonomy now also carries a moral overtone when invoked as a value, indicating a sort of inviolability of the person. It also carries with it the right to self-direction and what could be called self-authorship, or what has been called a ‘self-directed dignity’.<sup>14</sup>

But there is also the moral positioning of each such sovereign person, who should seek to be treated as an end in oneself by all other persons, and also by oneself. One should have the freedom to pursue the great project that is one’s life and goals.<sup>15</sup> Other persons should be treated in ways that *do not prevent* them from attaining this form of autonomy. But, with the modern value, one need not per se treat others as ends in themselves, nor prioritize them over oneself. It is not Kant’s autonomy that has become a modern value. Rousseau announces some of what autonomy is going to mean to moderns, when he advises: ‘let us begin by becoming ourselves again, by concentrating only on us.’<sup>16</sup> Once the true self is known, it seeks to be recognized by others as an end in itself.

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<sup>13</sup> Stephen Darwell, ‘The Value of Autonomy and the Autonomy of the Will’. *Ethics* 116 (2006). 263-284.

<sup>14</sup> By the sociologist of the professions, Steven Brin.

<sup>15</sup> It is hard to underestimate how important the ‘self-project’ is to moderns. After years of deep thought, one contemporary philosopher posited that the evil of death is the end of autonomy: that there is no time to pursue projects that you want to pursue. Or: ‘Death is bad for you precisely because you don’t have what life would bring you if only you hadn’t died.’ Shelly Kagan, *Death*, 233.

<sup>16</sup> Rousseau, *Moral Letters*, sixth letter, iv, 1112-1113. As translated by Robert Wokler in *Rousseau: a very short introduction*.

The basis of this value is the belief in a philosophy of freedom, or that autonomy is freedom to act. The metaphysical assumption is that one is not inevitably bound by necessity, but has natural liberty, that is, a ‘free will’, and that that freedom is the best part of human nature.<sup>17</sup> Whereas reason may be definitional of ‘person’, the will is definitional of the particular person. It is so singular and unique and undisclosed to others that, according to Rousseau, ‘the will is not capable of representation’.<sup>18</sup> If I speak of you in terms of that which is good for you as a ‘person’—that is, speaking of what is ‘reasonable’—then I am assuming we are more alike than different. I can know what is good for you and me *qua* person, and order society accordingly. But if I speak of you as a particular person, then your desires, choices, consensual activities are all your own. I must assume that at this level we are more different than alike.

Those acts of your will cannot be known by others in advance. And they are not to be unnecessarily restricted in ways that preclude you from being an end in yourself. As an end in yourself, you seek to be in a world in which you can safely bring as many of the will’s choices into existence as possible. You wish to do this without coercion or unnecessary bother about or from others. And you need to do it from a place that is not unnecessarily disadvantaged from its inception—namely, with as little endemic inequality as possible. This modern predilection is partially inspired by ‘Thomas Hobbes’ reasons for one entering a pact with others for protection. However, I understand modern cultural values to include a modified form of his anthropology, which includes a robust understanding of the will (something he lacked, saying it was just the ‘last appetite’). This anthropology is understood to include a helping of Rousseau’s and the romantics’ emphasis on the unicity of persons, especially based in their perspective on the world and the choices that follow from it. ‘None have ever been like me. I may not be better than any of them, but at least I am different!’, to paraphrase Rousseau and those who follow him. John Locke’s focus on the integrity of the body—its autonomy from

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<sup>17</sup> Rousseau, *The Social Contract* 1.4.6: ‘To renounce one’s freedom is to renounce one’s quality as man, the rights of humanity, and even its duties. . . . Such as renunciation is incompatible with the nature of man’; Joshua Cohen, *Rousseau: A Free Community of Equals*, 28-32, is a well-sourced discussion of Rousseau’s evaluation of freedom.

<sup>18</sup> Rousseau, *The Social Contract*. This shall be denied by all modern theories of corporate personhood, especially representative institutions of government and governance: an early indication of the conflict between democracy (political consensualism) and autonomy. I shall return to this point in the Conclusion.

external molestation and as a tool for ownership—is also taken into consideration in this context in a way that Hobbes never did.

Within modern moral philosophy, the ability to impose moral obligation on oneself is considered autonomy. That is also true of the value of personal autonomy that I present as foundational to modern personhood. Yet, personal autonomy is a value free of reason's tutelage. One is not compelled to legislate merely that which is universally valid onto oneself in order to be autonomous. In comparison, Kant's 'autonomy as morality' reveals itself to be based on a heteronomous principle of universal reason, to which one is required to adhere if he is to be moral, and thus autonomous. There is more freedom, in a sense, in modern personal autonomy than Kant would allow. As one sociological commentator rightly suggests, 'What makes us modern, in short, is that we are capable of acting as our own moral agents.'<sup>19</sup> That obtains whether it is reasonable (read: universalizable) action we choose or even an action that, additionally, falls outside of our own self-interest. We rightly act in our own right in place of any other's (right), who might speculate on whether our action is moral.

Before we were modern, those determiners could once have been natural moral persons of a certain social status (parent, *dominus/domina*, magistrate, husband) or corporate moral persons (churches, states, [modern] corporations, families). The same commentator continues, 'If modernity means a withering away of those institutions such as tight-knit families and local communities that once taught the moral rules of interdependence, it simply means that modern people have to work harder to find such rules.'<sup>20</sup> Those rules rest on moral authority, which is said to rest 'with' or 'within' persons.

This statement is meant to communicate that moral authority 'belongs' or 'begins' with(in) persons. It can be delegated to other moral persons via consensual relations, and under conditions of equality of negotiations, in other words: no coercion, duress, gross asymmetry of information, and other principles that—in their most sophisticated form—provide the formal, material, and moral limits modern contract law.<sup>21</sup> 'Equity' is the term that is often used for it in this context. In private and public life, contract and contractualism have replaced status and deferential relations, in no small part

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<sup>19</sup> Alan Wolfe, 'Market, State, and Society as Codes of Moral Obligation', 233-234.

<sup>20</sup> *Ibid.*

<sup>21</sup> Stephen A. Smith, *Atiyah's Introduction to the Law of Contract, Sixth Edition* (2006 [1961]) contains useful sections on each failure to form or keep a contract.

because the assumption is now that others are (meant to be) autonomous. With the rise of autonomy as being an end in itself, there is a decline of various heteronomous ends. There are no longer *substantive* shared ends in the public sphere outside of health, safety, and the preservation of the procedural order that guarantees autonomy. That which would have been dedicated to pursuing shared substantive ends gets turned in on the self where personal substantive ends are found.

Politically speaking, modern personal autonomy encompasses all areas in which one is '*sui juris*', such as within the private law of contract and in one's private life, in total, after the age of majority. The philosophy of freedom behind personal autonomy says that in some important ways one is a *law unto oneself*. Both Rousseauian and Lockean understandings of self-possession as autonomy are proximate sources of this modern value. The autonomy of body (Locke) and of the true self (Rousseau) show up in politics, for instance in President Franklin Roosevelt's 'Four freedoms' from his State of the Union, January 6th, 1941. The first two are Rousseauian: freedom of speech/expression and freedom to worship God in one's own way; the latter two are Lockean: freedom from want, and freedom from fear.<sup>22</sup> A difference to keep in mind is autonomy understood as legislating *the* law unto oneself (Kant and the natural law tradition) versus autonomy understood as legislating a self-discovered or self-created law onto oneself (Rousseau and Nietzsche, plus the existentialism that follows suit). The latter can sometimes be understood as 'doing whatever one pleases'. That is too far afield. If there were no regularity, it would hardly be regulation or 'law' that one was imposing in anything but an analogical sense. If there were no determinate ends chosen and pursued based on the consistent choices of the will, one could hardly be considered *auto-nomos*. And that latter form of romantic autonomy is much more common in modern values than the difficult moral autonomy of Kant ever could have been.

As the chapter below, 'What is it like to be autonomous?', details, the relevant opposite of autonomy is an understanding of 'participative heteronomy'. This means the necessary belonging to, membership of, and participation in a community of moral self-governance that is larger than, greater than, prior to, and superior to the person who is so governed. These might be families, clans, tribes, religions, nations, nation-states, or civilizations. And one could be a member of multiple compatible communities.

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<sup>22</sup> Available at FDR Presidential library website: [fdrlibrary.org/four-freedoms](http://fdrlibrary.org/four-freedoms).

Together these values form a constitution that, again in Rousseau's words, provides 'a form of association which will defend the person and goods of each member with the collective force of all, and under each individual, while uniting himself with the others, obeys no one but himself, and remains as free as before.'<sup>23</sup> Rousseau was talking specifically about the political manifestation of the social contract. I am extending his analysis to the whole constitutional order that begins in the heart and manifests itself in making the world in the image of that which the heart cherishes.

### **Inflected universal values**

Modern values, precisely as moral values and attendant virtues, are in principle accessible to anyone, anywhere. For, they are inflections of a common human moral inheritance. Before I explain part of this connection, one caveat needs to be made.

The universal availability of these moral values should not be construed as an argument for the 'naturalness' of modern moral values. I do not argue that they are our true or fundamental human values. An analogy to music might help.

The scales we have in modern music, which rest on divisions of sound into a finite number of whole and partial tones, could have been developed anywhere. Only in some places did thirds and fifths and all the chord patterns that are based on them get developed into classical music. We could imagine musical geniuses in other ages coming upon a similar division of tones and relating them in chords, even as they existed in very different musical worlds. Modern music dominates our high and popular cultures, but it is not inconceivable that others have participated in its structures in the past, willy-nilly. And, if civilized humanity disappears today, it might be that another human community emerges that will discover them again. For, it is a variation on the pre-existing human capacity of the ear, throat, mouth, tongue, and brain, and mathematical relations. All known cultures have music. Even if one argues that the modern musical system is in some way best, it need not either be considered natural or unique to this age. My position on modern values can be gleaned from making use of such an extensive analogy.

Returning to the way modern culture can be understood as inflected universal values, there is a particular and a general way that this might be so.

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<sup>23</sup> Rousseau, *On the Social Contract* (1920 [1782]), 1.6.

In the particular way, modern cultural identity could be understood as a form of inflected classicism. I am taking ‘classicism’ to include the pre-modern inheritance of the Greeks and Romans, as interpreted in Christendom. A concept such as *logos* is classical. The utility function in economics is certainly not part of the classical heritage. It is, however, a gross limiting of thought on the *logos* to one sort of calculation. I am arguing that, whereas in Western instances, the route to modern values has been by way of inflecting classical values, it need not be so elsewhere.

Classical values such as those expressed in Cicero’s *De Officiis* have near equivalent social and personal virtues in all ancient civilizations that obtained a certain level of public and moral order. One could become ‘modern’ from any one of them. It is unlikely, however, that one falls into modernity from a pre-civilized society. It is hard to imagine a hunter-gatherer becoming obsessed with his own autonomy, mostly relating to the difficulty of obtaining resources for life alone. A citizen in Periclean Athens, with slaves providing the work, enjoying relative peace and luxury, has the resources, both material and time, to develop a philosophy. Without a large amount of predictability of food supply, water, security from external threat, most of one’s time is taken up in fending, preparing for battle, committing group identity to memory, etc. The luxury of falling away from society into modern values scarcely exists if there is no ‘society’ to speak of. So, it is routinely by way of analysis and criticism of classical and Christian values—themselves usually instances of universal values—that those in the West have become modern.

In a general sense, consent, equality, and autonomy are concepts known to all cultures *in some way, and to some degree*. Whether these values were formerly prized is another question altogether. Modern identity is considered a *bona fide* good to moderns. But, for instance, in Cicero’s Rome, inequality was the condition believed to provide societal order. Equality was therefore not a value that enjoined high praise. Still, it was not wholly absent from consideration. Compare Cicero’s *De Amicitia* wherein friends get not mere equality, but something much more.<sup>24</sup> Jesus also proclaims the supererogatory nature of friendship that lacks mere equality: ‘Greater love hath no man than this, that a man lay down his life for his friends.’<sup>25</sup> When these values are modified in particular ways, and those modified values are related and prioritized in a particular way, we can call it modern. As modern values, equality is expanded to become universal; autonomy attaches itself to the life

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<sup>24</sup> XVI: 56-60.

<sup>25</sup> Jn. 15:13, KJV.

of persons as personal autonomy; and consent becomes the necessary condition of moral obligation between autonomous and equally free persons.

Equality has been known in the West as a political concept since antiquity.<sup>26</sup> Aristotle presents an idea of ‘proportional equality’ in *Nicomachean Ethics*. In some form, it would seem to need to be present in all societies, at least in the sense that those of the same status see one another as *similar enough* to treat ‘likes as likes’ in relevant contexts. The absence of an equality in antiquity that extends in all things to the whole person, as compared to another whole person, is noteworthy. Until recently, equality was always curbed and limited by all sorts of social and other hierarchies. Or, it was imagined that persons were more different than alike, particularly in their natural and social statuses.

Those who shared a status were equals insofar as that status went. They were equal morally if not socially, so that, for instance, two fathers could confer about the marriage of their children, even though one was otherwise socially superior to the other. There was, however, no single status that all shared, which could render all alike.

Many of the statuses on offer then were not fully determinate of the person, but only determined the person’s role in one sphere of life. For instance, the civil status of ‘wife’ could be present with that of ‘citizen’ or ‘foreigner’ in Rome. Moreover, equality had been ‘proportional’, with ‘like treated as like’, and ‘different treated differently’—and only similar treatment as far as the likeness went, rather than ‘all treated as alike’.

In the transition to modern values, mere ‘equality’, which Aristotle understood as central to the social virtue of justice, became inflected with ‘universal’. Thus, its reach now extends to all in all ways. This cut down hierarchies where they remained and replaced many statuses with one status. Formerly, when justice had ensured that each got his due—*suum cuique*—very different things were got by each person based on their status. Now, for instance in legal justice, nothing but full equality under the law is acceptable.

It is a similar case with autonomy, which in many forms is evinced in law and culture from our earliest extant sources. Both the Greeks and Romans have equivalents for being self-governed, including the terms *sui juris* and ἀὐτεξούσιος, not to mention the provenance of ‘*auto-nomos*’. Whether this was used as anything but a description of action originating in the self, rather than from the other, is not known to me. Nevertheless, these terms of legal art could apply to groups, institutions, states, and even individual legal or moral

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<sup>26</sup> 1130b-1132b; cf. Plato, *Laws*, VI.757b-c.

persons under the law. In the case of its application to natural persons, in order to be autonomous their status would need to be something equivalent to citizen, rather than that of slave. It might also require that majority had been reached (by age or mental capacity), land ownership, and probably also that one was male.

But, even as the Roman citizen had many powers of self-determination, individual persons were not understood as personally autonomous in the way that Rousseau and Locke later do. Their public persons might have rights or privileges, but there was not an assertion of a deep identity which could be autonomous. There was no implicit metaphysics of the person as naturally autonomous. Neither was autonomy a moral category associated with ‘sincerity’ or right action, reason, or dignity. All that would come with the various permutations of autonomy as it became a modern moral value.

One could say that autonomy was formerly attached to specific statuses rather than being individuated in each person. Those statuses were socially derived and guaranteed through law, custom, and convention. One could, for example, sue in court when there was a breach of rights *in personam*. But a mere moral breach against one’s body, say, that of non-consensual sex with a slave, was not pursuable in a court of law unless that sort of activity was illegal.

However, autonomy, as a modern value, is thought to be intrinsic to the person. And the person subsists primarily as the living human being. Personal autonomy revolves more around the life of the individual person than around the facticity of autonomy itself. It is about her freedom, independence, self, self-development, inviolability, unicity, uniqueness, and, importantly, self-determination.<sup>27</sup> For this reason, protections and provisions for autonomy are enumerated in law. In liberal forms of modern politics, these are foundational to law, described as fundamental human rights. But modern persons also subsist as artificial (constructed) persons first in the state, whence autonomy originally was derived, and now in corporations, associations, unions,

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<sup>27</sup> Regarding the overlap in personal autonomy between natural and corporate persons, Wilsonian ‘self-determination of peoples’ should be kept in mind. This arose to popularity in the first fifty years of the twentieth century, around the same time that natural persons were beginning to enjoy legal guarantees to modern values (expansion of franchise, of civil rights, of consumer and labour protections). For a psychological take on what is similar grounds, see E. L. Deci and R. M. Ryan. ‘Self-determination theory and the facilitation of intrinsic motivation, social development, and well-being’ *American Psychologist* 55 (2002). 68-78.

churches and the like.<sup>28</sup> There are similar guarantees for corporate persons in modern law as for natural persons, often by analogy or extension.<sup>29</sup>

As is now evident, personal autonomy includes individualism, methodological and metaphysical. So, it carries a large part of Enlightenment thinking into the modern. However, its foundation is laid on the older concepts and structures, popularized by Hobbes and Spinoza among others. Just as with rights and status, with autonomy it is as if everyone has now become an aristocrat, sharing in the privilege.<sup>30</sup> Personal autonomy applies to the status of ‘person’, all persons enjoy it, independent of considerations of other merit. This dignity should not be prevented in others, and it should be sought by oneself.

Lastly, most forms of obligation have existed ever since one man could be made to serve another. Many of those obligations—perhaps most—had the character of moral obligation. The assumption was that obligation is a natural form of relations between humans, descending from on high (obligation was frequently based in duty, so that a duty to obey God could manifest itself in religious obligations), or arising from human action of certain kinds. But chiefly they arise from the facts of our existing together, from our common father in one God, or shared gods, or from shared patrimony. In such forms of obligation, one’s consent has little to do with the fact that one is morally bound.

Notwithstanding the great preference for ‘natural’ obligations, consent is also as old as obligation. Contract, covenant, and promise are at least as old as the Bible. Whether the bond is moral, social, political, or divine is another question. Incidentally, those need not be separate categories of bondage. All known cultures have means of binding oneself to a promise (or just to one’s

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<sup>28</sup> Just why ‘person’ necessarily attaches to human beings, so that all human beings are dignified with the moral status of person, is a great debate. This sense of ‘person’ arrives with the advent of Christian theology, particularly Boëthius’s Christology in *Contra Eutychen*, received later into the tradition. See *Aquinas Summa Theologiae* 1a, 29ff and Peter Singer, *Practical Ethics*, 76, 78-84, 98, for two widely different interpretations of the relation between human being and person. For Aquinas, all humans are persons, and some non-humans are too (God, angels, devils, etc). Persons are ‘individual substance of a rational nature’. For Singer, persons are beings that are able to self-consciously will their own goods. New-born babies and the undead in comatose states might thus not be persons; whereas animals of high sentience and sensitivity might well be. Both for Aquinas and Singer, only persons deserve special status, consideration, protections, rights, and privileges associated with moral agency.

<sup>29</sup> Cf. the US Supreme Court case, *Burwell v. Hobby Lobby*, 573 U.S. (2014), where freedom of religious belief was formally recognized in closely-held, for-profit corporations, according to the free exercise of religion clause of the First Amendment of the Constitution.

<sup>30</sup> Jeremy Waldron, ‘Dignity, Rank and Rights’ (2009).

word) by means of consent, or by ‘the will’, if the anthropology is sophisticated enough to name parts of the soul or person that might act independently. These are outward signs indicating the intention to do or refrain from doing something now or at some point(s) in the future.

Most moral obligations for non-moderns are *non-consensual*. They are givens that come from without. Obligations to family and nation, religion and tribe, are born into. Only some obligations, and a small minority at that, are consensually acquired. The same pattern was evident in ancient contracts, which for the Romans had very few *pacta nuda*, wherein consent alone, minus forms or performances, made obligation. To be modern is to understand that the essence of moral obligation is that it is consensually contracted, bound by ‘the desire of each individual striving in every way bind himself’, as Grotius earnestly put it in a text that has helped to usher in consensualism in the law.<sup>31</sup>

In the modern age, there are exceptions, such as human rights and the obligation to respect the consent of others, which are non-consensual and morally obligatory even for our contemporary moderns. However, these can be construed as meta-ethical positions that are foundational for a moral environment in which consent can be the leading cause of moral obligations. It might form part of what we call an egalitarian constitution. They can be said always to be obligatory for the sake of *eventual* consent; or to support consensualism in as far as is possible. Or, as is common in political philosophy, they can be rationally reconstructed to have been consented to all along, just as the social contract putting the monopoly of violence in the hands of the state often is. Locke, for instance, poses ‘non-revolt’ as implied consent.

These inflections of universal or classical values sometimes result in a narrowing of the ancient concept, as with consensual obligations. Consent limits that which can legitimately be considered morally obligatory in advance of personal considerations. Inflection could otherwise result in an expansion of a value’s range, as when ‘universal’ extends the reach of that which is to be considered equal from any number of limited sets of statuses. It now involves the set of ‘all’ persons. At other times, the inflection reflects a redefinition of the term itself—jazz scales used to re-set Bach, as it were—as is the case with personal autonomy. But in all three cases, that which is essential to being modern, namely the three values, are variations on the old tunes, rather than wholly new songs.

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<sup>31</sup> Hugo Grotius, *DIB*, II.11.1.

### **Chapter 3: More than mere values**

This chapter begins to connect modern cultural identity to the ‘person’ that bears its values and enacts its virtues. There is an in-baked philosophical anthropology in the triad of consent, equality, and autonomy that I expose for examination here. Then I interrogate this ‘person’ throughout the remainder of the study, both in its natural and corporate forms. The final part of this book is an extended analysis and assessment of this ‘person’. Beginning in Part II, I proceed by assuming that modern values and virtues take this anthropology for granted as if it were a natural kind. It is needed for the values and virtues to make sense. I first, then, must establish that it even exists. Then I can draw some of its contours.

I shall do this by extending my initial analysis of the values and virtues from the previous chapter to the point where they call for being spoken about in personal terms. ‘Personal’ here means two distinct things. First, they are talked about as, say, beliefs or actions, of specifiable if not also specific persons. Second, they must be spoken about in general terms of a certain philosophy of the person. I will then lay out some of the direct and implicit claims about said person(s). These are metaphysical, ethical, political, and epistemological claims. Implied here is that the modern axiological and anthropological shifts also involved changes to—and often revolutions in—the major areas of philosophy. These changes did not remain locked away in treatises. The new philosophies are evinced in the social practice of ordinary modern persons.

These three parts of modern cultural identity, and thus the egalitarian constitution, are notably both experiential categories *and* conceptual ways of speaking about reality. They can range across human experience. Each also determines possible obligations or ways of deriving obligations on both sides of the personal/public divide. For instance, when there is social agreement that personal autonomy is to be supported, a shared moral language emerges. This might include great focus on the free will of the parties involved. Contractual language then fills moral conversations with ‘consent’ and ‘intention’, as well as those common words for formal concepts like duress, coercion, and mistake. Once formalized legally, autonomy manifests itself as claims to rights, protections, welfare, and freedoms. It might, for instance, involve positive freedoms of universal education and healthcare, a robust welfare state and advanced human rights or similar, plus the universal franchise. Those are all on the side of the person as citizen or subject. The

state's—and along with it, society's—adherence to laws that protect others from harm or certain kinds of unfairness, ensuring negative freedom for the autonomous persons, is another aspect.<sup>1</sup>

These values, manifested in law and as law-like customs, virtues, and dogmas, create imperatives for personal action, both individual and corporate. They should thus also be psychologically accurate descriptions of what is required of modern persons in daily life. Where this is the case, they are not received as moral imposition, but as natural features of the human world—being good, fitting, proper, and right. When there is such harmony, neither the Right nor the Good needs to be given precedence, for both converge. There is then little sense in talking of 'imposing obligations' or 'legislating' morality, about which a little more will be said. Finally, the one metaphysical assumption of the modern constitution is addressed, along with its related revolutions in philosophy.

## **Virtues**

Virtues, at least in the Aristotelian tradition, are dispositions for human action, habits of doing the right thing for the right reason at the right time. Of course, that makes virtue relative to the right. If 'right' is grounded in something higher than convention, then virtue would be based in the good, as understood by a given society. For Aristotle, the good was anthropologically anchored. This is also true for moderns. The difference between the two lies in what each understands the human being and his good to be. If being modern implies being disposed to acting according to the three values as both right and good, then there are all sorts of modern virtues that could be derived just from equality, autonomy, and consensualism. These would, under most normal circumstances, usually remain unnamed or implied only by their corresponding vices.<sup>2</sup> However, simply because there is no name for a virtue

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<sup>1</sup> Although it is routinely denied, John Rawls's philosophy of 'justice as fairness' would seem to enforce a minimal understanding of autonomy as the sovereign virtue, with harm and fairness as the measures of whether autonomy is being respected. The terms 'person' and 'society' in his understanding of 'political ideals of person and society' are Trojan horses for autonomy to be the leading virtue by means of the inability of anyone to opt out of 'principles of the political conception of justice'. Cf. *Justice as Fairness: A Restatement*, §47.4. He becomes the main exemplar later in the chapters on equality.

<sup>2</sup> We humans are generally much better at naming the bad than the good. Consider only how well Hell is described, and how weak all descriptions of Heaven seem. Compare Dante's *Inferno* to his *Paradiso*.

or its corresponding vice, this does not in any way preclude it from being an important part of ethical life.<sup>3</sup>

But then there is a third aspect regarding habitual disposition. When modern values are understood to underlie a system of virtues, habits involving consensual obligations, equalitarian policies, and the promotion of autonomy ensue. When we say, ‘It is not a modern country’, we tend to mean that it is deficient not only in modern *nomoi* and dogmas, but that the dispositions to action are not modern. Imagine, for instance, a modern nation that had a modern constitution and had the belief that it should follow the first principles upon which the constitution could be said to rest, but this nation was incontinent in its actions. It has not developed a modern disposition. If it had, then its natural reaction when legislating or engaging in foreign policy would have also become modern. Latin America is full of such states: Mexico has nearly a photocopy of the United States’ Constitution as its own constitution. But the differences in state action are stark.

One can imagine other corporate persons and natural persons similarly being modern in all ways but adherence to the virtues. Hypocrisy, however, ‘is a tribute that vice pays to virtue.’<sup>4</sup> *Nomoi* are socially enforced customs. Dogmas involve personal conviction and belief. Virtue is the hardest, since it requires habitual action reconciling the latter with the former. As clear as custom can be, and as certain as dogma is, it is still not always clear how one is best meant to act in a given circumstance. Virtue is difficult in any system where it is taken seriously. This is true even when the customs, dogmas, and virtues are united, and all descend from the same shared values (as with the modern). Am I meant to be an egalitarian in all my relations? Or can I place my child’s personal autonomy above other considerations? Should consent trump equality and personal autonomy (freedom from unwarranted harm) when someone wants to sacrifice his life for another?

To distinguish virtue from *nomos* sufficiently, it should be remembered that *nomoi* have the psychological force of mores; whereas virtues are the dispositions to action in line with those mores: when virtues are defined as acting ‘at the right time, for the right reason...’, that reason can be a *nomos*; the sense of it being the right time for a certain action can also be related to a *nomos*. This indicates the relativity of virtue-ethics as a systematic engagement with human action. It is as relative to culture and place, as to the truth and the Good. It is true that nowhere is injustice confused with justice.

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<sup>3</sup> In his *Ethics*, Aristotle himself names and refers to unnamed virtues of such and such description.

<sup>4</sup> François de La Rochefoucauld, *Reflexions Morales* (1692).

However, in some places ‘treating others with equal moral consideration’ is seen as a virtue, with ‘patronizing others’ and ‘treating others with unequal consideration without reason’ as the two opposing vices. In other places or times, equal moral consideration could be seen as a vice.

More than just a set of values, together the modern trinity presents a positive vision of the good that calls for persons to instantiate and extend that vision through their dispositions for action. The temptation is to imagine it as a ‘meme’, if that concept were not itself fatally flawed. Persons self-consciously want to replicate modern values because they believe that these values are as real as genes, and certainly more important to busy themselves with. Genes are mostly out of our control. Values are the very stuff of our daily decisions. There are obvious sets of twinned vices which are either deficiencies or excesses of the virtues of consensualism, ‘the practice of equality’<sup>5</sup>, and autonomous living.

## **Nomoi**

In this study, the three values of modern cultural identity will occasionally be addressed in their law and law-like relations through the broader concept of ‘nomos’. ‘Nomos’ will be the word that I use for ‘law’ in this broadest sense, except where ‘law’ or ‘custom’ communicate the concept better. *Nomos* is an ancient Greek word meaning ‘law’, ‘custom’, ‘mores’, and other related concepts. The *nomos/physis* debate amongst the ancient Greeks brings it into relief. *Physis* can be understood to be ‘nature’ and its laws. What man adds in terms of law is *nomos*. Hesiod said that the *nomoi* are what distinguish man from animals. Different *nomoi*, would be what distinguishes one group of men from another. Conceptually, I use ‘nomos’—without italics—for a set of customs, habits, mores, and morals that regulate and order a way of being for persons. It is a system of Right grounded in the Good. The Good that it is grounded in need not be self-consciously part of the reasons for adhering to the *nomos*. ‘Nomos’ is the word for the system of rules, as well as the word for a single rule. The plural stands in either for multiple systems of Right or many rules of order within what could be called a culture. In that way it functions much like the words ‘moral’ and ‘morals’.

Any given *nomos* is not necessarily formalized into a code or codification. Many codifications or codes of conduct, however, are based in particular *nomoi*. Modern *nomoi* encompass the relevant parts of law and law-like

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<sup>5</sup> Cf. Ronald Dworkin’s book subtitle: *Sovereign Virtue: The Theory and Practice of Equality*.

relations that specifically differentiate being modern from other ways of being in the world. This holds true both as it is experienced by modern persons—whether individually or as part of modern institutions—and as it is understood by scholars.

Modern *nomoi* are mapped onto the cardinal modern values: equality (universal equality of persons) as the default moral position in modern political constitutions; consensualism, as the only route to *a priori* morally binding political obligations as the binding force of law (it answers the question ‘Why am I morally bound to obey the law?’ often with a social contract); and personal autonomy, understood as ‘being an end in oneself’, as the point of departure and goal for moral action, both personally and politically.

These *nomoi* bridge the experience of personhood, the definition of what a person is (or conceptualization of what persons are), and the experience of law and lawmaking (as the ratio within the law), as well as the limits and the understanding of what the law is, at least insofar as it can be said to obligate morally. And they are as true for institutions that want to be considered modern as they are of individuals who self-understand as modern.

Approaching the topic with the conceptual framework of *nomos* allows the academic discussion also to include the lived experience of the person amongst other persons. That is where *nomoi* become imperatives, moral values, as well as the justification for moral obligations. Being appealed to in social, psychological, and legal discourses, they become metaphysical anchors in the world of persons, to which other concepts or entities can be tied down. Adhering to or living with(in) a *nomos* has many consequences, including that which could broadly be called anthropological consequences: *nomoi* are ‘designed’ for certain kinds of constitutions, and vice versa (egalitarian *nomoi* for democratic constitutions).

I chose *nomos* chiefly for the precision and accuracy of the term. In the first case, law in its broadest signification could mean either a description of regular action or an imperative for action. *Nomos*, too, is able to bear such meanings. Secondly, in modern parlance we speak of the ‘laws of nature’. There is an impersonal aspect of those laws as descriptions of regular non-volitional activity. Such a use of the word ‘*nomos*’ would not be likely for the Greeks who invented it. Custom was usually opposed to nature, famously in the *nomos/physis* debate. And the *nomoi*—the law and law-like customs and traditions—were built atop nature (or, so contended one side of the debate). Sometimes they were constructed even in opposition to ‘nature’ in the

descriptive sense, but for the sake of ‘nature’ in the teleological sense. In virtue ethics, for instance, weak natures were made virtuous by that process of building a ‘second nature’ with the crooked timber that nature had provided. If *nomos* comprises the law and law-like customs as well as traditions that bridge self and society, then ‘modern *nomos*’ should describe a *culture* of law and personhood that obtains when certain *nomoi* are in place. In the broadest sense this is a culture of ‘right preceding the good’, which is built atop an ostensibly naturalistic natural world. God is absent, dead, or exiguous to its functioning.

Why use a Greek word? Some of the reasons for my preference for the Greek word *nomos* over its insufficient English near-equivalents should by now be apparent. As Boethius notes in his discussion of persons in *Contra Eutychen*, Greek does not lack for words. I would have preferred simply to use the word ‘law’—that is, if its non-legal connotations were closer to the surface meaning, as they are in ‘natural law’ or ‘moral law’. ‘Law’ has in the modern age come nearly to mean ‘positive law’ (for reasons not unrelated to the modernization and secularization<sup>6</sup> of law). ‘Modern law’ as a title also seemed insufficient. It suffers not only from the aforementioned positivist limitation, but it also has no obvious content. For some scholars it refers to positive law after the French Revolution or following nineteenth-century European codifications; whereas for others it was law in the age of human rights and modern international law; and, again for others, it is ‘our’ law as opposed to historical law. ‘Nomos’ has the initial advantage. It neither suffers from a handicap of meaning nor is it completely idiosyncratic in its senses.

Lastly, I am not only borrowing words and concepts from the ancient Greeks but also from the sociology of religion. There the term ‘nomos’ was introduced into academic discourse in senses that I have here followed.<sup>7</sup> Although *nomos* as a concept becomes thicker in this book than the original

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<sup>6</sup> In this book, I have little to say about secularization per se, or as it relates to modernization. Although, it has to be said that the experience and theory of being modern is very much involved with questions of religion, especially in self-understanding and the content of the law. Nevertheless, I anticipate that what I am doing is at one time both more meta-level than the social facts of religion and more personal than religion. If ‘faith’ is meant by ‘religion’, I respond that any specific personal faith or belief is far too particular for the nature of my argument, which could equally apply to Jewish, Christian, or Neopagan faiths, so long as the persons of those faiths are also moderns. The removal of the heteronomous relation either to God or religion is more to the point. I return to it in the chapters on autonomy.

<sup>7</sup> Peter L. Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion*, especially the chapter ‘Religion and World-Construction’. Giorgio Agamben has used *nomos* idiosyncratically in his *Homo Sacer*, ‘The Camp as the “Nomos” of the Modern’ 166-80.

Greek term, the Greeks still play their part. Although I do not venture too far from the original meaning, since many examples are drawn from their ancient political communities and thinkers.

### **First principles and Dogmas**

The three cardinal values involve not only the structures and laws, but also serve as motivation for belief and moral action. Equality, consent, and autonomy are necessary to explain a great deal of modern cultural identity—and thereby the modern constitution—in a logically and *psychologically* convincing way. As first principles<sup>8</sup>, these values have a credal character, both for the faithful and for the heretics that oppose them. If I were to believe that ‘All men are created equal’ or ‘freedom is the essence of man’, I would act with those as moral knowledge—literally, as conscience—and thus as the reason for my action. And I would merge them synthetically wherever possible, perhaps so that ‘every person has equal (similar) access to the provisions that make freedom realizable’.

These values are self-evident enough now for modern man that they have the character of first principles, or ‘ethical premises’.<sup>9</sup> He also knows that these were not always treated as first principles: they were discovered at some point. Which is not inconsistent with their being true, and universally valid, and self-evident. Mathematics, too, was once unknown to us. It was always true. We can easily and proudly concede this, especially as we moderns believe we were the ones to discover these truths.

The trouble is that they are not necessarily first principles at all. They require either argumentation or a leap of faith to establish them. Since they are treated as self-evident first principles, argumentation for them is less forthcoming than emotional outrage at their denial. Taboos are set up around them to guard their sacrality. Of the books defending universal equality that I have encountered, none directly defends universal equality as a fundamental value, establishing its truth *by way of arguments*.<sup>10</sup> Some take the route of admitting equality to be undefended in the literature, and then after a hypothetical proceed to berate anyone who would require a defence of

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<sup>8</sup> John Finnis, ‘Nationality and Alienage’. See supra Chapter 2, footnote 7.

<sup>9</sup> ‘The justification of the claim of fundamental equality has been held to be impossible because it is a rock-bottom ethical premise and so cannot be derived from anything else.’ Brian Barry, ‘Equality’, 324.

<sup>10</sup> John Kekes has well-sourced section, ‘Arbitrary Claims’ concerning the dogma of equality in *The Illusions of Egalitarianism*, 65-71.

something so obviously true.<sup>11</sup> Others proceed *arguendo*, with the conclusion as a point of departure.<sup>12</sup>

Modern man seems to arrive at an affirmation of these values precisely by a leap of faith, or by way of indoctrination from a young age, or both. While they serve well as first principles, they are really more dogmatic than first principles in character, and much less philosophical. I shall nevertheless charitably refer to them as ‘first principles’. Yet, there is at least one problem in treating dogmas *as* first principles. First principles are indisputable because incontrovertible, often logically self-evident. Dogmas are indisputable by the insistence of an authority. Modern culture, after it is established, does function as this authority socially, and the identity that one forms within the values also seems to have authority, derived in part from its resilience, to continue to perpetuate itself. At times it does this by reflexively setting itself against itself or against modern institutions, rather than as against tradition, as formerly. Now ‘the precepts and social forms of modernity stand open to scrutiny’, or at least those that are no longer considered modern enough: the nation-state, the nuclear family, certain protestant churches, and the free market.<sup>13</sup>

I use ‘first principles’, that is, unless a stronger word is needed. One can think of the dogmas of the Nicene Creed, which are not themselves about action, but imply action or restraint from certain types of activity once they are taken to be true. The belief in ‘God the father’ as creator of all has obvious and less obvious follow-on actions and activities. The basic outworking of the meaning of consent, equality, and autonomy is not action, but beliefs about the state of the world and how it should be. More to the point, they are beliefs about the *way the world should be ordered henceforth*. Just as

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<sup>11</sup> ‘But if everyone matters just as much as everyone else, it is appalling that [material inequalities persist]’, Nagel, Thomas. *Equality and Partiality*. Oxford University Press (1991), 64.

<sup>12</sup> Richard Dworkin opens *Sovereign Virtue* with an introduction entitled ‘Does Equality matter?’ In place of answering yes and telling us why, he instead posits: ‘No government is legitimate that does not show equal concern for the fate of all those citizens over whom it claims dominion and from whom it claims allegiance. Equal concern is the sovereign virtue of political community—without it government is only tyranny...’; the 300 pages that follow in the ‘Theory’ section are not an extended argument for equal concern over, say partiality. It is theory of how equal concern should mean equality of resources. Nagel ranges through ‘the type of argument’ that would ‘provide a moral basis for’ his favourite form of liberal egalitarianism. He readily admits: ‘I do not have such an argument.’ He then proceeds to claim that ‘moral equality...might even be described as the mark of an enlightened ethic.’ Nagel, Thomas. *Mortal Questions*, 108-112.

<sup>13</sup> Anthony Giddens, ‘Living in a Post-Traditional Society’ in Ulrich Beck et al., *Reflexive Modernization*, 57.

with the Nicene Creed, natural and corporate persons can act using its dogmas as reasons for action. And it is important to note that modern cultural identity does have the character of a ‘political religion’.<sup>14</sup> At times ‘dogma’ is much more apt than ‘first principles’, also simply in terms of how the values function. If someone is trying to get a law changed so that it allows greater universal equality, the *reason* he could give would be based ultimately on the egalitarian first principle of equal moral consideration. But the way in which he defends the principle makes it function more like the dogmatic formulation of the same principle: ‘All men are created equal’, which appeals to the higher court of conscience.

Dogmas are perceived as being either pious or pretentious, and so they are rarely directly invoked in daily life. There are, rather, shorthand rhetorical ‘God terms’, such as ‘democracy’, ‘progress’, ‘equality’, and ‘freedom’, which are employed to enforce their message. God terms are notoriously vague, conversation stoppers, with an ‘inherent potency’ that are also positive in their connotation. ‘Devil terms’, the mirror image of God terms, can serve the same goal by policing the boundaries of the dogma. Thus, the rhetorical enforcement of the dogma of universal equality has been maintained in terms of accusations: inequality is not merely bad but ‘slavery’, one becomes a ‘vassal’, and he is not treated like a man, but ‘patronized’; discrimination does not make one discriminating but ‘prejudiced’.<sup>15</sup>

I refer to modern values as ‘dogmas’ without irony or judgment (even when irony or judgement might be warranted on their own terms). These dogmas motivate modern institutions to act or refrain from acting in predictable ways. Modern governance of public life is hard to imagine without the limits set on them by these dogmas. This is so, even as modern cultural identity is allergic to terms like ‘dogma’, believing it has left such religious certainty behind. Moderns, thus, refrain from speaking about their own dogmas. They preferred to refer directly to the thing believed in, calling them ‘rights’ or ‘freedoms’, or another term that meshes with consent, equality, and autonomy. How a ‘fundamental right’ differs in practice from a ‘dogma’, if each has the same content, is beyond me. It gets quite grammatical, without a clear divergence in meaning.

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<sup>14</sup> Eric Voegelin, ‘The Political Religions’ in *Modernity without Restraint*.

<sup>15</sup> Richard Weaver. *The Ethics of Rhetoric*, 215-223.

## **A public morality**

Together consent, autonomy, and equality account for much of the most important moral claims of modern persons. They also explain the psychology of modern obligation, which prefers consent over command wherever possible. The equality and autonomy of the person in question, whether natural or corporate, must always be allowed for. Following in this line of moral reasoning, one hears amongst moderns that ‘we cannot legislate morality.’<sup>16</sup> Reasons for this relate to the autonomy of moral enquiry of each person; the difficulty of deciding whose morality to enforce (or ‘pluralism’ as it is popularly called<sup>17</sup>); an egalitarian position vis-à-vis moral judgement implied in universal equality; and the fact that pre-emptive enforcement of morality goes against the consensual nature of moral obligations (even if what is chosen under coercive pressure would have been their same choice if uncoerced and in similar circumstances).<sup>18</sup> It would no longer be ‘moral’ if coerced, moderns tell themselves, even as the law that is considered just has coercion all over the place, ostensibly to enforce its moral positions. By the logic of the amorality or neutrality of the law, any legal obligation could be called into question if construed as a moral obligation with a sanction attached to it. The claim is beside the point that personal autonomy and the rest of modern values, when brought into the law, become an enforcement of a very clear morality. It is a meta-morality, to be sure, or a moral foundation, if you prefer. But there is no getting around the morality of modern law.

Nevertheless, from within the trinity of consent, equality, and autonomy one does not ‘legislate morality’ on others, any more than one legislates morality on persons by having a speed limit on the highway or a tax code that encourages investment rather than spend-thriftiness. If the morality is already by and large present in the people, then it is not ‘legislation of morality’, if the phrase be understood as coercive moralizing through law. Rather, it is merely lawmaking that reflects the moral convictions of the people who must abide by it. It is making laws that are understood also to be Law, being grounded in the moral principles that are foundational to the law itself. If a legal system guarantees autonomy of persons, it can hardly simultaneously support a system of heteronomous determination of life paths of, say, the second-born sons being ‘given’ to the monastery by the family. That will look like an

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<sup>16</sup> See Lucinda Peach, *Legislating Morality: Pluralism and Religious Identity in Lawmaking*, Introduction.

<sup>17</sup> In ‘Two Concepts of Liberty’, Isaiah Berlin claims ‘the unity of the Good’ must be denied in order to respect this value, in avoiding the trappings of positive liberty.

<sup>18</sup> Gerald Dworkin, ‘Acting Freely’, *Nous* (November 1970).

imposition that could also be the legislation of a particular morality. But if the laws guaranteed the rights to the property and person of individuals, over and against any and all group rights, that could hardly be called the enforcement of morality. The vision motivating the lawmaking is a moral position involving a kind of autonomous life. But that vision is native to the legal system itself and its theory of itself.<sup>19</sup>

### **Metaphysical and methodological individualism**

Equality would be unfertile ground for political and moral imagination if individualism were not already present in the conversation. And consent means little outside of personal permission (i.e. of individuals), making licit that which would otherwise be unjustified harm. Personal autonomy has little attraction if it does not promise the development of the talents and desires of the individual person. Expressive individualism—a byword for romantic autonomy—is possible as a result of the metaphysical centralizing of the individual person. But this individualism is also methodological. In fact, it has become methodologically necessary because the individual person is now thought to be that which is really metaphysically real.<sup>20</sup>

The claim—often implicit—is stronger: the reality of the inviolable individual person has replaced the mirages and the social constructions of status, family, culture, history, religion, nation, civilization. When the accreted layers of the social units of family, society, polity, and any other groupings claiming to have a sacred or natural place in the order of things are peeled away, the individual person is revealed to be at the centre. Or all such individuals are their own centres. Now discovered, they can be liberated, namely, restored to what they always really were before corrupted by society. The common background assumption motivating this liberation is an

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<sup>19</sup> ‘The doctrines theory embraces are ideals as well as descriptions: the choice theory must make are choices among conceptions of what society ought to be as well as among views of what it is. These choices are neither arbitrary nor capable of logical or empirical proof. They build upon speculative conceptions of the requirements of social order and of the demands of human nature, conceptions that are informed by historical knowledge but which cannot pretend to follow necessarily from it.’ Roberto Mangabeira Unger, *Law in Modern Society*, 267.

<sup>20</sup> The inheritance here is something like Hobbes plus Spinoza – only individual things exist (Hobbes), and they have no essence outside of their distinguishing activity (Spinoza in the *Tractatus Theologico-Politicus* [1670]).

anthropological optimism tied to pessimism about society: man is by nature good, only corrupted by society, as Rousseau put it.<sup>21</sup>

So goes the claim. But, as Charles Taylor comments about the limitations of the teachers of this new metaphysics: ‘What it cannot be seen as [by them] is a novel form of self-understanding, not definable simply by the negation of what preceded it.’<sup>22</sup> That newly-discovered individual supplants the previous order, through a robust commitment to it as font and foundation and justification of the new order. Moderns thus regard individualism as ‘the normal fruit of human self-regard absent the illusory claims of God, the Chain of Being, or the sacred order of society.’<sup>23</sup> Those forms of ‘participative heteronomy’ (as I term them) are all falsely endowed with authority that is only ultimately the possession of the individual person.

It is not only that the individual is a discovery, after which one cannot unlearn it without trauma (like un-learning to read); it is also that individualism takes on a new naturalness (like always having been able to see from birth). People ‘behave as individuals, because that’s what they “naturally” do when no longer held in by the old religions, metaphysics, and customs’.<sup>24</sup>

This individualism, as Taylor says, carries ‘an often unreflective methodological individualism’ coupled with faith in the omnipotence and omni-competence of natural science. So, ‘its protagonists are frequently tempted to case out “coming to see” the kernel truths as a sort of “discovery” in science.’ The advantage is neutrality: whatever natural science discovers is a ‘neutral fact’, by its nature ‘value-free’. It does not remain unvalued, but we humans add value to it. This is *mere* value, rather than any recognition of intrinsic worth or dignity, and so, it remains devoid of moral significance. Chief amongst the ‘natural facts’ that science has discovered is our metaphysical status as individuals, ‘impelled to operate by instrumental reason, maximizing our advantage when we are not deterred from doing so by unfounded belief.’<sup>25</sup>

The trouble with the metaphysics of the individual leading the analysis is: self-understanding is never ‘approached’. It is certainly not held in a vacuum. We are always located among others in relations. With some notable

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<sup>21</sup> Joshua Cohen, *Rousseau: A free community of equals*, section ‘Realism? Natural Goodness and Democracy’, 16-20.

<sup>22</sup> Charles Taylor ‘Two Theories of Modernity’.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

exceptions, the ‘human condition’ itself is a social one. Self-definition is conducted, as Taylor says, ‘in exchange with others’, be they parents, friends, enemies and those with whom we share society, all of whom ‘we come to see as constitutive of our identity’. There is great difference in how we place ourselves amongst others. History itself is materially ‘understanding these differences and their change’<sup>26</sup> He adds that

[m]odern “individualism” is coterminous with, indeed, is defined by a new understanding of our placement among others, one that gives an important placement to common action in profane time, and hence to the idea of consensually founded unions, which received influential formulation in the myth of an original state of nature and a social contract. Individualism is not just a withdrawal from society, but a reconception of what human society can be. To think of it as pure withdrawal is to confuse individualism, which is always a moral ideal, with the anomie of the breakdown.<sup>27</sup>

He has connected here ‘individualism’, which I deal with under the auspices of ‘personal autonomy’, with consensual governance, which I deal with as a broader category of consensual moral obligations and consensualism. When individualism and consensual governance are brought forward, it is hard to draw a line between them that does not include universal equality. How would you rank *a priori* a society of individual consensualists? For, all social ranking involves some sort of belonging to a larger group that has a claim on one’s moral life. This is precluded by individualism and consent as the gate through which all moral obligations must pass.

With this individualism as a principle, that which is challenged is not only the metaphysics of society, that is, that upon which society is ‘built’, but more so, the vision of the good in Western society. Rather than a default position that is restored by the advent of modernity, the acultural vision of modernity has blind spots for its own reality as a normative vision of the good.<sup>28</sup> The ‘one among many’ approach to modernity has an implicit delegitimizing effect on the claims of Enlightenment triumphalism or those of the modern ‘ethnocentrism of the present’. But it need not be a claim about the far-reachingness of modern truth. It could just be a very different way of

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<sup>26</sup> Charles Taylor ‘Two Theories of Modernity’.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

understanding that which is true about modernity. Rather than the last man standing, modernity would be the best man in the race.

Taylor notes that those of us who assess modernity make it either a hero or villain.<sup>29</sup> I do not want to do either, for I am unsure I understand either that which I should praise or blame in it *in itself*. The contingencies are too great. A large part of this book is dedicated to understanding just what is different about being modern from being anything else that one may be. But the understanding that I espouse is not one that takes the materialist account favoured by purportedly ‘scientific’ or ‘hard’ explanations of modernity very seriously, at least not as an efficient cause or specific difference resulting in modern identity. Explaining the social changes that came about in modernity as an innate desire for survival, power, wealth, or the need to control others—which Taylor rightly understands could be found just as easily in the moral fabric of humanity as the material conditions, if one bothers to look there<sup>30</sup>—is one part of the cause.

But it is a material cause rather than an efficient one. Sometimes the hard scientific account tries to make use of certain moral ideals that are neutral enough to be non-offensive to Enlightenment amoral purity (and in that way they are taken for granted as being morally neutral and acultural). ‘Freedom’ as the absence of restraint allows you to ‘do what you want’, which everyone apparently is ‘very into’. Instrumental reason gets you more of whatever you want, no matter what that may be.<sup>31</sup> So, instrumental reason’s increasing influence on life and society is nothing more than an increase in the freedom that we recognize as important to modernity.

Put differently, the idea that the ideals of ‘freedom’ or ‘equality’ alone are yeast enough to make the modern dough rise—and that it will rise similarly wherever those ingredients are added—misses the fact of the contentlessness of those concepts once they are decontextualized. Yeast needs dough. One hears it said that ‘all men naturally seek freedom’, a statement that is nearly as manifestly false as it is unfalsifiable. Saying that the gradual march of freedom has been the story of the emergence of the modern West is a false start in proving the general point that man has a natural desire for freedom. It may as well be an argument for the complete uniqueness of the West, rather than one for the universalizability of the results of the Western modernization. And it does not stand strong against the more likely account that natural science

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<sup>29</sup> Charles Taylor ‘Two Theories of Modernity’.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

itself ‘has grown in the West in close symbiosis with a certain culture’. Culture here, again, is understood by Taylor (and, following him, by me) as ‘a constellation of understandings of person, nature, society, and the good.’<sup>32</sup> This is based on an understanding that there is a split between nature and culture, so that culture is all that is not nature. In contemporary scientific terms, we would describe culture as: all that is not inherited through our genes. In its particularity, it is ‘what my tribe does’, as opposed to what other tribes do. Consciousness is one marked difference. Moderns are conscious that all other tribes are different to them. So, to begin with, the next section will start with the radical break between modern culture and that of all other tribes asking: What is this culture of egalitarianism like? And what is it like to be equal?

### **Three revolutions produced the egalitarian constitution**

Modern values eventually became the values of all or most of us participating in the West and the cultures that have been heavily influenced by it, be it through colonialism, imperialism, or free associations such as trade and cultural participation. During this great change, each modern value revolutionized an area of philosophy and its constituent parts of human action.

Proportional equality became universal equality, and thus revolutionized politics (in practical politics, many times in actual revolutions). Equality was barely on the radar screen—or scroll, as it were—of ancient politics. Now it is the guiding light and litmus test of political justice, especially in Western socially-minded democracies, where justice is pretty closely identified with fairness. ‘Fairness’ is a byword for equal distribution of goods.

Inherited obligations (and ascriptive obligations) were swapped for consensual moral obligations, thus revolutionizing ethics (there are obvious political ramifications).

Autonomy, which had a limited use in the ancient world of heteronomy, became an affirmation of individual persons as the groundwork of morals. This meant a revolution in metaphysics with obvious knock-on effects for ethics, epistemology, and politics.

Then there were combinations of the results of individual revolutions. For instance, universal equality plus personal autonomy meant a revolution in

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<sup>32</sup> Charles Taylor ‘Two Theories of Modernity’.

epistemology. Think no further than of him who announced it, René Descartes. As he went, so goes the modern: the metaphysics of the self are the groundwork for a new philosophy of science, for an autonomy of enquiry, and for a new world order.

The individual human person is really real, namely a metaphysical substance. As such, it is also a moral entity. The turn to consensual autonomous egalitarians as our image of man has brought us this and at least three other revolutions in philosophy. In ethics, consensual relations are now considered the most just, precisely because of the belief in the universal, equal moral consideration of the person. In politics, these consensual relations amongst egalitarians are extended so that liberal democracy eventually becomes the only acceptable form of government and governance. The tearing down of old statuses and hierarchies has meant that a new epistemology permeates ethics and politics. Beginning with the metaphysics of the person, it proceeds to prioritize knowledge. In ethics, all kinds of intuitionism and conscience-based approaches have followed this (rather than either deontological or utilitarian approaches, which have more ancient provenance, going back to Plato and Aristotle respectively). In politics, the move toward justifying political rule on the basis of the ‘consent of the governed’ has assumed that political legitimacy.

The precise relation of the values to the philosophical revolutions in which they are embroiled is of less importance than the fact that the three values are part and parcel of the constitution that includes the revolutions’ results. Rather than describing it in terms of its constituent philosophies, the constitution could be sketched in terms of the person at its centre. As its centre, the person provides the metaphysical anchor. The content, substance, and direction—the ends—are all located within the person. Only by the manifestation of these is a non-naturalistic order given to the world. This is another way to talk about personal autonomy.

This person is not one of a kind; it is a definition of a kind. That kind currently includes many billions of instances. In order for them reasonably to remain autonomous, they cannot disturb one another too much. There are many ways to imagine the coordination of their relations. An all-knowing mind could perhaps design the world so that they would never interfere with one another, so that they would only (even willy-nilly) assist each other’s autonomy-seeking. Absent such a mind, the limits on autonomous action need to be set at the points where one disturbs the ends of the other. Such disturbances can be construed in many ways, but the preferred way to speak

about them is in terms of ‘harms’. ‘My freedom stops where it harms another’ is a common enough phrase of those influenced by this consideration. How does one know when one is harming another? Sometimes it is obvious. But most of the time one needs to be told. What about harms that can nevertheless have beneficial ends? Well, those can be permitted by the one who would otherwise be harmed. Seeking consent from others is the best way to ensure that harms are avoided. The running assumption here is that pragmatic reasons emerge from a person wishing to achieve her self-defined ends. Under conditions of scarce *a priori* knowledge of other’s desires, consensualism is the only manner of relation possible between autonomous persons.

Nothing has yet been said of the limits that would need to be put on the content and direction of the consensual relations, so that they do not result in the routine acceptance of harms—the harm of which is, ironically, able to be washed away by one’s continual consenting to it. Equality provides a universal status to which autonomy and consent are calibrated. Under such a regime, the content and manner of relation between persons cannot be such that it introduces or exacerbates inequality. And so, a viable universal status, manner of relation, and source of the content and ends of human action are all provided for such persons.

Returning to the theme of this chapter: these values can be seen manifesting themselves as *nomoi* in politics and everyday life. In metaphysics, they are the first principles and dogmas that are ever-present. And in ethics, it is the modern virtues that present themselves most forcefully.

### **What is it like to be a consensual autonomous egalitarian?**

The parts of this book that follow are about much less approachable topics for ordinary moderns than equality. Equality meets each of us right where we are. No wonder it has been called ‘the leading fetish of our time’, endorsed as an ‘obvious ideal’ and a social and political ‘cause’.<sup>33</sup> These are all true, but the most telling statement is that ‘[m]ost people now believe in equality’, the way that one might believe in the Bible or the One Holy Catholic Church. This belief means that social life should be reformed to rid it of inherited inequalities.<sup>34</sup> It is not hard to get agreement amongst self-conscious egalitarians that equality is (1) a desirable end, (2) a feasible end, and (3) the

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<sup>33</sup> William Letwin, ‘The Case Against Equality’, in *Against Equality*, 1.

<sup>34</sup> *Ibid.*

paramount political end.<sup>35</sup> Thus, both on the personal and social level, clear opposition to ‘inequality’ is able to be mounted. For instance, educated women’s complaints about ‘women’s work’ differ from equity feminists’ ponderings about the ‘patriarchy’. The former is couched in terms of basic unfairness amongst presumed equals—‘If we are equal, why am I stuck with the dirty work? That’s not fair.’ Both the modern women and the feminist activists, however, are asking for solutions to the problem of an unwarranted hierarchy. In all but the extreme cases they want ‘fairness’, meaning equality. Even those who disagree with its ends have been forced to put their arguments in the language of equality, like ancient heretics who affirmed the orthodox position only to redefine the terms. Those from the east who support traditional sex differences in labour and life will often present these differences as choices made by ‘equal and free’ persons. That is, all women in these societies have chosen to remain behind closed doors.

Equality is clear and clearly desired, even as it never seems to manifest itself sufficiently to satisfy those who want it. And we all want it. Autonomy, however, is notably fuzzy and all over the place in its definitions. It is true that *‘omnis definitio est exclusio’*, but with so many definitions, very little is excluded. As it goes, only those who have spent too long in philosophy classrooms could complain that they have too little ‘autonomy’, or are oppressed by all the ‘heteronomy’ in their lives. Even as ‘autonomy’ is perhaps the most important definition of morality for the most important modern moral philosopher, namely, Immanuel Kant, the term itself rarely is featured in the titles of monographs. Few article collections, even scholarly ones, are dedicated to the idea. I know of no scholarly journal dedicated to or named ‘Autonomy’. So, autonomy is not the natural point of entry to the moral world of moderns, even the benefits of autonomy are part of what is desired by them. So instead moderns, even philosophically informed ones ask for ‘freedom’ or ‘liberty’, ‘human rights’, or ‘welfare’. Each of these could presumably form or restore a basic starting point of human goods from which one could act autonomously.

Consent, too, is what we moderns want, regarding moral obligations, but it is rarely what we ask for per se. Concerning consensual obligations or consent as a value in morality, one finds treatises of all kinds against inherited obligations. Yet there is scarcely a developed philosophy of consent, for instance, as the efficient cause of moral obligation. This is a curious inheritance of Rousseauian ‘sincerity’, made more acute by the influence of

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<sup>35</sup> William Letwin, ‘The Case Against Equality’, in *Against Equality*, 3.

Immanuel Kant. The long-standing minority position, held consistently by influential ethicists follows Kant, insists that duty be the only reason a rational person could rightly appeal to as a guide for moral—and thus obligatory—action. Nevertheless, the philosophical difficulties surrounding consent do appear in discussions of the free will, psychology, and more recently in the neurosciences. Many of the last understand their research to deny or curb the possibility of free will, making self-conscious consent illusory. It is not Brian but his brain that does the choosing.<sup>36</sup> Instead of begging for consent, we moderns demand ‘the vote’ or having ‘a voice’, ‘to be asked’. We also demand rights that presume consensual relations over command. Freedom of assembly allows us to join with whom we like consensually in societies or institutions within the law. The free market allows individuals to contract relations with those that they believe are most in their own interest, rather than being required to sell to one and not the other. Moderns balk at paternalism and flee from command-morality as inauthentic. We want the liberty in all things possible to ‘do what *we* want to do, not what others tell us to do’.

Each part or chapter is a different version of the title question, with the leading value standing in at the end of the question, ‘What is it like to be ...?’

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<sup>36</sup> As an antidote to neuro-determinism, see Raymond Tallis, *Why the Mind is Not a Computer: A Pocket Dictionary on Neuromythology*.

## **PART II: What is it like to be equal?**

The purpose of this part of the book is to show what it is like to be equal by way of illustrating its common modern instance, the egalitarian mind. *Equalitarians* take up the mindset because, both conceptually and practically, ‘equality’ alone—namely, ‘more equality’—is not enough to secure the basic sense of the modern value of universal equality. It is thus fortunate that equality alone is not what moderns are after, after all. Their alter-conscience protests otherwise, with a Jacobine insistence, but the innocence of ‘mere equality is enough’ is broken by equality’s totalizing and violent insistence on levelling, its ravenous desire for more. The alter-conscience is always wakeful worrying about inequality, imagining grand and total (and just as often violent) schemes to make the world instantly fairer. It whispers that ‘the human race has before it splendid destinies of various kinds’, the only road to them is found ‘in the recognition of substantial equality between all human creatures’.<sup>1</sup> But that road is littered with headless corpses and inundated boats full of those who were not revolutionary enough to become universally equal, on the road the Gulags. Moderns have come to realize—as anyone would who toyed with so sharp an instrument—that something else is needed to balance, to control, and to channel the great power that is universal equality.

The ‘container’ that moderns use to temper and tame and direct the equality impulse, which has become their alter-conscience, is the modern mindset: ‘the egalitarian mind’. It sometimes acts like a neutral agent that helps the medicine to be digested safely, and at other times it functions like circuitry that routes otherwise dangerous electricity to beneficial uses. ‘Justice as fairness’ serves as the best contemporary instance of this mindset, and for that reason I compared it to the older sense of justice as *summ cuique*, which it has attempted to replace. ‘Justice as fairness’ is used to defend a less destructive form of equalization of resources and access, often called ‘social democracy’, after humanity’s traumatic experience with modernity’s totalizing instances of equalitarianism, such as Marxist communism, proved deleterious not only of the Right but also of the Good of equality.

I set the stage for the comparison of justice as fairness with thought experiments that might excite your equalitarian alter-conscience and cause you to resort to some of the security of the egalitarian mind in order to

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<sup>1</sup> James Fitzjames Stephen employs the phrase in defining Comte’s ‘Religion of Humanity’, *Liberty, Equality, Fraternity*, 3ff.

prevent equality's excesses. As you resort to the egalitarian mind, and find your social imaginary participating in an egalitarian regime of likeminded persons, I'll describe some of its elements, which you will likely also have taken advantage of in order to save equality from itself, and to save you and yours from it as well.

### **Thought experiment: Fair science**

A modern liberal democratic republic has had the good fortune of birthing a citizen whose intelligence is higher than any ever recorded. From an early age she, let's call her 'Suzy', began solving mathematical and practical problems that had baffled previous generations of thinkers. She turned her attention to medicine during university and led a team that developed an AIDS vaccine. Then, even more miraculously, she cured the common cold with an inexpensive enema. She dedicates most of her waking hours to advancing practical knowledge that benefits humanity, with the knock-on effect of increasing her personal wealth and library of patents. In the process, she has founded some of the most successful technology and R&D companies in the world. She is now also one of the wealthiest persons in the world at age 33.

Her government increasingly exercises a modern progressive tax scheme, so that the more successful she becomes, the greater share of her income is allocated to the public fisc. Once that ceases to be sufficient to the public's 'needs', they alter the laws on intellectual property 'for the common good', causing many of her patents to fall into public ownership after only five years. After twenty years of diminishing returns, Suzy no longer sees any incentive in spending her time solving other people's problems. After all, she has already done more than any other mere human before her to ameliorate the plight of humanity. She does not believe in any reward in the afterlife, and so she wants to spend the rest of her life enjoying being alive. She thus decides to retire at fifty-three, and proceeds to divest herself of interest in business and scientific research.

But rumours have been flying for years that she has more or less figured out cold fusion. With a couple more years of research, it might provide unlimited and nearly free energy to all of humanity, but first it would benefit to the citizens of her land. She is kindly asked by the Minister of Energy to complete the work. She refuses, preferring instead to emigrate to an island atoll, and live out her days away from such acquisitive persons and states.

Her leaders respond by taking her passport, arresting her, and quarantining her. They tell her that for the good of all, she must produce the

formulas for cold fusion. It is *unfair* that she keeps this great benefit to herself. She won the lottery of birth, and now she has the *moral responsibility* to give back. If she refuses, then she will be detained indefinitely.<sup>2</sup> She vows that she will commit suicide rather than be tormented in this way, and goes on hunger strike. The state hospitalizes her, and actively force-feeds her. And the battle for her knowledge ensues.

Shouldn't she just give the formulas? Isn't that the 'fair' thing to do?<sup>3</sup> Or, is it the other way round, that any state that would coerce her into working in this way—becoming literally a captive slave—is always on the wrong side of equality?<sup>4</sup> The question boils down to: Can 'equality', or its more particular inflection as 'universal equality', tell us what to do here? Does it come down either on the repugnant side of torturing one woman for the sake of the health of all humanity or on the tragically bleak side of denying free energy to the world, and thus presumably resulting in millions of preventable deaths and a continued low general living standard for two-thirds of the world.<sup>5</sup>

You are probably retreating either to deontological or utilitarian calculations to justify the side that you find 'equality' to be on; or, likewise, you might well begin by condemning the side that you find 'equality' to be against. But neither of those ethical approaches are native to the value of 'universal equality' (albeit that deontological certainty does mesh with equality once the question of who or what is to be equalized has been determined, as often on utilitarian grounds as not).

Is it not the case that Suzy is an autonomous person, who must consent to moral obligations before they are ascribed to her? Hasn't a liberal democracy betrayed its very mandate and become the opposite of itself when it sustains itself on the suffering of even one innocent? All must be treated to the same justice under the law. That is what equality means politically, right?

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<sup>2</sup> See Grahame Lock's article 'Self-ownership, Equality of Resources and the case of the Indolent Indigent' R&R (1989) JRG 18 AFL 1., from which I took inspiration from for this example. Rawls, Marx, and many others who see only randomness in the assignment of excellences at birth ('luck', they call it) have had to treat talents as just another resource for exploitation and distribution. This temptation cuts across modern political philosophies and cultural *nomoi*. Think of the business concept and department of 'human resources'. Some 'human resources' are consensually exchanged (labour), whilst others are appropriated like so many taxes.

<sup>3</sup> Would you think any differently of the example if Suzy were Sam instead?

<sup>4</sup> Does your assessment change if Suzy were black, or from some other formerly enslaved/maltreated population?

<sup>5</sup> This choice is seemingly less problematic, since it involves the denial of a good rather than the visiting of harm; and in that the harm is both spread out over time and involves millions of nameless and faceless persons. Whether it is actually less wrong *for those reasons* is not clear.

That is its slimmest formal realization in receiving ‘equal justice under law’ (which is, incidentally, emblazoned on the United States Supreme Court building).

Or is this, rather, a case of one person, Suzy, holding the rest of humanity hostage simply because of her moral luck?<sup>6</sup> Imagine if all farmers decided to burn their harvests instead of bringing them to market, citing the fact that they own the land and the products that they have mixed their labour with.<sup>7</sup> Would they not be forced to hand it over? Moreover, and again, Suzy’s intelligence comes about simply because of the luck of birth. She had the freedom and resources to develop it because of the society around her, the government, and the positive and negative peace that those provided. Doesn’t she owe it to everyone else to share this knowledge?<sup>8</sup> Isn’t her knowledge in some way also the property of her society? Of all humanity even?

In short, by which principle would you deprive her of her freedom and life, coerce her, threaten her, remove her from society, and thereby set such a precedent about the collective use of ‘resources’?<sup>9</sup> Alternatively, what is the principle or value by which you would allow her to keep her knowledge to herself? Which of these is unrelated to an understanding of ‘equality’?<sup>10</sup> Is equality alone enough to determine what is just to do in such a circumstance? If it is not, what could we add so that a just outcome could be decided on?

Is ‘personal autonomy’ as a value enough to add to universal equality to guide the situation to the good? What about the necessity for consent before

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<sup>6</sup> Does the example change, if, rather than discovering cold fusion, she has found a way permanently to prevent inflation from reaching more than two percent worldwide? Or for perpetual, controlled growth? Or if she has stockpiled so much money, after taxes, that *if* she were to decide to dump it at once, all would suffer from a great deflation?

<sup>7</sup> An example derived by Lawrence Cahoon based on arguments in perhaps the first self-styled anarchist, Pierre-Joseph Proudhon, *What Is Property?* (1840).

<sup>8</sup> Recall Hobbes’s understanding of the ‘overmighty subject’, whose power, be it direct or by way of influence, made him a danger to public order and the peace. He was to be dealt with, presumably not unlike Athens and the other *poleis* dealt with their over-mighty *citizens*, by way of exile or death penalties at times, if he could not be brought into the service of the Commonwealth.

<sup>9</sup> Echoes Nozick’s ‘Wilt Chamberlain’ example against ascendant forms of distributive justice—including Rawls’s ‘difference principle’—in *Anarchy, State, and Utopia*, 161-164.

<sup>10</sup> In the article, ‘The Empty Idea of Equality’, *Harvard Law Review*, Peter Westen argues that ‘the endurance of the principle [of equality] is due to the fact that it is empty of content. For the principle to have meaning, it must incorporate some external values that determine which persons and treatments are alike, but once these external values are found, the principle of equality becomes superfluous.’ What we tend to want when we ask for equality is not a fair, even or equitable distribution of some goods. It is rather a reduction in inequality of something, a ‘more equitable’ society, or in the baffling phrase a ‘more equal’ society.

an obligation is laid on someone? It is unclear whether, based on modern values, and enforced through modern virtues and institutions, the answer would *have to be* one or the other, that is, by necessity, moral or otherwise. Put plainly: It is unclear whether we would protect Suzy or use her as a means to everyone's benefit. We moderns would like to think we would never cause even one innocent to suffer for the good of all. But few moderns oppose drafts in a time of war, when male bodies are needed to protect the realm (or just as cannon fodder for the ambitions of great men). Why is a body any more appropriable to sacrifice for the common good than one's privacy regarding knowledge?

I suspect that pushing this example in the direction of its logic—allowing the alter-conscience to enforce equality—yields uncomfortable conclusions for the modern equalitarian. One will need to build up defences, at least, in the values of personal autonomy and consensualism (and their sub-values like freedom and assent, respectively), to try to control universal equality.

Yet, if it cannot finally be controlled by the egalitarian mind, the modern constitution will have been revealed as an insufficient order for achieving the human good. In the conclusion of this book I return to the question with the full trifecta of modern values and attempt to provide a positive answer to the question. For now, I'll delve a bit deeper into just what 'equality' is for moderns as a value and virtue. Then, I'll compare it to the proportional equality that 'universal equality' has been designed to subvert and surmount.

## **Chapter 4: Universal Equality**

The purpose of this chapter is to explain that to be equal is not merely to value and adhere to ‘equality’. The concept working behind the value has no content of its own; in its use, it is not stable (except tautologically); it is thus always contextually defined. Moreover, despite having dynamic meaning, it tends to act as an exacting and ‘total’ value. Its range of application is great, potentially touching all things everywhere in the life of moderns. Since the value is so constituted, as a virtue, levelling has no necessary relation to implementing the good; or only as a direct relation as the value behind the virtue has. Evil could equally be valued and thus routinely pursued through levelling by way of equality. Being natively directionless, equality could be made to move in any direction. It can and has been destructive even of its own valuer and its own levellers. Not only is it no respecter of the Good, but neither is it a respecter of the Right. It is certainly no respecter of persons.

### **Equality of ‘persons’**

Over the past few hundred years the value of ‘equality’ has been modified with the word ‘universal’. ‘Universal equality’ is a value related to persons. Persons may be natural or corporate. You and I are natural persons. Groups that involve natural persons can also be considered persons themselves, corporate persons. Ordinary examples include: political parties, states, trade unions, churches, as well as for- or not-for-profit corporations. Recently moral and legal philosophers have tried to extend the natural category of ‘person’ to include non-human animals. In some countries, Spain and Switzerland, laws have been passed to partially include great apes in the protections afforded to persons. Although ‘universal’ is limited to ‘persons’, there is no reason that ‘person’ may not also be extended beyond the boundaries of the human race, so that equality could be universally offered to them as well—whether ‘they’ be animals, robots or space aliens, we will have to wait and see. It can even be that the whole ecosystem or biosphere is included or all things in it.<sup>1</sup>

The question of how ‘universal’ this personhood could become is taken up in the final part of this book. If it is taken too far, it loses its moral

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<sup>1</sup> Arne Naess offers ‘biospherical egalitarianism in principle’, which affirms the equal right to live and flourish for all things. ‘The Shallow and the Deep: Long Range Ecology Movements’. This is a pro-equality and anti-humanist position that worries about ‘mammalian crowding’ of the biosphere.

significance for human persons. But the tendency is to extend equality to its logical limits despite costs to some or all human persons. In Chapter 5 and part of Chapter 6, I approach the modern fixation in politics, personal psychology, and society on equality as a standard of justice—‘justice as fairness’ as it is most famously called. This is also treated as the destination of human social and political order. In my reading, socialism—and its safe-for-the-West form called ‘social democracy’—is a quintessentially modern political doctrine. Not only does it analyse injustice in terms of individual deserts, as when labourers do not have access to their own products or means of production—referred to as ‘alienation’—but it also sees equality as the measure and remedy of the situation. In consistently reaching first for equality as the means and ends of social engineering, it has routinely self-destructed and destroyed those it set out to protect.

### **Universal equality as value and virtue**

Three interrelated questions spring to mind when universal equality is presented as a core value of social and personal life: 1) Why universal equality? 2) Equality of what? 3) Equality of whom? An answer to any one of these questions delimits or sometimes even determines the (possible) answers to the others. This partially turns on the definition of ‘universal’, which is contextually indexed. The set could include: all humans, all sentient beings, all creatures, all individual things in the cosmos or even the cosmos itself. Equalitarians are committed at least to the three-fold, ideal meaning of all human beings, always, and at all times. That ideal will be returned to below, especially its conceptual difficulties. However, I begin with *Equality of what?*, as it is the most open-ended of the questions.

*Equality of what?* involves what might be called the ‘the *goods* subject to distribution’. Often that means (re-)distribution by some central authority. In most modern imaginings it is the state that fulfils this role, but it need not be. Families, churches, insurance companies, lotteries: all could do it. But it is taken for granted that there are many things which we are perfectly happy not to have (re-)distributed in a more equalitarian fashion: contagious disease, early death, tax audits, and paper cuts immediately come to mind. Equalitarians are not usually in the business of distributing harms simply because it would be fairer that all suffer, say pestilence, rather than just leaving the misery to the unfortunate few. We are, then, speaking about (re-)distributing things considered ‘good’, rather than just ‘goods’ in the sense of material necessities. Mere equality—or ‘simple equality’—is a relation with no

possible content in itself, even if it is routinely used with regard to obvious social goods (wealth, land, education, healthcare). That was a conceptual point that I return to immediately below. The cultural point is that the choice of the goods to which simple equality is to be applied must be provided by the culture in which the relation is active. Or this must at least be provided by the person considering equality's levelling activity.<sup>2</sup> And no *persons in a position of choosing* are cultureless or neutral, no matter what John Rawls has suggested.<sup>3</sup>

Some goods are good everywhere and at all times wherever biological creatures persist, such as clean drinking water. Others are good in circumstances appealing to rational animals, such as receiving moral consideration.<sup>4</sup> Others, again, such as a dapper suit or a prize for achievement, are good only where certain conditions obtain—where they have a certain meaning, where such-and-such values are held.<sup>5</sup> They can thus vary greatly in their relative evaluation, just as easily being seen as goods or bads. Think of a chic 1970s polyester leisure suit in contemporary Berlin. What is good everywhere can be called an absolute good, bearing in mind that it is only 'absolute' in relation to human beings. In most cases such absolute goods will gain the status in relation to a biological or physical fact of suffering and death, and the undesirable psychological states that attend (the anticipation of) pain, suffering, and death.<sup>6</sup> The reverse case applies in that

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<sup>2</sup> Some have tried to get away from the tyranny of 'simple equality'. Michael Walzer has developed 'complex equality'. However, he adds a number of other considerations, including the fact that choices of distribution always relate to the cultural meaning of that which is to be distributed. Moreover, related to meaning is the principle by which things are distributed, which differs not only per culture but within differing spheres within each culture (e.g., strict equality for basic rights, merit for higher education, need for welfare, harm for recompense, etc). There cannot be one, simple equality for all everywhere. He also offers eleven basic goods that complex equality would distribute. So, the problem returns again to the goods themselves rather than remaining focussed on equality. 'Complex Equality' in *Spheres of Justice: A Defense of Pluralism and Equality* (1983), 3-29.

<sup>3</sup> Immature humans and humans who are alive but not cognizant are in no position to choose. They are, however, human persons and also human beings.

<sup>4</sup> John Kekes, *The Illusions of Egalitarianism*, 1-2, where he identifies egalitarianism by way of the statement: 'all human beings should be treated with equal consideration unless there are good reasons against it.'; Michael Walzer, lists eleven goods: membership, security and welfare, money and commodities, office, hard work, free time, education, kinship and love, divine grace, recognition, and political power. Each gets a chapter-length treatment in *Spheres of Justice*.

<sup>5</sup> Walzer, *Spheres of Justice* (1983), 6-13.

<sup>6</sup> This might be considered overly utilitarian, but with most basic goods the value they have is evaluated in relation to human life. Fire is considered a good up to the point that it burns human flesh. If we had the skin of elephants, it might be held as a good for a little longer before being tossed away in pain.

severe physical pain and the like are never absolute goods. This is also the basis of many utilitarian ethics, which also assume methodological and metaphysical individualism.<sup>7</sup> It is no wonder that equalitarian politics—even when purportedly grounded in deontological claims about the worth of the person—tends to be couched in utilitarian justifications. A shared vision of the human chiefly as an ‘individual’ binds them, in place of older visions of moral order that casts man chiefly in the role of a particularized ‘person’. Below I detail how this generalized ‘individual’ serves to negate the truly personal aspects of the individual so as to avoid anything intruding on justice as fairness. For equality is no respecter of persons. But justice once was that very personal form of respect.

Nevertheless, absolute goods are not always considered by equalitarians as appropriate or *prima facie* objects of equal distribution. In such enlightened places where one can procure an abortion (nearly) at will, one still does not enjoy the right to use a toilet wherever and whenever one wants. One will look in vain at the founding documents of universal human rights for the basic right to use a toilet when nature calls. Some goods fall under the equalitarian moral calculus, others do not. The reasons vary, and the justifications differ, from place to place and time to time. Yet, certain obvious necessities and other greatly desirable things for a happy life (almost) never seem morally necessary to attempt to re-distribute. Some examples: personal or physical affection, sex<sup>8</sup>, children<sup>9</sup>, friends<sup>10</sup>, beauty<sup>11</sup>, health<sup>12</sup>, access to

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<sup>7</sup> See ‘Average happiness versus total happiness’, 27ff and ‘Utilitarianism and justice’, 67ff, in J J C Smart, Bernard Williams, *Utilitarianism: For and Against* (Cambridge 1973).

<sup>8</sup> There has been talk in the Netherlands of allowing the handicapped access to brothels at the state expense. Otherwise, they might be denied the good of sex. But aren’t many of us some of the time and most of us in the twilight of our adult lives handicapped by ugliness? Don’t the less attractive suffer because of lack of access to sex? Why should the luck of birth determine who gets to have that pleasure? That meaningfulness?

<sup>9</sup> Some can have many; others can have none, being either barren or undesirable. Adoption is one option, but both costly and not yet justified at the level of social policy as *a form of egalitarian redistribution*, namely, for the ‘right’ to parenthood (although the gay adoption debate almost goes there). In the history of the human race men have had, on the whole, a much more difficult time reproducing than women. Women are much more selective about whom they allow to become a father of their offspring. Shouldn’t we rectify this injustice for the sake of equality? Don’t we have the right to be parents? Everyone who wants to become a father should be helped to do so.

<sup>10</sup> There are some absurdities in attempting to redistribute friends and the like. Are these, however, more absurd than equalizing certain ‘opportunities’? Many such opportunities nowadays come through friends. Hobbes saw this, listing friends as an instrumental power, alongside wealth and reputation. *Leviathan* X.

<sup>11</sup> I expect that healthcare in the Western world will increasingly include sponsoring aesthetic surgeries and treatments for the sake of equalizing the playing field. Orthodontics have nearly

nature or animals or the sea or trees, or an environment free of undesired stimuli...the list lopes on. Reasons for excluding these goods from equalitarian calculus are rarely enumerated. Reasons are usually given, however, for those things that should be included.

At the societal level, moderns err on the side of placing more goods into the redistribution mill than the societies that they have replaced ever did. This is especially true of goods that are considered 'basic'. It is also true of that category of goods which are grossly difficult to procure, especially when they are not yet institutionalized, without great personal expense, such as elementary education. One of the few articles of the Universal Declaration of Human Rights that reads like a commandment is Art. 26.1: 'Elementary education shall be compulsory'. The purpose of education, in Art. 26.2, is related to what could be called the 'freedom to be treated equally'. As it says: 'Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.' Hence, the growing preference for the welfare state by increasingly modern populaces of the North Atlantic nations, ever since Otto von Bismarck began the project in the latter half of the nineteenth century.

Nevertheless, that which is considered good, and why, will always need to be determined. Equality itself only gets us part of the way in understanding why some goods are nearly always up for redistribution, and others nearly never are, and others sometimes are and sometimes are not. Equality itself, when acting as a measure, often points out the problem of inequality of a purported good. By way of an equalitarian ethic, it points in the direction of complete equality by means of less unequal (re-)distribution. But it does not indicate which goods should fall under its moral jurisdiction.

### **From mathematical relation to cosmic truth**

As we have seen, equality, since it is necessarily relational, needs content and context for it to mean anything but the scarcest mathematical or geometrical truth. 'Equality' on its own is a mere factual description of that relation

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become that in American private healthcare plans, along with teeth whitening. Fashionable glasses are also routinely covered in the US, rather than just a minimum that would be necessary to restore bodily function.

<sup>12</sup> As distinguished from healthcare. This is now changing. For instance, a recent bill presented to Dutch parliament would make it obligatory to opt-out of organ donation. If one does not, then, upon death one's organs will be redistributed to others awaiting transplants. Could these also be used more generally for 'science' or 'art' even? and justified along egalitarian lines.

obtaining in nature, for better or worse, without any necessary value or moral imperative attached. When ‘equality’ becomes a value, it must be transferred from the world of maths to that of moral aspirations. ‘Universal’ is the indicator of that happening, since it carries with it a vision of order that stands above any person, above all individuals, above anything that was or could be chosen or denied. ‘Universal’ marks equality out as having cosmological import.

This import, however, is not sublime. It does not extinguish the significance of all other entities simply because of its grandeur. Like number for the Pythagoreans and Plato, it orders all that participates in it, gives it identity and form. Once equality is universal, there is nowhere in the universe that one could go where one would not be equal to those one met! What that means for our relations can differ as much as *one* egg differs from *one* idea, with both still being instances of the universal number ‘one’. Equality will negotiate its own participation in the life of man once it has installed itself in his mind as the standard of righteousness. From there it seeks to bring all to enjoy its perfections. It would massage itself into the politics of reform, as part of a vision of justice with a divine mandate to make the lives of all as adherent to equality as possible. Instead of becoming the cornerstone of the constitution, it would have to become the framework of social life, just as it is the framer of the moral life of moderns.<sup>13</sup> Moderns consider equality a good in itself, despite the impossibility of intrinsic goodness of that kind of relation (it is a category mistake). They want it to be spread throughout the world. Moderns are not equalitarians, although they do recognize equality in the nature of things. They are egalitarians. Just why can be seen in a discussion of justice, which I return to after going deeper into problems endemic of the concept of equality.

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<sup>13</sup> Bob A Hepple, *Equality: The New Legal Framework* (2011). The trend according to Hepple is away from discrimination law as a sufficient means of enforcing equality. He is writing as ‘the leading academic authority in equality law’ (as stated in the Foreword) on the occasion of the comprehensive Equality Act 2010 (UK). A new overarching branch of law is called ‘equality law’, ‘of which discrimination law is an essential but not exclusive part.’ *Viz.*, Chapter 1: ‘The Aims of Equality Law’. For discrimination law’s place in the enforcement of equality, see ‘Equality: Concepts and Controversies’, the confused and confusing introduction to S Fredman, *Discrimination law* (2002). The move is against negative law-making such as removing inequality (discrimination law) and for positive implementation of equality at all levels.

## Problems of 'equality'

Equality, again, is exactly what we moderns ask for, what we hope for, and what we never quite get. Except, that is, when we get more 'equality' than we ever asked for. In which case it is frequently destructive of the goods that it was meant to distribute more widely. For instance, socialism routinely destroys the markets and the social trust that had together produced the surplus it wanted to re-distribute equally. Being fundamentally a mathematical relation that is borrowed into human relations, the concept of equality itself calls for an unrealizable goal. When are we really 'equal'? How can we ever tell? How can we make it static in a dynamic world (must we assume, against the facts that the world is static)? And when is it completed? When are we equal enough?

There is a story of monastic life, almost certainly apocryphal but nevertheless *true*, in which all is equal amongst the religious except the pens with which the monks copy the sacred manuscripts.<sup>14</sup> All their moral righteousness and resentment are thus directed at either extinguishing the use of better pens or benefitting personally from their use. The quest for full equality, rather than the eventual leadership of a few 'holy' monks, ends in the dissolution of the monastery. The truth of the story is not new. As Tocqueville remarks: 'When inequality of conditions is the common law of society, the most marked inequalities do not strike the eye; when everything is nearly on the same level, the slightest are marked enough to hurt it. Hence the desire for equality always becomes more insatiable in proportion as equality is more complete.'<sup>15</sup> Equality in this way can be understood as a permanent revolution, religious-like zeal that counterposes the truth of a new founding with the wicked customs it seeks to supplant.<sup>16</sup> It needs those customs and traditions like a parasite needs a host, but as it progresses it needs less and less of them to incite violent revolt, as Tocqueville pointed out above. Without inequality to rail against, it is a weak relation of equation.

Equality, then, when taken seriously in human action, becomes a sacred social tie.<sup>17</sup> Definitionally, it necessitates totality, and thus necessitates extremism. Otherwise it could never actually even be approached in the world. Because it takes on a character that is neither personal nor civic, but

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<sup>14</sup> This is partially adapted from Umberto Eco's *Il nome della rosa* (1980).

<sup>15</sup> Alexis de Tocqueville, *Democracy in America* (1899[1835]), Volume II, Sec. II, Ch. XIII, 'Why Americans are so Restless in the Midst of their Prosperity'.

<sup>16</sup> *Ibid.*

<sup>17</sup> Edward Shils, 'Primordial, Personal, Sacred, and Civil Ties'. *British Journal of Sociology* 8, (1957).

sacred, the commitment to equality should be total. That alone satisfies both its definitional and its sacral meaning. Like a half-truth, which is not in fact a truth, but in the most important way an untruth, equality is also total: something either is or is not equal. For that reason, when the ideal is brought to bear on the real, equality is totalitarian in the sense that ‘democracy’ also is: anything undemocratic subverts the claim of ‘democracy’.<sup>18</sup> It is also total in the sense that it precludes opposition, and seeks to subdue and recast the world in its own image.<sup>19</sup> Worryingly for equality, [d]omination is transfigured into administration.<sup>20</sup> For, equality, especially in its tame forms such as ‘justice as fairness’, pretends to be a theory of the Right. Thereby it insists on the inclusion of its vision of the Good to the exclusion of all others. If administration of the Right is controlled, little more needs to be said about the Good. Yet, equality alone has never been enough to secure modern constitutional order. In its revolutionary register, brotherhood and liberty had to be present as moderating influences on it. Both the temptation to extremism in thought and action against inherited inegalitarian institutions and the impotence of ‘equality’ *on its own* to secure any but the most meagre goals, recur politically and psychologically.

These and other problems of equality exist for ‘equalitarians’, whom I wish to distinguish from egalitarians. Equalitarianism, in the words of one critic, ‘would by design sweep away the built-in inequalities of family, of inheritance, of luck, and of individual ability and aptitude.’<sup>21</sup> It is the problems related to ‘equality’ that lead most equalitarians to encumber equalitarianism with all sorts of qualifications, placing its energy at the centre of the more moderate position as egalitarians. It is not simply the abandonment of one position for another. It is the replacement of a hammer with a whole set of tools; a single ideology is replaced by a mindset with that ideology as its tenor. The next chapter details this Egalitarian Mind which attempts to preserve as much of the equalitarian urge to total equality as is can without destroying the very beings that the alter-conscience was intending to equalize or the goods that are meant to be distributed fairly. For the Egalitarian Mind, the quest for

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<sup>18</sup> ‘When this point is reached, domination—in the guise of affluence and liberty—extends to all spheres of private and public existence, integrates all authentic opposition, absorbs all alternatives.’ and ‘Democracy would appear to be the most efficient system of domination.’ Herbert Marcuse, *One-Dimensional Man* (1991[1964]), Chs. 1 & 2, respectively.

<sup>19</sup> This is one mark of totalitarian regimes listed by Hannah Arendt, ‘Ideology and Terror’ in *Origins of Totalitarianism*.

<sup>20</sup> Herbert Marcuse, *One-Dimensional Man* (1991[1964]), Ch 2.

<sup>21</sup> Nisbet, ‘The Pursuit of Equality’.

equality is noble and paramount, but its realization must be tempered. But what are some of the problems with ‘equality’ that make it both too strong to be taken straight into the system and too impotent in itself to use as the cornerstone of any society or self-understanding?

Firstly, there is the ‘Pythagorean problem’. Equality is not a stable political or ethical concept. It is, rather, a mathematical definition of the relation of sameness, which has been borrowed into politics, ethics, and everyday life.<sup>22</sup> Originally, it was in terms of numerical sameness rather than of numerical identity. Saying ‘1 equals 1’ is not an example of equality. Saying that ‘2 equals 1 plus 1’ is. This relation is logical and tautological. And it is not very interesting as far as things go. Saying that there exists a relation between two different things such that they are in some way equal is not a statement about the type of relation. It is about the means by which the two things can be considered equal. Equality is always equality *in something*, that is *of something else* than equality.<sup>23</sup> With numbers, the numerical set provides the content and measure of relations. Numbers are equidistant from each other on the same line, counted in the same unit, and share a base (of ten or whatever distance is chosen), etc. The statement that ‘x equals y’ is about that *thing or concept* shared between them (for, x is not the same thing as y). It is not about the relation of equality itself, which is always and everywhere the same relation. When numbers are not used as the set and base, something else must be or else no relation can obtain.

Once outside of the perfect world of discrete numbers, we should always remember that nothing is in fact ever precisely equal to anything else. No two drawn lines are the same length. It is easier to affirm equality in things that are difficult to measure precisely, or which are in principle unmeasurable. Saying that two persons are of equal height will never be able to be true. Saying that they are equally human is true enough. Saying that they are of equal moral dignity is beyond measure, and thus might pass muster. So, if ‘equality of persons’ is going to be a claim that is neither manifestly untrue at some level

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<sup>22</sup> The relation between the mathematization of the understanding of the world in Descartes, Hobbes, De Metrie, et al, and the rise of one particular mathematical relation, equality, as the central way of relating man to man and man to the world, and man within himself, deserves to be chased to ground.

<sup>23</sup> William E O’Brian, ‘Equality in Law and Philosophy’, both continues the argument of Peter Westen in ‘The Empty Idea of Equality’ that ‘equality’ is an empty set and adds arguments about when it is a ‘non-empty but mistaken value that should be rejected’. Other considerations, ‘such as alleviating poverty and distress, promoting accuracy and substantive justice, avoiding arbitrariness, and other values’ might actually achieve what many mistakenly think is the province of ‘equality’.

of examination (even if it is seen to be functionally true at the level of everyday life) nor beyond interrogation, then it would need to claim equality of some quality or virtue that is more like number than like the physical body.

The relation of ‘equality’ as inherited from math is useful only as an exemplar. But it is a dangerous standard, as it always demands a level of precision that can only be reached in the changeless intelligible world of number. It is applied secularly by equalitarians to the world of flux. Aristotle warns about applying unfit standards of proof to different areas of knowledge. Only a fool looks for, say, mathematical precision in moral reasoning. The analogy to this shift of equality from maths to morals should be borne in mind. Obsession with the changeless as the object of reverence is one way of casting the early history of mathematics. The Pythagoreans were well known as religious cultists *because of* their holistic teachings on the cosmological meaning of maths. It was the centre of their belief system. A whole way of life for self and society flowed from their basic assumptions about number. (Plato was even said to have been a follower of Pythagoras.) It is not hard to see the parallel, long hidden by anti-clericalism amongst equalitarians, that a new religion is formed when equality is affirmed as the relation without which all justice fails—even cosmic justice. The affirmation is made to become both a political and a social imperative because it is believed to be cosmologically true.

The second problem emerges heuristically wherever equalitarian dogma must be put into practice on its own terms. I call it the ‘me-too complex’. The difficulty of doing anything worthwhile and lasting with so thin a concept as ‘equality’ alone—such as founding a society—becomes immediately clear. If contemporary students learn nothing else about the modern world during their education, they will certainly learn one truth: ‘All men are created equal’. This will mean many things, but chiefly it will mean that no serious and lasting distinctions can be made between themselves and their classmates, certainly none that are based wholly on innate qualities, rather than on preference and on habit. And even then, it must be remembered that such distinctions are merely incidental, not essential. Imagine that these children were thrown onto an uninhabited island, *Lord of the Flies* style, and decided to make a society based on one principle, ‘*sola aequalitas*’. Society would be guided by a ‘sugar and salt principle’. The ‘sugar’ is care offered for the victims of inequality. The ‘salt’ is ‘fairness as equality’ extended to all.<sup>24</sup>

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<sup>24</sup> For this usage see Jonathan Haidt, *The Righteous Mind*, 157ff. Besides care and fairness, loyalty, authority, and sanctity could have been used to found society. Those latter three, however,

The principle represents the underlying equalitarian dogma. Betrayals of this dogma excite the passions of envy, resentment, and anxiety, since it is a special sort of personally relevant dogma. With equality, moral righteousness is tied to self-interest. It might not be so with an older dogma that was betrayed by sacrilege, that is, where the offense was felt on behalf of a god, the community or one's ancestors. The dogma of equality in practice returns our psychology to a nearly instinctual form of self-preservation. This is the 'me-too'-ness that equality relies on for its force. Each person fighting not to be deemed 'unequal', not to lose out on the benefit presumed to be conferred by equality, the place with the wolfpack at the carcass. Resentment, envy, jealousy, constant comparisons of oneself with others and one's lot to others', all become the driving engine of social and political change. In all this, note that it does not matter much what is being distributed—its quality or value—so long as it is in some way *considered a good or its conferral is considered a good* (e.g., as a form of respect, recognition, affirmation). The dogma will get monks fighting about pens or children fighting about gold star stickers just the same.

The previous example was about children, but it need not have been. There is a notable puerile tone to the moral language in which claims to equality are commonly expressed, appealing to 'fairness' and not much further. 'It's not fair!' says the child; 'Me too' cry children of all ages.<sup>25</sup> Childish it is, but there is also something basic, fundamental, and related to our most inbuilt human sense of justice about native appeals to equality as fairness.<sup>26</sup> Said more sympathetically: calls for 'equality' can be considered

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immediately betray an anti-equalitarian sentiment. According to Haidt, the Equalitarian ('liberals' in his usage), being a 'two-foundation morality' thus appropriates the other moral values merely as Trojan horses for furtherance of equality (care and fairness). They do so against the 'five-foundation morality' of conservatives. Think of the 'sanctity of the Constitution' in contemporary American discourse. When used by two-foundation moralists, an appeal is made to the Constitution's guarantees of equality and basic rights, rather than also making an appeal to loyalty to a specific sacred Constitution as authoritative—penned in one place, by certain Founding Fathers, for historically-situated reasons.

<sup>25</sup> John Rawls, *Justice as Fairness: A Restatement*. (Belknap Press, 2001) offers both a limiting and a sharpening of the post-Kantian sentiment, with a heavy dose of Rousseauian egalitarianism. Rawls restates the basic feeling of the harm of unfairness as a positive political truth of 'justice as fairness'. In this he foregoes all that has been done to moderate that insistence throughout the history of philosophy. See *A Theory of Justice*, for his update of Kant, making him a disciple of Rousseau: 'Kant's main aim is to deepen and to justify Rousseau's idea that liberty is acting in accordance with a law that we give to ourselves.', 256.

<sup>26</sup> This has been borne out in recent research. Although those who are more traditional ('conservative' in the author's words) appeal to a larger set of moral values, which include sanctity,

*childlike* rather than just childish. They are the beginnings of moral reasoning that are elementary in the sense of being fundamental. It may be even more elementary than we realize. Not only children but even our great ape cousins would seem to recognize some inchoate form of ‘injustice’ in unequal distribution of food, rewards, praise, etc.<sup>27</sup> They at least express disapproval when they end up on the short end of the stick. As one study of primates notes, ‘[p]eople will sometimes invest in extremely costly behavior to achieve fair outcomes for themselves and others.’<sup>28</sup> Equality—or the reduction of (gross) inequality—is important, perhaps even essential, to our moral reasoning. Affirming that truth is different from insisting that it be the essence of our moral reasoning, as well as the test of the justice of our society. There are reasons for this greater than the baseness of psychological life that a single-minded focus on inequality produces.

When implementing abstract notions of equality becomes a social imperative, both its pettiness and violence come to the fore. That is in part because of the unreality of its achievement when compared to the obviousness of the injustice. These together produce frustration and anger in the cognitive dissonance, when inequality is an obvious blight that is intractable. If one seeks inequality, one finds it; nearly any situation can be accused justifiably of some form of ‘inequality’. And if one agrees to the plaintiff’s terms that all inequality must be justified by its uses for eventual equality, it certainly would be unfair and thus unjust and thus wicked not to attempt to fix the unequal situation. According to the equalitarian, the plaintiff is not here pointing to trifling matters.

These appeals to fairness as the whole of (political) justice even sell the matter short. Fairness was formerly thought enough, sometimes being too little done, and often being too much done—or the wrong sort of action—to mend a moral failing or make the world better. In the insistence of universal equality, the principle of fairness reaches its nadir. The equalitarian is pleased

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authority, and loyalty, both the ‘very liberal’ and the ‘very conservative’ are still committed to fairness and care. *The Righteous Mind*, 158.

<sup>27</sup> See following footnote for a survey study of recent findings in animal prosocial behaviour relating to ‘justice’ and ‘fairness’. With all the terms used, caution must be exercised about translation of results from non-human to human groups. Again, seeking to diminish inequality seems more universal than seeking equality itself. Only rational creatures could seem able to hope for equality, by way of understanding the concept and applying it analogically. Great apes of many kinds seem at times to seek more equitable *distribution* of rewards and choice vitals; but this sense is less pronounced regarding punishment and other negative stimuli. For instance, would an ape balk at a whole group of apes being punished for the errors of a single member?

<sup>28</sup> Sarah F Brosnan, ‘Justice- and Fairness-Related Behaviors in Nonhuman Primates’ (2013).

with the phrase, its ostensible meaning, and the possibilities it portends for moral progress. The equalitarian *knows* it is a universal principle, inhering in the cosmos in the same way that the Pythagoreans believed number did. And the alter-conscious insists that the ideal become the real in a total vision of equality.

## Chapter 5: The Alter-Conscience

The purpose of this chapter is to describe and explain the problem with valuing and adhering to equality alone, as the alter-conscience insists. The equalitarian's solution to the problem is first to appropriate the language of liberalism to save equality from itself. Tocqueville said that moderns prefer equality to freedom. However, they do not do so at the cost of both. Thus, certain contemporary 'liberals' have attempted to turn the point into a parody by redefining liberty as equality and in the process importing a large share of moderating influences on the alter-conscience. John Rawls is the best near-contemporary example of the mature form of this doctrine, which replaces justice as *suum cuique* with justice as fairness. During the discussion below, I'll appeal to the thought experiments from the previous chapter, expanding them where necessary with relevant conjectures.

### Justice as (more than just) fairness

The goods that moderns value are considered morally relevant. They are normative and formative of a way of life in the world that is less beholden to considerations of what is 'above' or 'below', 'beyond', 'before', and 'hereafter'. And they differ markedly in extent and content from those goods valued by the ancients, premoderns, and contemporary non-moderns. Modern universal equality is about (material) goods and access to power, the distribution of human booty, as it were. The ancients would have separated it out from a broader sense of justice, and called it 'distributive justice'. Moderns might just call it 'fairness'.<sup>1</sup> Rawls mainlined the dose when he began by straightforwardly presenting 'justice as fairness'.<sup>2</sup> He walked it back a bit in the restatement and clarification of his earlier thought, which also limited the range of justice as fairness to politics. It had been thought (hoped?) that it could stand in for a whole morality: 'rightness as fairness' or 'goodness as fairness', as it were.<sup>3</sup> Rawls was clever enough to see the difficulty of that proposition. That he felt the need to limit its range in this way shows how quickly the sensation had reached the central nervous system of equalitarians. His philosophy was understood to be a surrogate for failed utilitarian morality that would also mesh with procedural liberalism and methodological

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<sup>1</sup> John Rawls, *Justice as Fairness: A Restatement*, Preface.

<sup>2</sup> The main thrust of his systematic tome, *A Theory of Justice*.

<sup>3</sup> *Justice as Fairness*, xviii: '[J]ustice as fairness is now presented as a political conception of justice.'

individualism, all for the sake of equality. Thus, it was (rightly) thought to be ‘egalitarian’. Insuring a sustainable equality of persons under conditions of autonomy and consent (both part of Rawls’s doctrine of ‘equal liberty’) could serve as justification for its levelling tendencies.

Fairness itself is not egalitarian. It is too thin and non-committal about all kinds of human goods, those which egalitarians prize, such as autonomy and consensualism. Similarly, personal autonomy and consent-based moral obligations are in need of a justification for their liberalism and individualism. Liberalism and especially individualism destroy many collective human goods of family, nation, common land, and common history. A focus on minimal fair treatment in lieu of full equality could be sold as supporting autonomy. Since the goal for Rawls was no longer complete equality but less inequality beginning with the least well off, all under conditions of individual freedom and consensual relations, the alter-conscience seemed to be quelled, or at least put to work in determining who were the least well off, so that it could begin re-distribution.

Moreover, ‘fairness’ shifts the discussion always to the level of personal psychology, mixing the public and private virtues, vices, rights and wrongs, and thus performing many sleights of hand along the way. In its most direct form ‘fairness’ does not take into account the particulars of those for whom it is fair and why. *A priori* fair distribution of a pie to a room of ten individual naked apes would be ten equal pieces. Even after something is known of the individual apes: their body mass, how long it has been since each last ate, their relative desire for food or food of a certain kind, there is no necessary (i.e. non-contextual) *reason* that a ‘fair’ distribution should be altered to take those into account. (There is also, incidentally, no reason why those cannot be taken into account, which is Rawls’s ace in the hole.) Fairness, unlike the most basic sense of justice of the ancients, pays no necessary deference to *suum cuique*—to just deserts. It defers instead to the general or generalized *status* of those concerned, beginning with the assumption of one shared basic status for all that is enough for determining equitable distribution. More than one status could be allowed, if justified on other morally acceptable grounds, or if it leans toward perceived equalitarian or egalitarian outcomes.

A phrase like ‘All men are created equal’ is a principle of fairness that need not concern itself with the differences amongst the men. Men (and women eventually) are approached by way of justice as fairness *qua* ‘man’.

Any other status that is introduced must justify itself in promoting this.<sup>4</sup> ‘Man’ is an abstraction or generalization of that which is thought to be essential about human beings; that is, man is a stand-in for ‘person’. From the general sense of what is due to ‘man’, an ethic of fairness can be worked out. The ideal of human relations expressed in short form, say, ‘*Egalité*’, is what each individual human is called to affirm, or will be made to affirm, as the case may be, within a ‘free community of equals’.<sup>5</sup>

As we approach the underlying assumption that all humans share a single status, something needs to be said of the older ideas of justice that have been replaced in the lives of moderns by the sturdy ideal of fairness. As the equalitarian ethos extends its dominion, general teachings that man is ‘by nature equal’ and possesses a ‘natural goodness’, notions of individualized deserts—those that attach not to man but to named persons—become increasingly untenable, whether this be merited rewards or responsibility for wrongs.

Nowhere is this more evident than in the criminal justice system. For instance, in most North Atlantic nations it has become difficult to justify *punishment* of criminals for their crimes.<sup>6</sup> The status of ‘criminal’ has also been discouraged from official use as being prejudicial against the person. In other words, it treats him too much like himself—warts and all—and not like an anonymous individual of a general kind called ‘man’.

‘Equality before the law’ is the original example of an artificial structure that seeks to establish a form of justice as fairness denied by social, political, customary, and cultural life. Some forms of this, such as ‘Chinese legalism’ are traced back into the fourth century BC. The same law was meant to apply to all, aristocrats and commoners, members of one’s own clan and outsiders. Contemporary forms of justice as fairness attempt to ensure that the

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<sup>4</sup> Rawls states in *A Theory of Justice* (1973) is that of ‘our intuitive conviction of the primacy of justice’, by which he means fairness, by which he means equality. Rather than survival or perseverance, Rawls says that justice is the chief virtue of social institutions. See Nisbet, ‘The Pursuit of Equality’ for a discussion of Rawls’s locus.

<sup>5</sup> J Cohen, *Rousseau: A Free Community of Equals* (Oxford, 2010), 166-77.

<sup>6</sup> An undercurrent of this sort of penology has existed at least since Cesare Beccaria published *Dei delitti e delle pene / On Crimes and Punishments* (1764). See his arguments for decriminalization of suicide as case-in-point, Ch XXXII ‘Of Suicide’. From the mid-nineteenth century, popular(ized) utilitarian positions have had a lot to do with the reform of the ‘penitentiary’ into the ‘correctional facility’. All energy is set to prevent future crime. The forefather of this way future-oriented redefinition of punishment as reform is Jeremy Bentham. Three goals are presented against the ‘delinquent’: ‘incapacitation, reformation, and intimidation’, Ch 3, ‘Of the ends of punishment’ in *The Rationale of Punishment* (1830 [1811]), 21.

outcomes of the system of Right also serve the Good of equality. The ancients could not have understood how such an abstract distinction, seemingly pulled from nowhere, could be used to cut their world up into so many equal parcels. Ancient justice was personal and social; modern justice is anonymous and individualized.

## **The individual**

Just how different ancients were from moderns can be seen in the individualized characterization—bordering on a caricature—of the modern ideal of justice, with its procedural individualism. Moderns tend to think that the ‘individual’ was invented yesterday, or perhaps the day before yesterday, during the Renaissance or ‘at the Reformation’. Shakespeare invented the human—or so we hear—with the character of Hamlet.<sup>7</sup> Only this morning humanity awoke to see that there were so many individuals, as many as there were human animals. Before that it was merely hierarchy and misery, patriarchy and privilege, coupled to deference and duty. That is the popular imagining among the chattering classes of credentialed moderns. This is why the term ‘medieval’ is a slur, as in ‘The Pope supports medieval practices in forbidding condoms’. A more sophisticated version of the position that individuals are novel to the modern age appears in argument-like form in academic literature. Compare Larry Siedentop’s recent (and commendable) book, *Inventing the Individual*, to the more modestly titled tome of Colin Morris, *The Discovery of the Individual*.<sup>8</sup> Both works trade in the *belief*—even when the authors don’t necessarily share it—that something completely new was brought into the world, either through creation, invention, or discovery. And they present plausible narratives for the emergence and refinement of the novelty.

At base—where it is most plausibly correct—the ‘invention thesis’ is a claim about the development of Western metaphysics, with knock-on effects in ethics, politics, and so forth. The individual gains an ‘ontological status’ in Heideggerian terms, independent of society or any other group that might attempt to put a claim on the individual. Whether the metaphysical doctrines

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<sup>7</sup> H Bloom, *Shakespeare: The Invention of the Human* (Fourth Estate, 2008). The cult of the Renaissance has led to some curious definitions in this vein of Whiggish historiography. I once heard the historian Diarmaid MacCulloch define the Renaissance facetiously as the realization that there is more to life than the Middle Ages.

<sup>8</sup> L Siedentop *Inventing the Individual: The Origins of Western Liberalism* (Allen Tate, 2014); C Morris, *The Discovery of the Individual, 1050-1200*. (University of Toronto Press, 1987).

came first historically is no matter; the logic of, say, the moral priority of individuals over groups in political theory assumes an ontological priority of the individual over any imaginable group. Likewise in other areas of philosophy and thought. Notwithstanding, it seems at the very least far-fetched that the natural individuation of the body, together with the great divergence of personalities (each of whom is given a personal name in all societies involved in this discourse), would exist alongside a total denial of individuality until, *Voilà!*, the cover is pulled off the individual that was there all along; or, *Eureka!*, someone (presumably an individual himself!) has an idea that he calls ‘the individual’. But the individual what? ‘Individual’ is an adjective that needs a noun to modify. Again, nothing was discovered, created, or invented—except, that is, a new priority in relations: not a new order but a new ordering.

A more plausible position than the ‘invention thesis’ is that a reprioritization happened—a change in ‘ontic priority’—which ended with the individual *person* on the top of the heap. From there he was able to determine the order and ordering below. He was asked to do so, required even, since he was (now) in the position to do so. The question of authority was between the presumptive authority of the past and the authority of the self, which was emerging as the victor. Of course, we are speaking of the individual person both as concept and as an actual natural person. As concept ‘the individual (person)’ was elevated to become a value in itself. This value was used to evaluate the relative worth of the heap that the individual sat upon. A society was just if it did right by the individual.

Formerly, before the ontic reprioritization, the heap of individuals was itself *the great individual* that gave definition to all its constituents. The service of the body’s functions and ends provided the ends of the many individual persons so constituted as one body.<sup>9</sup> The constituents were always known to be individuals. They were not, however, accorded the sovereignty (extreme autonomy, i.e., self-sovereignty) that is now accorded to individual citizens, for sovereignty fell in another’s jurisdiction.<sup>10</sup> For persons operating politically

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<sup>9</sup> The use of a body metaphor to define the group and its parts, with the priority given to the group and to some guiding parts like the head or eyes, has an ancient lineage. However, after the Christian church came to dominate social thought, the idea of ‘one body, many members’ with one head, was given a divine mandate. *Cf., i.a.*, 1 Cor. 12:12-27.

<sup>10</sup> The justification of sovereignty is often a process of question-begging or infinite regress (or both); that is, unless it is settled prejudice and social habitus as Edmund Burke advocates, or some sort of divine right, as many others have advocated, including (ultimately) current justifications of self-

and socially this meaning of ‘individual’ as measure and goal of common life became a tool for further reform and social change. When one individual person suffered, it meant that all suffered.<sup>11</sup> Rights were discovered, declared, and formally attached to the individual. This did not change what it was *to be* an individual human person. It did change *how it was to live as one*, or at least how it could be imagined to be. It was adverbial and subjunctive, extending the possible in many directions, as many as there were individuals...and so long as they did not get too much in one another’s way. Meaning: with the advent of the individual as a foundation of social life, harm became a guiding wrong for society, to be avoided by each and all, and cruelty became one of the greatest evils.<sup>12</sup>

The unjust excesses of ancient law are sometimes paraded about like macabre relics by moderns: separate courts for the nobles; multiple socio-legal statuses that pre-determined outcomes (or even whether one even got one’s day in court); no justice for the masses; rife corruption in both secular and ecclesiastic courts; legislation of morality that was convenient to the powerful; torture, torture, more torture (except in England, where it was mostly forbidden). With the advent of human rights and natural rights before them, all this changed. Justice for all replaced prejudicial treatment and all low forms of cunning that kept the people in deferential—often grovelling—obedience to the enforcers of the law. Formerly, no ordinary person was approached as an ‘individual’.

If one’s analysis remains firmly in this ‘hermeneutic of suspicion’ on the continuum between Hobbes’s *Leviathan* and Foucault’s *Discipline and Punish*, such a reading of legal history proves obvious, necessary, and, it must be remembered, morally useful for purportedly progressive ends. The equalitarian urge in modern morality insists on keeping oneself busy within that hermeneutic.

Yet, if one reads classical texts, or classical and medieval law cases, something more complicated emerges. The ancients knew the individual at least since Socrates, whom no one else was ever thought to be like. Hegel, showing his modern prejudice, seems to see Socrates as a burst of ‘free limitless personality’ (*die freie unendliche Persoenlichkeit*) in an otherwise uniform

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sovereignty in human rights discourse. Marco Verschoor attempts a contractarian justification in ‘The quest for the legitimacy of the people’, *Politics, Philosophy & Economics* (2014), 391-428.

<sup>11</sup> This sentiment can be found in 1 Cor. 12:12-27. Verse 26: ‘... whether one member suffereth, all the members suffer with it...’ (ASV).

<sup>12</sup> Forbiddance of ‘cruel and unusual punishment’ shows up early in modern law, for instance in the Eighth Amendment to the US Constitution (1791).

society; whereas the Platonic republic ‘essentially conceived nothing but the nature of Greek ethical life’ against the ‘deeper principle that was breaking into it’ (referring again to Socrates).<sup>13</sup> Hegel is right to see Socrates in this way. But he is wrong: (1) that Socrates was unique in being perceived as an individual; and (2) that the individual emerged historically only with, or *in*, or *as* him. The ancients knew the individual, to be sure. But something was very different about his natural *condition*.

### **Natural goodness**

The equalitarian alter-conscience precludes seeing justice in a situation the very condition of which is said to be unjust, since unequal. Human individuals were *part of* classes, families, clans, nations, and the like, that eclipsed ‘individual’ identity, and that guided the meting out of justice. By ‘individual’, moderns mean that humans are to be treated: (1) independently of circumstance and person (*ie*, without regard to particulars); and (2) according to their universal equality and natural goodness, irrespective of what heinous acts they might have committed.

The universal moral equality, the ‘the truth within’, was originally a Pauline position in Christianity that was always channelled by the belief in sin as the greatest individuating factor.<sup>14</sup> Think of the most unique character in Milton’s ‘Paradise Lost’<sup>15</sup>, Satan, whom no others were like and who served none but his own chosen ends: ‘Better to reign in hell than serve in heaven’, he says, thus preserving his own prerogatives in a proto-Romantic form. Universal moral equality then meant universal culpability: ‘for no man liveth and sinneth not’.<sup>16</sup>

The ontic reprioritization of ‘individual’ from member to master removes the shared ends that were formerly prerequisite for and definitional of individuals, such as individuating sin relating to a negation of a shared end in the good, and, likewise, individuating holiness. Only Adam could have committed the sins he did. ‘Individual’, then, cannot mean that persons are treated *de novo* in accordance with what each particular person ‘deserves’ (at least not unless the particular person has consented to such a system of deserts). ‘Individual’ does not mean ‘personal’. Modern individualism is not

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<sup>13</sup> Prologue to the *Grundlinien der Philosophie des Rechts* (Stuttgart, 1928), 35.

<sup>14</sup> Siedentop, *Inventing the Individual* (Allen Tate, 2014), 67ff.

<sup>15</sup> Milton, *Paradise Lost* (1674).

<sup>16</sup> A sentiment found throughout the New Testament, as well as in the Hebrew Scriptures cf. I Kings 8:46; II Chron. 6:86; Eccl. 7:20.

concerned with biography but procedural adherence to fair rules, almost in a game-like way.<sup>17</sup> Equality before the law and laws written according to the ‘rule of law’ are together emblematic of this procedural adherence. And this is why the model of equalitarian fairness is ‘equality before the law’ under the rule of law.<sup>18</sup> Equality is a shared means in order to remove the need for agreement about ends. This preserves natural goodness indefinitely, despite even the most vicious biography that precedes a person.

Consequently, modern bureaucracy is the epitome of this respect of ‘individuals’ rather than moral persons, rule by law (i.e., neutral administration) rather than by (any particular) man. Moderns do not self-consciously praise bureaucracy, but that is for other reasons, such as when it becomes a self-serving class of pencil pushers. In other areas, especially the law, the bureaucratization is praised. For instance, the ‘presumption of innocence’<sup>19</sup> in modern criminal proceedings helps to underline the universal status and natural condition that attend ‘equal justice under law’ of individuals.<sup>20</sup> (How it differs from the phrase ‘justice under law’ turns on whether justice requires equality in order to be just; in other words, whether justice *is* fairness between and among ‘individuals’.) In practice contemporary criminal proceedings also exercise a concomitant ‘presumption of agnosticism’ about many aspects of the defendant’s life, including past criminality, at times rendering such information inadmissible.

Relatedly, the categorization of the ‘individual’ as an ‘unencumbered self’ is well known to moderns, and theorized by Rawls as a necessary component of the ‘original position’ (although Rawls does not use the phrase ‘unencumbered self’).<sup>21</sup> Justice, who either is blind, blinded or has been blind-

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<sup>17</sup> Michael Oakeshott, ‘The Rule of Law’ in his *On History and Other Essays* (1983), 119-164. Also: John Rawls, ‘Legal Obligation and the Duty of Fair Play’ (1964).

<sup>18</sup> Michael Oakeshott, ‘The Rule of Law’ in his *On History and Other Essays* (1983), 126-127: ‘to be related in a mutual obligation to observe the conditions which themselves constitute the game, an obligation which cannot be evaded on the grounds of disapproval of or conscientious objection to what they prescribe and which may be symbolically expressed in deference to their custodian: an umpire or a referee [...fair play] does not invoke considerations of “justice”; it means neither more nor less than to play this game conscientiously according to its authentic rules’. Or, said differently, justice is fair play according to the rules.

<sup>19</sup> Art. 11 of the UDHR states ‘Everyone charged with a penal offence has the right to be presumed innocent...’

<sup>20</sup> The Supreme Court of the United States approved the latter phrase to be placed on the court building in 1932.

<sup>21</sup> M Sandel on Rawls’s implicit metaphysics of the individual, *Liberalism and the Limits of Justice* (1982), 119-123 ‘For the unencumbered self, the grounds of self-respect are antecedent to any particular

folded by Rawls, is meant to be unable to see just that sort of purportedly prejudicial personal information: the individual as a *person* with a history of her own, belonging to a community, enmired in all the contingencies and imperfections of life. Those contingencies are meant to be avoided. One standing criticism of the common law is that it takes the specific history of the English-speaking peoples seriously as a source of law. The doctrine of precedence means looking to the facts of past cases and the ruling on such cases as the source and location of the law.<sup>22</sup> It is the inverse of blindness to persons, writ large. It is an alligator—that is, really a remnant dinosaur that has managed to remain thriving among more modern animal models. But not without great distracters, including Swift.<sup>23</sup>

### **Ancient moral-political persons**

For the ancients—at least *our* ancients, for I can say nothing about the Egyptians, Incas or Japanese—there was no doubt that: (1) all individual humans were moral persons, and that (2) all moral persons were individuals. Slaves are often said not to be considered (moral) persons. In Rome as elsewhere they were subject to the criminal law. This did also function as a juridical means to repair harm they caused. But it was not like the proverbial pig on trial in a medieval village. Slaves were interrogated as moral agents (without using that term), *who* act for self-determined reasons, *who* participate in the good and evil, virtuous and vicious, fortuitous and the reverse alike.<sup>24</sup>

What was denied by our ancients in Greece and Rome was: (1) that those who happened to be the good and bad, virtuous and vicious, lucky and unlucky (in all the senses that contemporary moral philosophers use that term), were *each* entitled, in principle and perpetually, to equal treatment; and (2) that the goal of life together was justice, namely, a restoration (*restauratio*) of a fabulous *status quo ante* of universal equality. They had, shall we say,

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ties and attachments...’, xiv. Major argument of the book can be found in ‘Justice and the Good’ in *Liberalism and its Critics* (1984), 159-176.

<sup>22</sup> See J Cartwright, *Contract Law* (Hart 2007), on the doctrine of precedence, ‘The Judge as Interpreter and as Law-Maker’, 19ff.

<sup>23</sup> Jonathan Swift, *Gulliver’s Travels* (1726), Bk IV, Ch V makes great fun of the doctrine of precedence.

<sup>24</sup> For the outlines of who had legal capacity to commit a misdeed, see Theodor Mommsen ‘Roemisches Strafrecht’, in *Systematisches Handbuch der Deutschen Rechtswissenschaft*, Erstes Buch. Karl Binding (ed.). Leipzig: Dubcjer & Humblot (1899); Boudewijn Sirks, ‘Delicts’, in *The Cambridge Companion to Roman Law* (2015), 246–271.

greater concerns (or at least larger ones). Even if someone, somewhere in the ancient world had seen the truth of equalitarian dogma and wanted to live based on it, any attempted realization of it would have been very costly. In ages of such material scarcity, it is much costlier for the equalitarian than it now is for the modern social democrat. When petroleum-powered tractors do the grunt work of agricultural labour, one need not think of the costs and harms to oneself of giving up slaves for reasons of equality.

In a way the ancients could not *afford* allowing everyone to be an individual of a certain status (*dignitas*) under the law and in society. In the context of the economic and social understandings, both the collective and personal costs would have appeared too high. As a rule, that which seems impossible does not generally come to inform one's moral imagination. Additionally, there was the whole-part relation that permeated ancient psychological self-understanding. If some ancient did concede the equalitarian point and freed his slaves and servants and liberated his women from domestic toil, then *life together* for the whole population might have been at least less dignified. That could be reckoned as a cost, but not a harm. The harm might be that, other things remaining equal, society could fall below the level of subsistence. Much of the mutual benefit of the ancients was negotiated through the particular hierarchies, without knowing of any people anywhere who had lived differently, more equally. They did not have a universal model of human relations to implement; they had their own culture and history and habits and customs to rely upon. 'How would *we* get our daily bread?' was a question not yet answered by Adam Smith and others in a liberal vision of material order that could replace scarcity with abundance. The one material necessity that Jesus tells his disciples to pray to God for is 'daily bread'. One does not generally ask God for something that is unerringly provided by human hands.

If the problem of ancient inequality seems like a simple one that should have been answered by implementing 'equality', consider how many hands, backs, feet, and hooves must be present to bake daily bread even for a modest city. The wheat from the farms (and the farms themselves!), the mill, iron for the oven or pans, sources of heat, yeast lines and their storage, buildings or tents, liveries.... Now imagine that you are such an ancient citizen enjoying the wonder of daily bread. You are told that your orderly but unjust system of bondage and deference was going to be replaced by an equalitarian system in which 'every man may do as he pleases' under minimal law. Wouldn't you think that the dissolution of formal and informal bondage would make life

together impossible, and thus much worse for all individually and thus collectively? If even we cannot explain the spontaneous order that emerges from free relations after enjoying its effects for hundreds of years and after having heard it described for much longer, how then can we expect that our ancients could have lived by lights that remain dim to us?

If politics is the art of the possible, the political considerations of ancients endangered individual persons' flourishing on each person's own terms. First came subsistence and sustenance. Someone needed to work the fields and tend to diurnals, prepare meals, wash clothes, fetch water. Someone needed to bear and raise the next generation. Someone needed to pray for the city and 'keep the books'. Someone needed to defend it.<sup>25</sup> Some of that work was done by slaves, some by women, some by soldiers, and some by clergy. Then there was corporate self-direction and its excellence. Subsistence and sustenance were all taken care of so that someone—or a class of some such persons—could lead the city and defend it. That involved setting the bearings, defending the legacy, and constantly reminding ourselves who we are—so that we can keep our bearings and defend ourselves. Memory was held in the civil arts of the comedies, tragedies and poems, and other collective endeavours that 'remind us who we are', so to speak. These preserved learning and defended the honour and greatness of 'our' legacy. In forming this bulwark of a 'we', they were seeking not only to survive but thrive. The city was there for the good life, as Aristotle put it.<sup>26</sup> Post-Darwinian moderns might say: 'Our ancestors did not leave African savannah life for nothing!'

Two realities obtained. First, the ancients were generally realistic about the relation of their needs and desires to the associated costs. This includes personal and collective wants, needs, and desires. Second, they did not have labour-saving devices that eventually made some workers and slaves redundant. Redundancies allowed for the sort of work one does to become a voluntary choice rather than an inherited obligation. While this became more possible in North Atlantic nations as the modern age progressed, it accelerated as technologies made energy both abundant and cheap. The taming and channelling of petroleum into both kinetic energy and cheap plastics has contributed in ways that have not to my knowledge been accounted for. The attempt was at a unified vision of the human good, as Aristotle says 'what manner of life is desirable for all', meaning for each

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<sup>25</sup> Recurring discrete functions throughout human history, and necessary tasks. Ernest Gellner, *Plough, Sword and Book: The Structure of Human History* (1990), esp., 'Production, Coercion, Cognition', 20-23.

<sup>26</sup> Aristotle says, 'the end of the polis is the good life', *Politics* 1280b39–1281a4.

considered *qua* man or *qua* citizen.<sup>27</sup> Since there was no sacrificing the definition of what constituted a good life for mere individual interests and much less so for individual desires, the pressure was on the workers and slaves, the women and the lower orders, to make collective life just so. The freemen and higher orders also had to do their part, albeit at times in more comfortable surroundings. ‘Freeman’ did not mean ‘I do as I please’. It meant that he was freer to choose endeavours that were of a higher order in human social life.

The general frame of mind that I am describing in these ancient moral persons wasn’t merely held by the unreflective and subservient, but also by the most enlightened. Most plain persons in most societies are comfortably enmeshed in their own world as if it is natural. And we philosophers expect little from them. But our world-wise ancients, and many of their finest minds, also held fast to the inegalitarian social order in spite of seeing great likeness between all humans. Some even declared something approaching equality. Seneca, the famous Stoic wrote that slaves are like us, the free, and ought to be treated as such.<sup>28</sup> Yet he did not draw the consequence of this for his own life or that of the community. He kept his slaves until his death. Moreover, he did not advise Stoic masters to manumit slaves as Paul did in the letter to Philemon.<sup>29</sup> Seneca was a bit of a Thomas Jefferson in this way. Stoicism was fine, but had its limits! If one wants a certain form of life, he’s going to need slaves or robots to do the work. They did not have robots. The basic truth of human dignity was there—there was no confusion of lower orders of humans with mere animals. But the good of human dignity did not trump the good of the political community, nor the good of certain members of it. Both of which were perceived to be higher goods than those of mere individuals. Again: the individual was known and recognized as worthy, but there were things that had a greater worth, including the common good and the availability of a life *for some few* that is not only subsistent but also chances at excellence. That we must be guided by what is excellent in us rather than what is base, that we are, for instance, more rational than animal, was the fundamental claim that justified such an ordering of goods. One could see this as multiple statuses or sub-statuses within the shared status as human

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<sup>27</sup> Aristotle *Politics* 1323a14.

<sup>28</sup> Letter 47, to Lucilius.

<sup>29</sup> Cf. Philemon 1:16. That slave had become a Christian; in the Dutch East Indies in the seventeenth and eighteenth centuries, a master was supposed to manumit his Christian slaves, in any case by testament (probably in line with this epistle of Paul).

person, each of which was understood to serve a unified vision of personal and collective flourishing.

### **Real-ideal correspondence**

Moderns think that they are themselves relatively decent persons so long as they try to be equalitarians. No matter which residual (and hypocritical) inequalities our alter-conscience identifies in modern life, we still find it hard to imagine that ancient *men* were relatively decent persons (those subjected to the men usually get off the hook for their relative participation in the moral disorder). How could they have been anything but monsters whilst denying justice, meaning the fairness of equality, to whole segments of the population based merely on their (birth)status as slave or freed, rather than freeborn?<sup>30</sup>

Moderns do not keep domestic slaves. This is almost a dispositive marker of modern cultural identity. Yet, we do support labour in conditions approaching slavery for the production of our luxuries, and so that our necessities are cheaper (thus allowing us to further dignify our lives with luxuries). We keep these ‘workers’ just far enough away, first in industrial estates and then later in the Far East and Sunny South that no immediate evidence of it offends our equalitarian eyes.<sup>31</sup> Yet one can become comfortable conferring a shared status of humanity on all whilst permitting large parts of the human race to be treated inhumanely. This is easily justified if the result of that ill treatment can be construed as an increase in some shared good or as a transition to equalitarian relations. Nevertheless, what is now produced in inhumane conditions are mostly consumer goods, privately enjoyed. Thus, it would be daft to talk about forced or abusive labour supporting any common good, for instance, in the way that Athenian slavery can be said to have contributed to the common good of the Greek theatre, which continues to enrich us up to the present day. This reminder of our own complicity (and complaisance) should warrant some sympathy for our ancient forbears. It will at least pique the alter-conscience’s indignation and call to action: All is not *yet* right in the world! The real must be reconciled to the ideal.

The difference between the shared status of ‘all men are created equal’ and the ancient belief that all are moral persons is that the latter carries the

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<sup>30</sup> ‘Freed’ certainly gave one more rights and privileges, but it did not always confer citizenship; and the stigma of having been formerly enslaved remained.

<sup>31</sup> See Slavery Footprint, where you can calculate how many ‘slaves’ are working for you: [www.slaveryfootprint.org](http://www.slaveryfootprint.org).

normative assumption that *all must be treated as equal insofar as is possible*. It is a moral *duty* incumbent on all who share that status, irrespective of station in life to treat others in that way and to insist that one is also treated in that way. The dignified way of life of the Roman Stoic could no longer be seen as justifying unequal treatment of a Roman slave. Whether a decent way of life for a North Atlantic citizenry justifies the abuse of a ‘Chinaman’ is a question that equalitarians struggle with. Justice as fairness would seem to find no way to allow the abuse of even one for the good of any other. In fact, it stands against it, since the relative lot of the least well off is the standard of justice within that paradigm. More psychologically convincing is the retort: Is there any principle on which it could be justified? It’s just not fair. Full stop. Or, as the bumper sticker that I once saw in the United States: ‘None are free when one is oppressed.’

That may very well be true, and a little below I reflect on Suzy’s lot, as her society tries to justify enslaving her for the sake of fairness to all. First, I’ll offer a brief account of the justice that our ancients thought was present for the politically-located moral person. It won’t satisfy the alter-conscience, since it begins with the premise that moral worth is not equal. Nevertheless, it must be explained so that we can see just how radical an inflection ‘universal’ is to equality.

### ***Suum cuique***

‘*Suum cuique*’ serves as Latin shorthand for a Greek principle of justice: ‘to each his own’ or ‘to each his due’. Unlike a principle of fairness, which is usually defined relative to one’s status or relation, *suum cuique* involves status, but can also take into account all of the particulars of personal, interpersonal, social, political, legal or historic relations when used to determine what is owed. As knowledge of right action, it must be located *in the world*. Its principle can be generalized, but its meaning cannot be usefully generalized. Practical reason is the only route to know it in itself. The route is one that begins with an action or an omission in the world. That (in-)activity is understood by at least one person to have either disrupted a prior balance and thus require rebalancing or to have been of such a kind that some specific kind of follow-on action is now required. Think of damage to one’s body in the first case or fulfilment of a promised gift in the second. The understanding is followed by a claim that something is owed to the person, originating either in the person herself or from another person (natural or corporate) on her behalf. The other person learns that he owes something to

her. The follow-up questions interrogate their relations, past, present and future, asking what might thus be due, if anything (for, the claim could be mistaken). The question of justice is enmeshed in relations and conditions incommensurable in terms of equality as fairness. However, that does not mean justice is lost. The parties seek equity as justice or what has been called ‘proportional equality’. This restores or establishes a distribution according to what one is owed based on how one is situated within the society to which the question is asked.

The resulting moral reasoning is descriptively casuistic, moving from the case at hand to its relation to what has come before. This involves both other cases and general principles of human action that can be argued to apply to this case directly or by analogy. Casuistry has gotten a bad name ever since Pascal’s attacks on it showed all its vices in his *Provincial Letters*.<sup>32</sup> Not only as a form of legal reasoning is it viable. Think of the common law jurisdictions’ doctrine of precedent that case-law is binding. But it is also the form of moral reasoning that breaks through the divide between relativism and rationalism, allowing one’s duties and obligations to emerge in context where one actually lives.<sup>33</sup> They can then seem much less arbitrary, less imposed from on high, and more ‘natural’.

## **Duties and obligations**

*Suum cuique* does not deal in duties but rather in obligations. See the following paragraph for what I understand to be the relevant distinction between them. *Suum cuique* begins from two assumptions: (1) action in the world of various kinds can create obligations for persons; (2) such obligations are morally binding. (All theories of justice as *suum cuique* necessarily deny the fact-value distinction.) The limits and contours of those obligations, and which actions lead to them, are always culture-bound and historically located. Obligations are always applied to persons, be they natural or legal; and not to things, whether inanimate or animate (animals are not obligated to do anything, ever). Commonly, the actions that lead to moral obligation descend from the person who will also bear the moral obligation. These are actions, such as consenting to a moral obligation, or acting in such a way that one harms another (even without intending harm), and thus acquiring a moral obligation

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<sup>32</sup> Blaise Pascal, *Les Provinciales: Pensées et Opuscules divers* (2004 [1656-7]), esp letters 5-10.

<sup>33</sup> See Introduction, and ‘Pascal’s Critique’, 231ff in Albert R Jonsen, S Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (1990).

to set things right. Law generally recognizes these actions as contract and tort/delict. From our most ancient ancestors through our own age, what might loosely be called the ‘consensual’ and ‘tortious forms of acquiring obligations’ have been present in moral, social, and political life.

However, for the ancients, obligation need not obtain only when one has acted in such a way as to invite being bound by it. One was once able to be born bound. Social, political, and even moral obligation were ascribed to a person; they were understood as inherited obligations. They were tied to him as firmly as his red hair and fair complexion were. This gradually fell out of favour in all areas except theology. In the strongest statements of the Calvinist churches, one is born having already sinned, obligated to repay an un-repayable debt to God. In more mainstream Christian doctrine, the idea that one is a child of God, creates religious obligation to worship, and to obey as one would a father. Both are residual and persistent forms of the ancient understanding of ascriptive obligations.

Here and in the section on consensualism, I employ a distinction between duties and obligations wherein duties are understood to be taken from an analysis of the nature of things or the nature of certain kinds of relations. They might be definitional (tautological) of the relations or implied. In the first sense, say, as a rational creature I have a duty to seek reasonable ends. In the second sense, as a part of the nature of the created order, as a creature, I have a duty to obey the creator. Or in a more mundane register: as party to a certain kind of relation, say, as a citizen to the state, I might have a duty to obey the law, or a ‘duty of care’ within a specific legal system.<sup>34</sup> Duties, like laws, tend not to be formulated for specific individuals. One might have a duty to tell the truth. But Mr Thompson does not have a duty to tell the truth *qua* Mr Thompson. The duty is *qua* rational being, or man, or child of God, or some other relevant status. Obligations, however, are generally particularized to the *person*. This could be the specific person or sometimes to a *persona* of a certain status. Slaves might have an obligation to obey their particular master based on the relation of *that* master to *that* slave (they could also have a duty to obey based on the nature of master-slave relations). A party to a contract has an obligation to meet the terms of the contract based on her actual agreement to those terms. Or any person who

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<sup>34</sup> When breached, this is spoken of in English law as a tort of negligence, and damages are assessed. Duty of care does not usually arise from a special action of a person but from a status held as party to a contract or person living in the realm. See Cartwright, *Contract Law* (2007), variously, but for the basic relation to the tort of negligence, see 35-40.

entered such a contract would have the obligation. That same person would also have a general duty of care, a duty to act *bona fide*, and so on.<sup>35</sup>

### **Persons and *Personae***

The question, *Who owes what to whom, and why?*, is seeking facts of the case, regarding the two levels of specific persons and relevant *personae* (I'll use the Latin for the legal/moral/social status of 'person' rather than the actual being that inhabits the status). Often historical facts determine who has which obligation and why. If I signed a contract ten years ago for a mortgage, or if my father under the Roman law promised my labour to a neighbour, or if I am a freeborn citizen of Rome, I might in each case have particular obligations in my person and in my *persona*. Cultivating those obligations as my 'garden of justice', and ensuring that others mind their obligations to me (but not meddling in the affairs of others uninvited), was thought to be a good pattern for society. Justice was constructed in just that way, from the ground of human action up. This sort of justice as rendering specific dues to persons and *personae* is idealized as *suum cuique*.

It is not merely Socrates and by implication Plato who seem to agree on this sense of justice as everyone minding his own business.<sup>36</sup> In Roman law usage over the ages, 'his own' or 'his due' could be understood variously to fall under *ius*, *dominium*, *meritum*, etc, in all their manifold and mercurial usages. The process of legal justice mirrored a sense that justice was rendering to each the correct proportion. As a citizen or dweller in a political community, one's business was also the preservation and service of the community. This began at home, with the *oikos*'s preservation featuring largely. At times the household was understood as a microcosm of the larger family dwelling that was the *polis*, with a leader exercising paternal care over the all that falls under it, the householdings. Plato draws this analogy at the beginning of political philosophy. He might have meant for it to be taken literally. Aristotle criticizes him strongly on this point. For he distinguishes the '*koinonia politike*' from either a family or a body. In either case, justice included those obligations to *patria* and patrimony, standing in differing relative valuations depending on whether the constitutional ideal is republican or aristocratic, monarchical, mixed or otherwise. But it, too, was rendered its

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<sup>35</sup> H L A Hart, 'Legal and Moral Obligation', in *Essays in Moral Philosophy*, A. I. Melden (ed.) (1958); R Brandt, 'The Concepts of Obligation and Duty' *Mind*, 73: 374–93 (1964). J Rawls uses the distinction in *A Theory of Justice* (1999 [1971]), 97.

<sup>36</sup> Plato, *Republic* 4.433a: 'τὸ τὰ αὐτοῦ πράττειν καὶ μὴ πολυπραγμονεῖν δικαιοσύνη ἐστὶ'.

due. In Sparta the public rendering was more than what was due to the *oikos*; in Athens that sacrifice seems only to have been asked in times of war or great need.

It might seem that I am arguing that *suum cuique* was synonymous with justice for our ancients, which is not the case. Aristotle, for instance, places virtue and moral character at the heart of determinations of what is one's due to oneself and to others; that is, part of justice.<sup>37</sup> But he never limited justice to this principle of distribution. Cicero later puts *suum cuique* forward as a *function* of justice: '*Justitia suum cuique distribuit. / Justice renders to everyone his due*', rather than as justice's definition.<sup>38</sup> It should also not surprise us that Justinian rolled this function into his *Institutes* as a precept of legal justice: 'to live honestly, to injure no one, ... to give to each his own.'<sup>39</sup>

The teachings of those four men—from Socrates to Justinian—make up nearly one thousand years of agreement and development of justice as the simple and universalizable (but not universalistic!) virtue of rendering to others what is their due through practical reasonableness. It manifested itself finally in Justinian's textbook for lawyers who were meant to enact the reformed laws of the empire, namely the *Institutes*. And thereby it has remained present in the secular legal traditions of most North Atlantic nations up to the present day. It has not sat there uncontested by competing functions of justice or by the occasional whole-cloth definitions being tried at.

The doctrine of justice as *an active principle*, which could only be manifested as a habitual disposition (i.e., a virtue), is also present in the ancient sense of the term. This is not an idealized vision of order, with a guiding principle such as fairness. Principled visions of order necessarily call for the same sort of implementation in all places and at all times; for, changeless principles are no respecters of differences. Justice functioning as *suum cuique* tends to work itself out in manifold ways in the various societies and ages wherein one finds it. Justice might be the highest virtue for the ancients, or up there among the highest. Yet, it is understood neither by Plato, Aristotle nor Cicero to be the highest good, or the good itself, or even the total of the political good. The modern alter-conscience could only condemn justice to the dustbin of convention if the ancients had acceded to the belief that justice was the same as goodness. The alter-conscience also

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<sup>37</sup> Nicomachean Ethics V.

<sup>38</sup> *De Natura Deorum*, III, 38; Elsewhere he says '*...justitia in suo cuique tribuendo / justice in attributing to each his own.*' *De Finibus Bonorum et Malorum*, V, 67.

<sup>39</sup> '*...juris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.*' (Inst. 1,1,3-4).

argues against ancient justice not only because of its incomplete attachment to the one correct principle of fairness (for ancient justice does bring about some fairness), but also because of its dynamism. *Suum cuique* is protean, relative, contingent, and thus arbitrary to the society or persons who employ it. It cannot be employed toward just anything, but it can be made to support many things, too many, and too many specious or wicked ones for the alter-conscience to take it seriously.

Being so generally employable, *suum cuique* seems like a canal without water, especially if there is not a thick conception of ‘justice’ standing behind it. As such, couldn’t all sorts of wickedness be sent down it as ‘one’s due’? Punishments that now seem ‘cruel and unusual’ were once *suum cuique*. That is a criticism of putting too much hope in *suum cuique* in itself as the end to which human social relations should aspire. Yet, ‘fairness’, too, founders here, if taken *in abstractum*. For, one can fairly distribute turns on the rack or public canings. *Suum cuique* is silent not only on what is meant to be distributed but also on the proportions at which the distribution is to be made. Fairness is only silent on the former. As a canal *suum cuique* can channel liquids of many kinds and from many sources. But it cannot channel just anything. What it channels must be personal, applied to persons and *personae*. It cannot be neutral, ‘a view from nowhere’, or wholly impartially determined justice.<sup>40</sup> The function of justice as *suum cuique* does not deal in the universal category of ‘all human animals’. Fairness is calculated for nameless and faceless ‘individuals’ who each count as one unit, in the same way that utilitarian calculus is for ‘the greatest number’.

The reverse is the caricature of *suum cuique*. It is the tribal elder sitting and dispensing justice in the big tent. Although often appealed to by the alter-conscience to mock non-equalitarian justice, the example reflects something true about *suum cuique*. To do justice, each tribe would need *its own* elder. One could not just swap old men from one to the other tribe and expect justice to be done by those persons. In determining justice, the facts are needed of (1) who owes what to whom and (2) why, plus (3) a good sense of acceptable approximate remedies in that society (e.g., can money make up for a lost loved one or must it be service?). One also needs to (4) ‘get personal’, to know who’s who, both the persons and the various *personae* that are their public faces. Understanding those things also requires (5) intimacy with the culture and traditions of the people being judged.

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<sup>40</sup> For an explanation and criticism of over-reliance on such a view, see ‘Birth, Death, and the Meaning of Life’ in T Nagel, *The view from nowhere* (1989[1986]), 208ff.

Conversely, the pinnacle model of justice as fairness is the non-human judge. For example, a computer or machine that some utilitarians imagine could parcel out justice to the collected individuals like so many portions of bread. This should replace leaders who apparently know so little about their subjects that they think ‘cake’ would be what should be given out. In the regimes following equalitarian revolutions, there was little talk of cake; for, there was scarcely bread enough to distribute equally. To see how *suum cuique* is altered to the good of equality by the alter-conscience, I turn to the philosophies that notably parodied it for equalitarian ends.

### **‘to each according to his need’**

The equalitarian folding of all the energy of justice into principles of fairness has created one grand parody of *suum cuique* as a totalizing vision of redistribution. This vision poses as a contextually-sensitive function of the traditional virtue of justice. This reserve sentiment of the alter-conscience was expressed by Karl Marx as a principle for political action: ‘*Jeder nach seinen Fähigkeiten, jedem nach seinen Bedürfnissen* / From each according to his ability, to each according to his need’.<sup>41</sup> The immediate predecessors of Marx would perhaps have replaced ‘need’ with ‘work’, especially following John Locke’s strong association of one’s labour with one’s desert. His liberal successors up to our own age might replace it with ‘merit’. Both the substitution of the old and of the new liberals, as well as that of the socialists, fail to reflect the fullness of what ‘due’ implies, each emphasizing only one half of a reciprocal relation. The liberals attach due to the doer, the socialists attach it to the dispossessed. Neither do they accept that anything like a ‘due’ could emerge merely from human action.<sup>42</sup> Being both a fact and a value, an historical and a moral reality, ‘due’ trespasses the materialist narrative, and thus falls afoul of the materialism of socialism. Facts, it is thought, cannot produce values such as moral obligation, at least not without the mediation of the human will. How can, say, the fact of a lost war result in the obligation of service due to a master by the descendants of the vanquished?

That was a traditional position of the ancients right up through students of the ancients like Grotius.<sup>43</sup> The Lockean liberals, too, must deny

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<sup>41</sup> Karl Marx, Part I of *Critique of the Gotha Program* (1875).

<sup>42</sup> Although, as R Nozick points out, Marx’s criticism does appeal to the products of labour belonging to Labour. When they don’t, it’s exploitation. See ‘Marxian Exploitation’, 253ff, in *Anarchy, State, and Utopia* (1974).

<sup>43</sup> *DIBP* II.5, III.7.

almost all qualitative manifestations of human actions in moral obligation, save those minimally necessary to ensure the negative freedoms of the individual. Beyond survival and sufficient life, there is not a philosophical bridge between deliberate action in the world and the creation moral obligation.<sup>44</sup>

Few things distinguish humans more than their differing obligations, whether chosen or given, assented to or ascribed. I am the husband of a specific woman, standing under the obligations of marital promises. I am the son of a father, with filial piety as an obligation, in relation to this father and the siblings sharing my paternity. No other person has that specific set of obligations. By placing moral obligations only at the level of consent, moderns allow the individual to control the definition of what obligates, and thus control more of her own identity. Otherwise, the obligation would determine the status of the person (*cf* wife, slave, son, novice, subject of a king, *etc*). This is another way to talk about the shared, single status of ‘universal equality’ from the point of view of its function. This single status pushes on the rest of life, requiring an alteration to ethics, which could be called ‘consensualism’. That alteration does away with *suum cuique* as a natural category, and it disposes with it as the function of justice. It is replaced with the *position* that ‘all men are created equal’, understood to be both the original position and the end, the final position.

The experience of all cultures in between, with multiple statuses getting in the way of the realization of equality, was a sort of secular Fall. Now it is time for the Egalitarian Redemption, for the ‘renewal of the Egalitarian Mind’. The equalitarian impulse was never able to take hold without destroying its own ‘individual’ objects of desire, as well as squandering the goods that were to be given to all individuals. But it did identify moral short-hands that it passed on to other mental and social actors in operative terms such as: ‘equality,’ ‘fairness,’ ‘non-discrimination,’ ‘inclusion,’ ‘diversity,’ ‘equal protection,’ and a slew of others serve the function of moderating the expression and often the activity of the alter-conscience, in order to realize its ends.

Such moderation would need to take into account the consensualism that is necessary to remove the monopoly of power from the equalizers. It would do so while leaving a place for the equalizing zeal as the surrogate

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<sup>44</sup> The result being that no one deserves anything at all—even if they are entitled to use it—beyond the basics that allow the animal to subsist. Grahame Lock’s article ‘Self-ownership, Equality of Resources and the case of the Indolent Indigent’ R&R (1989) JRG 18 AFL 1.

conscience of the modern persons. Consenting equals would provide checks on the excesses of their shared self-interest in the principle of universal equality and on the objects of desire that it allows access to: all, or nearly all will affirm it, if only by imagining that they themselves don't want to be excluded. That is the trick that equalitarians thinkers use to ensure that even the most puritanical of their set finally accede. The problem of imagined exclusion is exactly the problem that the 'Veil of Ignorance' purports to solve in Rawls's system. They have converted from the worldliness of hierarchy and obedience to the Kingdom of Equality. When they doubt their turning away from the world, they are reminded by the still small voice of their conscience that 'all men are created equal', and that any small divergence from the principle would place us in the outer darkness of 'the past' and 'history', where there is weeping and gnashing of teeth.

### ***Sola aequalitas***

That is the great Reformed principle of the disciples of the Kingdom of Equality, which is a kingdom of this world. Upon the restoration of the original position, in the salvation brought by the Enlightenment and French Revolution, in the prophet of Rousseau, a tradition of thought emerged that was chiefly marked out by its egalitarianism. One can think of this as a 'mind', in the sense of a character and characteristic way of approaching the world, valuing, and evaluating it based on a chief standard. Russell Kirk talks about 'the conservative mind' in a book by the same title.<sup>45</sup> That mind emerged around the same time, but as a result of the French Revolution rather than as one of its causes. The 'egalitarian mind' was complicit in the events of 1789 and its immediate aftermath, until it broke down into rule merely by the dictates of the alter-conscience, perhaps beginning with the regicide peace. This same 'egalitarian mind' became vested in modern persons. With its own conscience and moral weight, it inveighed against all forms of inequality, discrimination, and inherited privilege. All such were offenses against the dogma of perpetual equal moral consideration in light of a singular status as equals. The dogma in its simplistic form is: Everything in the human world is equal to everything else. Differences or inequalities emerge only when reality is manipulated by the wicked, toward the ends of their own privilege.

The term I have been using, 'alter-conscience', is perhaps a better way to think of this *active* moral knowledge—the conscience—that counsels this

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<sup>45</sup> 'The Idea of Conservatism', 3-11, in Russel Kirk, *The Conservative Mind*, seventh edition (1985).

mind, rather than by naming the knowledge itself in its passive form. For, the conventional conscience and the teachings of the church and state, family and school, are all still formative of inegalitarian modes of life, which all moderns still participate in. No society has been so re-made in the image of equality that it exterminated all forms of ascriptive identity or hierarchy. Some even thrive by means of maintaining these old hierarchies and institutions in positions of power. The North Korean regime of the Kims relies on the nearly divine quality of the ‘Dear Leader’, inherited from his grandfather to enforce a communist regime, dedicated to equality. Humans are, up to our own day, still trained in hierarchical relations as good and noble parts of life. But those are parts of life, which are not meant to overtake the whole. True, residual differences are now justified based on individual merit. But the resulting differences in rank and distinctions—different ‘outcomes’—is similar in kind to what it was under ancient values. Likewise, with the sense that the ranking represents something intrinsic about the order of the world. Thus, the traditional conscience remains present and busy with *suum cuique*, albeit in attenuated forms, now justifying its distributions on metaphysically individualist grounds. But moderns also always have the equalitarian alter-conscience screaming in the other ear, ‘consciousness-raising’ about the need for a permanent revolution against all forms of inequality and toward the equalitarian utopia.

This urgency has the character of a permanent religious revolution, one mind converted at a time, sometimes whole nations being made to convert the way the Poles or Russians were formerly christened in one grand act. When the mind is turned to see the truth, the alter-conscience is ‘counterposed to the traditions and laws surrounding’ it, giving new bearings.<sup>46</sup> The woman doing dishes for her husband is now alerted of the inequality of the circumstance; as is the man taking work home while his boss plays golf; so, too, is the person denied a job that a better connected person receives; and finally, all who receive less money/honour/status than their neighbours for what they see as no good reason, suddenly have the scales drop from their eyes. Each hears the voice of the alter-conscience saying that those duties, tasks or slights are unjustified based on the fundamental truth of universal equality. And that voice of the alter-conscience has the authority of God. Turning away from the old false gods and their idols of patriarchy, this neo-Marcionism finds hope in the new god of equality.

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<sup>46</sup> Robert Nisbet, ‘The Pursuit of Equality’, 124.

Early influential adherents to the modern dogma understood its religious character, as well as using it as a surrogate for the old religion, an alter-religion. Thomas Jefferson began the ‘rough draft’ of the Declaration of Independence as: ‘We hold these truths to be sacred and undeniable...’<sup>47</sup> Sacred things when expressed systematically become dogma, ‘undeniable’ in principle. That is the positive face of the religion, which seeks to invite all to the feast. There is another side. Nearly a century and a quarter into the age of equality, Anatole France says ‘...to labour in the face of the majestic equality of the law, which forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread’.<sup>48</sup> That is the side that will force us all to be equally autonomous—because it is a universal good—especially when we don’t want to.

This active moral knowledge is certain, general, and destructive if left to be implemented on its own terms, and irrespective of context. I have called this a problem of equality alone. But as has been argued above, equality is rarely about equality per se; it is usually about equality of some good. Often, freedom is invoked as the meaning of equality. But what is meant is ‘freedom to have equal shares of something’ good.<sup>49</sup> Thus, the conceptual problem of equality alone becomes the practical problem of ensuring equal access to goods. For those goods are located at places in history and within cultures. In order not to disrupt the goods, resulting in no one getting them, they must be parcelled out through means that also are acceptable to the individual persons to whom one wants to distribute fairly.

In finding itself faced with problems of practical reasoning, and after learning from many failed attempts to push through the real to the ideal, the alter-conscience finally settles into a ‘mind’. The mind becomes furnished with moral values and considerations that allow equality to flourish. There are many particulars, but at the top level these values include consensualism and personal autonomy. These values supplement what is lacking in equality with an ethic of consent and a metaphysics of the inviolable person, thus helping it

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<sup>47</sup> Available in J P Boyd (ed.), *Papers of Thomas Jefferson*, vol. I, 423.

<sup>48</sup> As quoted (and presumably translated) by S Fredman in *Discrimination Law* (2002), 1. From A France, *Le Lys rouge* (Calmann-Lévy, 1927), 106.

<sup>49</sup> Nisbet is here paraphrasing Tocqueville, whom he says understood equality to be the ‘*vis creatrix* of most modern social movements’, Nisbet, *op cit*, 125. Nisbet sees this Rousseauian vision ‘in which all citizens are to have equal shares’ as pushing aside ‘conceptions of freedom resting on autonomy’. I see that as a misreading of Rousseau, who attempts to define autonomy such that it could only manifest itself broadly under conditions in which a democratic (read: egalitarian) constitution was contracted.

to identify the things related (persons) and means of relations (consensual) that are prerequisite for any liveable equality. Equality then has limits within which it must operate, which both tame and channel it. As the egalitarian mind begins to develop historically, content is given to its conscience. That content involves a conception of the person, a model of consensual relations between such persons, and a few (contradicting) visions of autonomy that could be picked from. The alter-conscience and the alter-consciousness it produces, that is only alert to any and all forms of inequality had none of those tools to hand. Its limitations became obvious when one tried to apply it to real-world circumstances.

The first thought experiments from the previous chapter might help to put some skin on what I have been claiming.

### **Fair science: an initial response**

Suzy the super scientist is an equal amongst equals. Suzy has resources. If these are considered goods, it is not hard to justify appropriation and redistribution. This is especially true if the goods are considered absolute goods. It is not uncommon that wealth is treated in this way in the age of equality. Progressive tax systems have at times even become confiscatory on grounds of fairness to other citizens. During the twentieth century, even ‘capitalist’ systems had such policies. The United States, for instance, had a 94 percent tax on income over \$200k.<sup>50</sup> Very high income taxes justified on principles of fairness remained in place there until the 1980s. They are still in place in much of the developed world, particularly in the northerly North Atlantic countries. There the highest tax brackets are still justified in terms of distributing resources from the ‘haves’ to the ‘have-nots’.

The principle of equality is here stronger than that of need. Redistribution is not limited to the ensuring of absolute goods being had by all, to an acceptable level of subsistence. It is often done *to reduce inequality* (or the purported effects of inequality such as envy and low self-esteem in the have-nots), and such reductions are seen as *prima facie* goods. This seems so once one has committed oneself to the equalitarian principle, and received the

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<sup>50</sup> In 1944-45 under Franklin D Roosevelt. Elliott W. Brownlee. *Federal Taxation in America: A Short History* (2<sup>nd</sup> edition, 2004), Ch 3. There are related issues about just what can be asked of a person or taken from a person. Men are routinely conscripted into military service of a free nation in order to defend or promote its interest. Could women be conscripted into sexual service of the nation if needed, for instance, to produce a new generation after a plague or plight or deleterious war? If not, which principle or set thereof would moderns use to deny such use of women?

alter-conscience. As a principle of political (and thus ‘social’) justice this is hardly challenged in North Atlantic nations. Tax policies are the major vehicle of virtue signalling (of modern virtues) by these nations, both to their citizenry and to their neighbouring nations. Since personal income is abstracted enough from the persons involved that it is not generally considered as a ‘harm’ when they are deprived of what they fairly earned, and since nearly everyone involved has the alter-conscience whispering in one ear that it is good and just and fair, progressive income taxation is rarely contested as a matter of principle, even if there are quibbles about whether a ‘fair’ percentage might be, say, 51 percent or 62 percent for top earners.

However, it is rare that a regime—even a very left-leaning one—looks at citizens’ bodies and minds as resources that cannot be denied to others...that is, unless they are very serious indeed about equalitarianism. Socialist regimes frequently require 100 percent labour participation, viewing one’s person as *material* to the well-being of others. They restrict travel and expatriation also for these reasons. Private ownership of one’s own intellectual property is precluded by the denial of ownership of personal property. Where personal property is denied, ownership of one’s person is almost always precluded. By extension one does not own one’s body, labour, or products of labour.

Nevertheless, the attachment of the inventor to the invention, whether a machine or a piece of intellectual property, is great. The adhesion is even stronger in an age that prizes creativity as part of self-realization. However, imagine Suzy developed the cure for malaria whilst seriously intoxicated. When she awakes she does not remember inventing the cure. If it were very useful to everyone else, and she experienced no detrimental sense of loss (besides the financial loss) from its appropriation, would there still be qualms against taking it from her, and appropriating it to the commonweal?

There is nothing in the value of universal equality itself that would protect Suzy from losing her liberty as a result of her refusal of sharing cold fusion. For, equality is no respecter of persons; it is the servant of ‘individuals’. A strict principle of fairness would not allow her to get out of the re-distribution of her labour and its products merely because she considers her time and energy to be more valuable to her than to others. For, equality is no determinant of value; it is an enforcer of fairness. And, it is very unfair indeed that Suzy would deny you and me cold fusion, simply because she is irritated about what is *obviously just* to anyone with a properly working alter-conscience.

Her appeal would have to be made to the non-consensual nature of the circumstance, perhaps by way of the unfairness of detaining her. Or she could claim that this imprisonment constitutes a violation of her autonomy, that is, in the strict sense of her ‘self-direction’—first and foremost, because she did not consent to it. The nature of such imprisonment might itself also stand against her personal autonomy, even if she had consented to it. But that sense of ‘autonomy’ is a matter for later consideration.

This example and the preceding serve to illustrate both that we moderns mean by equality and that equality is not enough. It is an empty set, which needs either a (thick) concept of the good or complementary values in order to be of much use for reducing the right kinds of inequality. Debates in which ‘equality’ is employed are ultimately about ends and appropriate means, rather than just about increasing equality as a relation, that is, as a means to nothing in particular save more equality. Equality in the sense of a universal status of persons is, however, pursued as an end in itself. But, again, equality of these persons always assumes at some point it is equal access to *something*, such as opportunity. As one commentator puts it, ‘equal freedom or certain beneficial resources, is the end that is really sought, that is, by all but the truly envious (who want everyone to suffer rather than anyone to do better than them)’. Moreover, as the thought experiment about Suzy shows, equality cannot be forced, at least not under egalitarian considerations. Communism tried in a Rousseauian model of equalitarianism, as did the French Revolution before it. Both have proven themselves to be insufficient to the task of a perpetual peace under conditions approaching equality.

If equality is not to be forced, and it is to be sought at all, then it must be chosen by the persons for whom it is meant to be enjoyed. And the specific goods that will be distributed along the lines of equality, leaving much aside, will also need to be chosen in some way. This might be accomplished by choosing directly, indirectly, or just by ‘not opting out’. There is a moral authority in choice, and in the consent of the will that is behind it, that is lacking in command-based forms of political and social order. Since equality needs to determine what is to be distributed, from whom, and to whom, it must turn to the equals themselves to decide what, where, when, and to whom. Equal freedom of individuals is sought in the work of the will, in choice. This is why wherever a regime has succeeded in reducing inequality without destroying itself, its model of governance is in some substantial way based in consensualism.

## Self-determining together

Whilst choice is necessary to temper the alter-conscience, choice is not as innocent as it would seem to equality. In the previous example we saw that consent saves equality from doing truly heinous things to individuals who do not want to cooperate. It might save Suzy from imprisonment by her own government. Consensualism channels the alter-conscience through persons who choose their own ends. But some persons choose ends that are again destructive both of equality and consent. Consent alone cannot be the standard of equalitarian human relations, since one can consent to ill treatment, torture or even death, all of which would seem to limit the enjoyment of equality. Whole nations could consent to a servile status, for instance, after losing a war. Consent can lead to the undoing of all the work that the alter-conscience has done; it could undo equality.

Returning to the second thought experiment about the consensual cult, what is the alter-conscience, now shrouded by consensualism, to say about a *chosen* religion that separates its adherents from ordinary modern life? One which keeps them from reading and writing, and even from learning how to read and write up to the level of fluency? One that refrains from allowing them to use a personal pronoun, except in situations of dire necessity or in interactions with government officials in which it is required (signing contracts, swearing oaths)? What if it were not the religion of a minority but the religion of a breakaway group seeking self-determination as its own nation-state in East Asia?

The response would likely focus on the need for the adherents to have the ‘freedom’ to choose for themselves whether they wanted to have this as a way of life. The criticism implies that they would not be choosing actual goods until or unless they ‘knew what they were choosing’. This is a difficult criticism to sustain merely on consensualist equalitarian grounds. For who is to judge? To the point: Who can be said to be a better to judge than the person choosing?

One retort is surely that keeping the adherents illiterate and innumerate curbs possibilities for ‘critical thinking’, nearly ensuring that the faithful remain that way. From at least Kant the need to dare to think—*sapere aude*—has been associated with the essence of adult humanness. This was opposed to obedience of any kind as an initial reaction to command. But what is *wrong* with remaining that way? One does not really have an identity in any terms imaginable to individualists. The whole work of one’s daily life in the cult is for the perpetuation of the work of god and the group. To the

consensual equalitarian this is wrong, even if it is chosen by 100 percent of the group. Or, it would be *especially* wrong if it is chosen by 100 percent of the group. For, a lack of dissent is proof positive that a choice is diabolical, that it has crushed the critical faculties that would cause some to seek out the novel, to be creative, to realize their ‘potential’ outside of what others choose. The equalitarian is unable to accept conditions of complete consent-based equality, with all provisions provided for, without the ability of the self to express itself, to actualize, to grow, to realize the unicity that it is. That push for the freedom of manifesting personal identity betrays the singular status—or ‘persons’—of universal equality. Self-realization might prove impossible under conditions of universal equality. That it is impossible does not prevent most moderns from wanting it.

This thought experiment reveals that when one is confronted with the insistence of the equalitarian alter-conscience, there is a buried set of assumptions. These include the metaphysical and methodological individualism that were explained in the previous chapter. But there is also an assumption that the good life consists in a certain form of self-possession which is impossible if an inner life is denied to a person, or if they are treated merely as so many ‘individuals’. This inner life is not just privacy but the fitting furniture of a developed self. It would include the ability to move beyond the given. It involves the ability to be self-directed toward self-chosen ends. The tools of literacy and numeracy would be necessary in all societies where those skills are necessary means of self-development—meaning in all known contemporary societies. Taken together, the consensualist alter-conscience, coupled with this understanding of personal autonomy, is the minimum content of the egalitarian mind.

Both consent (in our analysis of the first thought experiment) and autonomy (in our analysis of the second) show themselves to be values necessary to the maintenance of the egalitarian mind, so much so that the term ‘egalitarian’ would almost seem a misnomer. That is, were it not for the fact that ‘egalitarian’ had become so packed with the meanings of consensualism and autonomy, rather than just meaning ‘conditions of equality’. The genealogy of some of the contributions to the egalitarian mind helps explain why it developed as it did, with its particular obsessions, loves, fears, and anxieties. But those are all a particular type of a general ante-type. This simultaneously reveals the logic and relations of the modern values that inhabit that mind. And it would have to inhabit any mind that took universal

equality of persons, and therefore consent and autonomy, seriously as moral values.

In the following chapter, the egalitarian mind is presented. It represents an attempt to bring together the demands of the equalitarian alter-conscience with nascent understandings of the restrictions that consent and autonomy necessarily place on it, so that it is psychologically convincing and workable.

## Chapter 6: The Egalitarian Mind

The purpose of this chapter is to show the ostensible solution to the problem of the previous chapter in the egalitarian mind. By the end of the previous chapter it was shown that the insatiable demands of the alter-conscience, which will destroy all concerned if it gets its way, require a container. Or the equality impulse needs to be tempered and tamed, not to cease to become a reduced version of what it was meant to be, but to become a liveable approximation of justice for persons. ‘Justice as fairness’ is its best contemporary example. This is not the limited version, which limits justice to a political virtue, but the broader metaphysical vision of justice as fairness, and fairness as goodness—the Good and the Right are more or less covered by justice. Although I’ll spend some time describing the limits and terrain of the most prominent manifestations of the egalitarian mind in our age, these are always meant also to be comments about the ordinary character of modern values.

### Before we were all egalitarians

There was a time before we would all affirm a form of political and social egalitarianism such as that which John Stuart Mill gave us when he says: ‘All persons are deemed to have a right to equal treatment except when some recognised social expediency requires the reverse’.<sup>1</sup> Mill was announcing to the much-changed world Anglo-American world of mid-nineteenth century, what had emerged into an identifiable and common enough cast of mind only two generations before.

In its infancy, the Egalitarian Mind had benefitted from contemporaneous conceptions of what equality meant. They varied as much as they were truly various—from Thomas Paine’s secular liberal religiosity (‘My own mind is my own church’<sup>2</sup>) to George Fox’s and the Quaker’s Christian heresy that each can be church of one, with one’s own private revelation of Christ; or one could even be a new incarnation of Christ.<sup>3</sup> All were not only equal but equally divinely superior, a phrase that makes a much

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<sup>1</sup> *Utilitarianism* 5.36.

<sup>2</sup> Thomas Paine *The Age of Reason*, Part 1 (1793).

<sup>3</sup> George Fox left little more than his legacy as an evangelist and his journal. The latter is of interest for the study of the transition of spiritual equality into practical theology (a term he would abhor). Cf., *The Journal of George Fox* (1952 [1694]).

literal sense as ‘more equality’, but which, nevertheless, tokens the meaning of equality as a universal superior status. These eighteenth-century thinkers and politicians extended into the secular institutions the long-held truth of spiritual equality. It had long been preached from pulpits and practiced in monasteries and cloisters.

But these early evangelists of the egalitarian mind also continued in a revived tradition of universal spiritual brotherhood, which wherever taken as a social prescription, resolves itself in the disappearance of difference, *and* a quest for total unity. In this rendering, equality and peace tend to be twinned values. St Paul had adumbrated this when claiming there is ‘neither Jew nor Gentile, neither slave nor free, nor is there male and female, *for you are all one* in Christ Jesus.’<sup>4</sup> Finding it hard to convince the inveterately hierarchical Romans of, the early church had tucked that truth away in a chest with the more eccentric prophetic statements, along with Jesus’s apparent *revocation* of what is Caesar’s.<sup>5</sup> But Luther, following Augustine, and the Anabaptists following Luther’s logic, cut down much of what had separated Christians from the teaching about ‘spiritual equality’. In Munster they tore it down, in a fit of revolutionary equalitarian zeal. The reaction against that zealous holdout was so strong—uniting Catholics and Protestants in a fight against the radical reformers—that it might have set back the political realization of spiritual equality by a few hundred years. Yet, the ideals collected and gained mass like so much mercury that has been scattered and slowly returns to its unified state.

Along with the musings on spiritual equality came the elevation of another ancient ideal of personal relations: friendship. This was now understood to be relations *as if equals*, and at times a ‘qualified equality’.<sup>6</sup> Friendship was meant to supplant stronger ties of kinship and blood. Friendship, as a consensual relation, was thought to decrease inequality, rather than enforcing hierarchy as so many other relations do by the fact of their being ascribed and defined heteronomous (master-slave, father-son, husband-wife, older sibling to younger sibling). The revolutionary call for *Fraternité* is a

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<sup>4</sup> Galatians 3:28 (emphasis mine). Paul communicates a similar message in his epistles: Cf. Romans 3:22; 1 Corinthians 7:19. In Colossians 3:11, he leaves out the abolition of sex differences: ‘Here there is no Gentile or Jew, circumcised or uncircumcised, barbarian, Scythian, slave or free, but Christ is all, and is in all.’ Perhaps that was the most jealously held difference?

<sup>5</sup> One obvious reading of an itinerate preacher’s words is that it is dismissive of Caesar’s pretence to own anything.

<sup>6</sup> See ‘The Aristotelian Framework: Conformity of Wills between Unequal Friends, 43-44, in Daniel Schwartz, *Aquinas on Friendship* (2012 [2007]).

mimicry and a mockery of familial and religious duties that it seeks to replace; and even more directly, is it an attempt at supplanting duties of patriotism with duties to 'peers'. This becomes stark when politics, often formerly understood as involving a relation of children to a father (be it to the *patria* or the sovereign), becomes brothers without a father; or, siblings with an absentee father in the being of a deistic God. One now becomes involved with others in a political bond that is not forged in shared origin in a father(land) or in a God who was or is active in history. Rather, it is a shared commitment to the same idea or ideals, those that make us a family. It is friendship, 'political friendship' as Aristotle calls it, that now makes us brothers.<sup>7</sup>

### **Traditions of equality**

There are at least two great traditions of equality in modern Western thought, and at least two in ancient thought. All of them have been adumbrated or referred to in what has preceded. The egalitarian mind has borrowed from each tradition, resulting in an alloyed conception of equality. Dividing modern from ancient equalities allows for a surprising realization of just how novel modern egalitarianism is. Although I'll take some care so as not to present the ancients as egalitarians, it cannot be denied that the concept and relation of equality was useful and used, even if in a limited way, in the ancient societies that we know best.

Ancient equalities find their roots in Attic and Koine Greek traditions: one is pagan, the Aristotelian, and the other is Christian, more properly understood as Pauline. The division I am drawing here between modern and ancient is really one between modern and pre-modern. Yet Greek and Roman antiquity remained sources of ideas of what equality is and its place in human life until well into the modern age. Where ideas with modern names such as 'meritocracy' are ascendant, an older conception of proportional equality persists, even if the availability of merit-based rewards is altered from the limited set of citizens to a set that includes all persons, the principle basis of distribution is self-same. The influence of our ancients is not always direct; there were times of partial cultural amnesia; much was lost and only regained centuries later. But the habits and customs of Western culture persisted even when only a third of Aristotle was known to the most learned among them, as

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<sup>7</sup> Aristotle lists political friendship as one of three kinds of friendship Bk VIII:II-III of the *Nicomachean Ethics*.

in the Middle Ages. The ideas had been digested and turned into the *nomoi* and cultural identity of the ancestors of the North Atlantic peoples.

### **Modern equalities**

It is possible to speak of at least two distinct forms of modern equality. Their differences are so marked that each eventually speaks a different philosophical language, even as they routinely are used to support similar modern personal, social and policy goals. For instance, there divergence in principle has not prevented them from being brought together in political experiments, such as the United States of America. These are also the most prominent ways of considering equality in any frame of mind that might rightly be called egalitarian, and any culture that is justly called modern.

First there is the natural liberty tradition commonly exemplified in Locke. It affirms that '[m]en [are] by nature all free, equal and independent'.<sup>8</sup> This tradition is an inheritor of the thought of Grotius, Pufendorf, and Hobbes before him, in teaching that life, liberty and land are not to be denied to anyone without due process, once guaranteed by some kind of 'right'. 'Right' is the term on which these thinkers will stake their claims, each with differing conceptions or concepts doing the work behind the terms. Their resulting teachings on natural law/right will differ as greatly as their points of departure differed. This right might arise from original possession or acquisition, in one taking something out of nature and making use of it. And it remains in place by control or power that is exercised over the property. This would in principle exclude ownership of the high seas, until or unless one can possess and control them. For those things that one can eventually own, one acquires original ownership if one transforms nature from its undifferentiated existence unto something more useful or valuable to himself than the time it took to make it: he sharpens a rock into an arrowhead, affixes it to a stick, and adds feathers. By that acquisitive labour he is now the owner of the resulting weapon.

This model is also used to explain how a *man* possesses himself *morally*, particularly his own liberty. Just as a *person* can own a piece of property *legally*, either by original acquisition or by just transfer from its current owner, a person owns his liberty morally by taming it and directing it toward his chosen ends. Those creatures that can possess themselves are understood to be natural persons (rather than legal persons). Personal identity includes the

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<sup>8</sup> *Two Treatises of Government*, (1988 [1690]), para 95.

body and all that transpires in and through it: particularly ‘labour’ in Locke’s philosophy. To trespass on his person—or anything the person does rightly—is to tread on his territory. Usually, the reverse is also true: to trespass on his territory is to tread on his person (i.e. to harm him in some way).

The concept of privacy on one’s own land has a parallel in this line of liberal thought in the freedom of conscience. There is a geographical sense to privacy that makes this obvious: the conscience is ‘in(side)’ the person’s body. Freedom of conscience itself, when not fully manifested in freedom of speech or freedom to go where one wills when one wills, tends to manifest itself in the Lockean side of autonomy. This involves self-determination (within the bounds of some basic rules) and self-defence. In both cases particularly this involves what one does with one’s body. Although expression of one’s deepest beliefs might not be seen as a necessary extension of this form of freedom rooted in equality, it is still the case that the conclusions of conscience that lead to actions are permitted, say, in contracting for sales and for use of one’s labour, as well as deciding where one might live, etc. All kinds of individual freedom are extensions of this bodily autonomy. Broadly speaking, these make pro-contractual forms of social and (pre-)political relations the most obvious go-to forms amongst such free, equal, and independent bodies (without having to *argue* that the state itself is founded merely on a contract).<sup>9</sup>

In its original design, the United States of America is by-and-large a Lockean settlement in the way its doctrine of equality manifests itself. For instance, the right to bear arms of the Second Amendment of the United States Constitution has long been interpreted to be an individual right to keep, own, and use firearms for one’s own benefit and protection of life and property. In that way this right connects privacy, self-protection, self-determination to the property of the literal arms and limbs and bodies that own them. Nevertheless, even as America retained Locke’s attaching of liberty to land, and of equality of access to the right of having both liberty and land, Thomas Jefferson altered the language of Locke’s phrase slightly but meaningfully. In Jefferson’s appropriation of Lock’s phrase, ‘land’ is replaced by ‘the pursuit of happiness’. He probably did this so as not to exclude non-landowners from the revolutionary movement. Yet, his alteration proved to

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<sup>9</sup> Typical of the Egalitarian Mind is Dworkin’s ‘persistent strategy ... to locate the essence of rights not in individuals and their needs but in the exclusion of arguments or political justifications opposed to equality.’ P Yowell, *Constitutional Rights and Constitutional Design* (2018).

be a door into the American settlement for another set of ideas about equality. This was done without Jefferson or the Founders ever defining 'happiness', and perhaps without claiming that it need be or even could be defined for individuals *a priori*. 'Equality' consists in access to life, liberty and the pursuit of happiness. 'Happiness' gets us to the second form of equality.

The other modern form of equality tracks well to the form of self-discovering autonomy of Jean-Jacques Rousseau. Kant, and Hegel, Marx and Engels, Bentham and Mill all appeal to it in various places. It can be encapsulated in the cry of revolutionaries. '*Egalité!*' is a word whose intellectual progenitor is Rousseau. It is more about equality as participation, be it in the means of governance or the means of production. It, as we shall see, is also a byword for various kinds of autonomy. Words like 'inclusion' and 'access', and 'diversity' and 'respect' are expressions of what it is meant to accomplish (although they only indirectly answer what 'equality of...' should be filled in with.) Non-discrimination laws are often motivated by *Egalité*.<sup>10</sup> With the Rousseauian philosophy of equality, there is less fuss about allowing for contractual and other self-directed freedom to be the outcome of equality, although that is manifestly one desire of those who espouse *Egalité*. Or at least the fuss is not about equal access to personal liberty *above all else*. It is rather about including, or better, *not excluding*, anyone from the good life (however construed by that person within the bounds of the harm principle). Always bearing in mind that a large part of the good life is enjoyment of *Egalité* itself. That equality itself in the abstract is now considered a good in itself must be returned to. When asked what sort of society they want to live in, moderns often say one which has greater equality. We know part of what they mean is distribution of goods. But there is also the *intention* to distribute in a certain way and the disposition to do so. Moderns like people who refrain from judging in advance of personal experience, and they have epithets for people who do not do so.

Inclusion in society is considered a bona fide good, so long as the society is based on the right principles, ultimately with equality at the centre. If one does not want to be included in a good state, one will be made to do so anyway. For, this form of equality is also a universal good. With a romantic

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<sup>10</sup> Although, they could also be set up in order to prevent Lockean equality from being trampled upon, as when property rights are adjudicable by almost anyone in small claims courts in most Western countries. Non-discrimination does attempt to restore equity in relations where power is unequally distributed. Contract laws involving consumer protection and labour arrangements do the same.

notion of selfhood hovering behind Rousseau's philosophy, one can be in error about what is good for one's true self. One could also be 'in bad faith'.<sup>11</sup> Thus understood, 'equality' requires public education to ensure that one knows what is good for oneself and has the formation (the 'tools') to fight to acquire it.<sup>12</sup> When we hear that there is tremendous 'inequality' in a society, it is frequently about education, opportunity, or salaries (or all three chained together causally). It is about participation in these forms of affirmation and self-respect, as well as the formation that one needs to be 'author of one's own destiny', notably within the confines of equality as fairness.

These two traditions of modern equality are brought together in 'political liberalism' of the Rawlsian variety. Rawls was not so much constructing a new way of being an egalitarian, as giving a sophisticated example of how to merge Rousseauian egalitarianism within the confines of Lockean liberalism. Thus, the alter-conscience of the egalitarian mind is assured that it can have its cake and keep it too. Since the publication of *A Theory of Justice* in 1971, Rawls has achieved near saint status in fashionable scholarly and policy circles of North Atlantic lands. This was only a few years after the fruits of modern values had over-ripened into campus and urban upheavals. Those movements rejected not only traditional orthodoxies—residual hierarchies, heteronomies, and inheritances—but the idea of any non-consent-based orthodoxy itself. The very idea of authority has been called into question; an authority that needs to be argued for is no longer an authority, which is also true of the principle itself. It was an experiment with what Durkheim calls 'anomie', rather than anarchy (although many anarchists took part). It was seen as a time when the promises of universal equality, of 'liberty for all' as the American Pledge of Allegiance is daily pronounced, could finally be extended to all.

Rawls stepped in with his proclamation that justice is the first virtue of social institutions. On other accounts of the virtues of social institutions one might count survival and reproduction as one or other of the highest. That collective vision of material necessity never really meshed with the promises

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<sup>11</sup> As the neo-Rousseau, Jean-Paul Sartre, called it, '*mauvaise foi*'. *Essays in Existentialism* (1993 [1965]), 160-9.

<sup>12</sup> Currently, in much of the North Atlantic world, 'literacy' is taught in place of reading. 'Literacy' means whole language, narrative, story-telling, diversity. Reading is those wretched 'rote' bits that are rumoured to turn children off to reading: grammar, syntax, orthography, phonics, and especially spelling. Reading is harder to teach, and also divides the children more quickly based on ability. It is no wonder that 'literacy' is preferred, even if actual literacy is never achieved at levels approaching those achieved when reading was taught. See Chapter 11 of 'The Two Cultures of Science and Education' in Mark Seidenberg, *Language at the Speed of Sight: How We Read, Why So Many Can't, and What Can be Done About It* (2012).

of individual liberty that John Stuart Mill had articulated in 1859, the same year as the publication of *The Origin of Species* (which argued for survival and reproduction as virtues of the species). But the two poles were kept apart from each other in the minds of most. For Rawls, justice is that set of principles, the use of which is the allocation of the benefits and the burdens of social cooperation. These institutions are ‘the basic structure of society’:

For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus, the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions.<sup>13</sup>

Besides his positing of a dubious first virtue of social institutions, the sentiments in his ‘basic structure’ could track with almost any elementary description of politics. The ‘monogamous family’ even gets a mention. How conservative! The danger of Rawls is his innocuousness. He lulls the reader with his sonorous prose until just when he slides the needle in and pushes the plunger. Let’s deal with the dose of equality on steroids that he delivers, the two principles, before tackling the manner he delivers it, the ‘veil of ignorance’. Here we see a model *par excellence* of the egalitarian mind doing its best to control the alter-conscience.

Justice is broken into two principles: (1) ‘each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others’; and (2) ‘social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.’<sup>14</sup> Amongst his disciples, the principles are known as (1) the ‘equal basic liberty principle’; (2a) the ‘difference principle’, and (2b) the ‘equal opportunity’ principle. But don’t confuse the ordering with the order of

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<sup>13</sup> *A Theory of Justice* (1999 [1971]), 6.

<sup>14</sup> *Ibid.*, 53.

priority. The first is the most important, then 2b and finally 2a. So, equality both coming and going. To see just how important the first is, he reworks 2a and 2b into his preferred short versions deemphasizing their liberal character in favour of their egalitarian flavour: ‘Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity’.<sup>15</sup>

This equality sandwich presents itself as the principle(s) of justice, even as Rawls is routinely presented (or presents himself) as a ‘liberal’ philosopher. If he were liberal, he would be expected to prioritize liberty over other values. Yet, whatever direction we are told we are going in, Rawls’s compass seems to point toward equality. As one commentator says, ‘Rawls declares that his book is grounded in Kant’s moral theory’, yet, for ‘every teaspoon of Kant...there are whole cupfuls of Rousseau.’<sup>16</sup> Rawls is operating under the mistaken impression that ‘Kant’s main aim is to deepen and to justify Rousseau’s idea that liberty is acting in accordance with a law that we give to ourselves.’ Rawls sees the relation of autonomy to choice/consent (‘acting in accordance with’), and thus to equality (his principles are ‘Kantian’). He is wrong in believing that Kant and Rousseau share a doctrine of autonomy. I return to this problem below. But for now, this serves to illustrate Rawls as *the type* of the egalitarian mind. He is attempting to implement the egalitarian alter-conscience in workable bounds of consensualism (freedom) and autonomy (guarantee of basic goods to all).

Rawls’s ‘equal basic liberty principle’ is a byword for autonomy. Like Rousseau, equality implies autonomy, and autonomy requires equality. Rawls frames this principle as our ability to ‘frame, revise and rationally to pursue’ a conception of the good, which for individuals is of the utmost importance. However, a world in which each acts according to his own conception of the good, is a world either of anomie or anarchy. Like Rousseau before him, a social contract (or something that can be construed as such after the fact) *must* be forged, which will grossly limit possibilities for action, toward the end of equality. The sacrifice will be in what can be chosen, the freedoms that are permissible. For, that is where the danger lies for the egalitarian mind to miss the mark of equality. Liberty tends toward diversity, equality toward unity. One should be wary of the ways that thinkers (or their disciples) self-describe. Sometimes the principle that they advertise is the very one that they are most

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<sup>15</sup> *A Theory of Justice* (1999 [1971]), 72.

<sup>16</sup> R Nisbet (1983) 129-30, footnote.

ready to sacrifice.<sup>17</sup> Rawls as a teacher of ‘political liberalism’ needs first to curb liberty extensively, especially amongst the (potentially) most free, ostensibly for the sake of its equal enjoyment. We are seeing here the unfolding of the egalitarian mind in a sophisticated form. Many brute forms also exist, and many more in between.

The energy that drives nearly all on the modern age into the disinterested arms of universal equality in part come from ancient ideas of spiritual equality and friendship; recall that brotherhood has been redefined as friendship since *Fraternité* became an egalitarian principle. That energy is now directed to a generalized vision of man as an ‘individual’. The anthropology of the ‘individual’ that stands in for each person in the egalitarian mind needs to be interrogated further. For, it sets the terms permissible in the debate. But, first I should say a little about two predominant premodern senses of equality that the egalitarian mind supplants by subsuming and then redefining.

### **Ancient equalities**

The two kinds of ancient equality could be called equality of likes and equality under God.

Let’s begin with equality under God. Monotheism, in which God is also creator of the world, includes Jewish, Christian, and Islamic varieties. Each presents the world to varying degrees with a new possibility of human egalitarian relations by way of spiritual equality. Spiritual equality is harder to approach when different tribes or nations, or even different families, are descended from different gods, demiurges, demons, powers, animals, stars, and so forth. It is not *impossible* from within polytheism or pantheism or local or animist religions to get to universal spiritual equality, but there are fewer obvious steps to arrive there. Meaning, it would presumably take more steps to get there. Monotheism is a more likely beginning of spiritual equality.

And then there is the record of history. Moral and social equality have descended historically from spiritual equality in monotheist religions,

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<sup>17</sup> ‘Autonomy is fundamental to liberalism. But autonomous individuals often choose to do things that harm themselves or undermine their equality. In particular, women often choose to participate in practices of sexual inequality—cosmetic surgery, gendered patterns of work and childcare, makeup, restrictive clothing, or the sexual subordination required by membership in certain religious groups. In this book, Chambers argues that this predicament poses a fundamental challenge to many existing liberal and multicultural theories that dominate contemporary political philosophy’. The answer is thus to limit liberalism, to call that autonomy, and to call it all an increase in equality. Clare Chambers, *Sex, culture, and Justice: The Limits of Choice* (2008).

particularly Christianity, as Hegel tirelessly illustrates.<sup>18</sup> Hegel, who sees the movement of history as an ever-increasing realization of freedom, saw in the relation between master and slave a hierarchy that would eventually resolve in mutual recognition of the other as a spiritual equal (or at least equal in so far as one is essentially spirit). This provided liberation on both sides, particularly for the slave. This was said to be an inheritance of monotheism. Be that as it may, monotheism inclines toward universal brotherhood, due to the sameness of our creaturely relation to God as his (or her, for that matter) children. Within monotheism there have always been internal contradictions. These include the ethnic component in Judaism, with some being a people of God and others only being blessed through them; the House of God/House of War (*dar-al-islam* / *dar-al-harb*) distinction in Islam; and the Church versus the ‘world’ in Christianity. These and other essential distinctions to those religions have called into question just how morally relevant the shared universal fatherhood of God is either to our earthly or our ultimate destiny as ‘spiritual equals’.

Nevertheless, the very fact that spiritual equality is declared, believed, and taught in cultures cultivated in a soil of monotheism, creates a foundation that can be used to cultivate more extensive doctrines of equality. Even very secular modern forms of environmentalism, which are almost exclusively a Western, post-Christian phenomenon, retain common brotherhood from a shared origin as a moral argument for collective action. It is Christian brotherhood minus Christ, where Gaia replaces both Christ and Mary, she being the source of life and herself a god. Think no further than Our Blessed Lady, ‘Mother Nature’. Very strange indeed, but the connection is there. The near universal *belief* in single origin, ‘out of Africa’, evolution—brotherhood in the long-forgotten past—is enthusiastically taken up in the popular uses of science for egalitarian ends.<sup>19</sup> The Romans, too, would be shocked at what egalitarian structures have now been built on the solid foundations they left in Rome, with a pagan religion that had nothing like spiritual equality in its teachings, and a legal system that ossified social hierarchies. Both their

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<sup>18</sup> Cf. ‘Hegel. Freedom as the goal of history’, in Leszek Kolakowski, *Main Currents of Marxism. Vol. 1* (1978).

<sup>19</sup> That natural science, if pursued in an impartial way, should have no ‘ends’ outside of itself, has not prevented it from being the handmaiden of politics and ideology. Nearly every European and American progressive movement, and most reactionary ones, since the French Revolution have declared their ‘scientific’ credentials. Marxism was the form of socialism that came to dominate in part because it was believed to be a ‘scientific’ theory of social change.

religion and their law were present to enforce the human order and its fitting hierarchical arrangements.

Slavery is in human history universal; that is, except in the Western world where it began to be outlawed universally at a certain point. In Christianity in particular, the emphasis on love and forgiveness, reconciliation in an idealized world where ‘there is neither free nor slave’<sup>20</sup>, led to the first known universal outlawing of slavery during the Christian middle ages in Europe. Eventually in the nineteenth century, in no small part through Christian argumentation by the likes of William Wilberforce, the Quakers, and many others, it led to the universal outlawing of slavery. Every civilization has known slavery; only one is known to have fully outlawed it. The process of universal removal of slave relations is still ongoing. God’s children are created with a shared status as persons. Increasingly that status (*dignus*) was seen as necessary to manifest itself here and now.

It is no accident that societies whose formation was predominantly Christian have been at the forefront of movements for equality of spiritual status. It means the realization in practice of the long-held belief in universal human dignity, based in the dignity of persons.<sup>21</sup> Even secular-seeming activities in such societies are usually the step-children of Christian faith’s influence on culture, for better or worse, for ill and for good. In this light we should not forget about the illegitimate children of Christendom, such as Robespierre and his ilk. They came down hard both on atheists and Catholics, but they were severe monotheists. *Egalité* was connected to *Fraternité*, these being two of the three endowments of a pure deistic god (a hand-me-down deity from the Manicheans). *Liberté* required *freedom from* the Church, a gift of a providential universal deity. The underlying spiritual equality was being transferred to political equality and eventually to social equality. The next descendant of this tradition would be Karl Marx, whose Chosen People were not his own Jewish ancestors, but a mass of proletariat so similar (equal in status) that individuation need not even be spoken about. They were as if one great body.

Equality in its most fervent forms pushes toward a totality in which all differences need to be smelted away as the pure metal emerges. Yet, for all the talk of spiritual equality, and setting aside the fantastical and short-lived rule of all truly revolutionary governments, it was not until the day before

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<sup>20</sup> See footnote 4 above.

<sup>21</sup> Thomas Aquinas puts plainly what seemed to be assumed since Boethius: ‘Person implies dignity’. *Summa Theologiae*, 1a. 29. 3. r2.

yesterday that universal equality took on its current urgency *en masse*. ‘Now’ became the time for equality. Formerly, equality before God took on an eschatological character. The ‘powers that be’ were always grateful to the Church that it did not revise Jesus’s words ‘to render unto Caesar what is Caesar’s and unto God what is God’s’, but rather interpreted them as a sort of rapprochement between Church and State.<sup>22</sup> It was often even understood as an endorsement of state supremacy or general caesaropapism. For, this permanent ‘rendering unto Caesar’ allowed the secular order to persist in spite of the manifestly better teachings of the Gospel.

Later theologians, perhaps discouraged by a few centuries of failed attempts to Christianize the Roman Empire, developed pessimistic theologies that put up a dividing wall between the two Kingdoms, one divine and the other human. The magisterial work of St Augustine, *The City of God*, completes the title as ...*against the Pagans*.<sup>23</sup> There is precious little hope for the reforming power of the Gospel to remake the city of man in a divine image, including spiritual equality.<sup>24</sup>

Nevertheless, the pessimism about a holy human city coupled with a doctrine of original sin, and all within a theology of one loving creator God, put all humans in the same boat: sinners in need of a saviour. *Agape*, that is, brotherly love, answers the call for equality, or makes up for some inequalities, but it does not by itself result in *sub lunar* egalitarian relations. Augustine’s realization that all are alike in their inextricable sinfulness is a mere descriptive equality, like the secularized Calvinist and neo-Augustinian ‘equality in weakness’ of Hobbes.

It was not until either the church was fully placed under the crown or until it was pushed into the private sphere (as was the case in various lands), that the urgency to equalize became a political-social urge. In some places, such as Quebec or Ireland, that only happened in the 1960s. In other places, such as France it happened in 1789, then unhappened in the Restoration, then re-happened in the Republican experiments (France has not been

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<sup>22</sup> Various and sundry churches and states organized their relations in idiomatic ways. After Constantine’s time, it was not until recently that the state fully subsumed the church under its protective custody, perhaps beginning in England in 1534.

<sup>23</sup> *City of God* (2004 [426]).

<sup>24</sup> Later theologians who were more optimistic about the possibilities imagined various ways to relate the cities of God and man. See H R Niebuhr, *Christ and Culture* (1951). Five ways are presented to imagine the Church/body of Christ and its relation to culture/the city of man: Christ against culture (opposition); Christ of culture (accommodation); Christ above culture (synthesis); Christ and culture in paradox (tension); Christ the transformer of culture (reformation).

constitutionally stable over these last two hundred years, vacillating between its many modern historical options: five or so monarchies, the same number of republics, a few empires, ...).

The urge to equalize has—and indeed does—happen every day in individual minds. Once we know and act on the knowledge that obedience is not due to God, the secular, meaning, the personal, is able to reign. This does not mean that one automatically becomes an atheist. It might mean that God becomes for us a creator of equals—that *god* also creates us as equals of himself as brothers, or even better, as friends. The Serpent in the garden told our first parents ‘you *shall be as gods*, knowing good and evil’.<sup>25</sup> And so we have become, first in the knowledge of our equal subjugation to sin, death and the devil; later, once we became moderns, it was in our knowledge that god is the moral law, and the moral law is that ‘all men are created equal’.

### ***De amicitia***

The other, ancient form of ‘equality’ is also perhaps the most universally experienced form of equal (or near-equal) relations. It is where likes treat one another as such. Treating like alike, or like cases alike, a doctrine of consistency, is one ancient form of equity. But friendship in the ancient world is perhaps the best model of likes treating one another as likes, since it involves as few as two natural persons, and could have, at least in principle, been open to anyone. It is hard to underestimate how important this relation was to our ancients. Aristotle and Cicero are able to appeal to this it as the sweetest and best that one can hope for in this life, and as a seedbed of virtue.<sup>26</sup> It shows up in the wisdom literature of the near east that ‘Iron sharpeneth iron; so a man sharpeneth the countenance of his friend.’<sup>27</sup>

Aristotle deals with friendship in multiple places, but the *Politics* contains the most famous passages. There he identifies various different kind of friendship. Moderns have in a way a more limited conception than he did. What he calls friendship in the good or in virtue, we would now call ‘friendship’. His two other kinds of friendship are friendship of use/pleasure and political friendship. Nevertheless, in all cases the two (or more, but ideally two) parties are pursuing things together, side by side. In the highest form they together pursue the best things, virtue, renown, etc. In a way, they are

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<sup>25</sup> Gen. 3:1-7, 12-13 (emphasis mine).

<sup>26</sup> See Cicero *De Amicitia*. Aristotle’s highest form of friendship involves the unity of pursuit of virtue.

<sup>27</sup> Proverbs 27:17 KJV.

then pursuing those goods in the other person, as a ‘second self’. They are not only walking toward the same goal hand in hand (and male friendships did involve physical affection that would now not regularly be practiced by heterosexual moderns), but like lovers, sharing passing glances at each other. Unlike lovers, the critical faculties are not dimmed by the passions. Friends rule their relations by way of the rational parts of man. Friends ideally increase the virtue in each other, by sharpening the wits—practical reason—and directing the attention of the other to the good, the right, and the fitting, in descending order of priority in the best men. The suggestion of something approaching equality is here present, without it ever being broached. Friends would not have said ‘you are my equal’, but rather ‘I cherish you as my own self’. We see here at least the *least unequal* of relations in the ancient world. There is a difference in that it is never said that the two are ‘equals’ but ‘likes’, meaning they are similar enough to conduct certain relations without dishonour, and hopefully with honour. A holdover of this sort of relation is seen in the peerage in England. No one believes that a duke and marquis are equals, but they might be enough alike to attempt to arrange that their offspring contract a suitable marriage.

### **Friendship’s sublimation of equality**

In truth, neither Christ nor Christianity has ever been all that concerned about equality *per se*. Jesus’s parable of the vineyard-labourers would have been a very different story indeed if each worker got his proportionally fair wage. As it is, those who say it is unfair get told off. All are treated with dignity; without respect to whether it is ‘equal’ treatment.

Equality is about what ‘I receive’ and that it is supposed to be the same as what ‘others have’. Friendship, however, is about putting others before myself. After Jesus calls his disciples his own friends, he says, ‘Greater love hath no man than to lay down his life for his friends.’ Here one is asked to suffer for others as the flipside of friendship. That is perhaps unfair. For, it is frequently unequally borne. An inverse hierarchy of love is what Christianity teaches, wherein each bears the burdens of others according to one’s capacity (and in proportion to the grace one is given), nearly always unequally; and God stands at the bottom of this inverted pyramid, holding it up, where he ultimately bears the whole burden on the cross.

These are common enough themes in ancient philosophies of friendship. The elevation of the other in friendship is found in Cicero. In his *De Amicitia* XVI, he writes of the friend as more than equal. Asked whether we should

have the ‘same attitude [to a friend] as [to oneself]’, he says no, the friend is better, and our attitudes must reflect that. Are friends of the ‘same value’ as myself? No, they are of higher value. Asked whether there should be ‘equal correspondence’ between what I give the friend and what I keep for myself, he answers no, it is not balanced. One is to be more generous with the friend. It is not, after all a base market exchange. One wants to form a ‘Complete community’ with the friend, ‘turning...[two] minds into one’. Friendship is then about pursuing the same goal together, and thus serving one another along the way. Compare this to the part of the Lord’s prayer, wherein it is asked ‘thy will be done’ rather than our own. It is prayed theologically in the Christian churches not only as children of God (‘Our Father’) but as friends of God in Christ. Cicero understood the greater value put on the other. He did not add to it the need for self-sacrifice that Christianity includes.

Friendship was ‘*simile simili gaudet* / like delights in like’, as the saying goes. It might serve as a better sense of the uses that our ancients put nearness of quality in persons, similarity, or what we might be tempted to understand as approaching a realization of equality. But it is not full equality.

### **Treating likes alike**

Although it is known everywhere, we are most familiar with the Greco-Roman instances of equality of likes in status. These include such statuses as ‘freeman’, ‘citizen’, ‘freedman’ and even ‘slave’. A Roman slave was in a higher place in Roman society than some foreigners and all foreign slaves. But to be a slave meant that like any other slave you were similarly subject to general laws pertaining to your person and a particular relation to your master. Between members of any given status, however, forms of equality could be assumed, *insofar as that status was the means of the relation*. If citizens’ cases were considered by the praetor, he would be expected to adjudicate similarly the cases of various otherwise differentiated persons. *Qua* citizen one was equally able to call for judgment by the praetor or appeal for another to be brought to the praetor for judgment. Since there would always be competing statuses, differences in consideration relating to those might enter into the judgment (but where is that ever absent?). The equality treatment is only relevant in so far as the status extends; it is not universal.

This form of ‘status equality’ differs from another, similarly limited, form, ‘proportional equality’.<sup>28</sup> It is related to desserts relative to, for instance,

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<sup>28</sup> NE 1130b-1132b. Plato too addresses it in *Laws* VI.757b-c.

performance of some sort of meritorious act. Likes are treated alike in rewards. I am suggesting that friendship and other forms of status which were not universally shared in the ancient world, at times allowed otherwise hierarchically stratified persons to consider one another as if equal, as far as status equality and proportional equality permitted.

Think of shared membership in a tribe or nation. The common way that certain statuses related to identity had buried within it a sense that convention was mapping onto something true about reality. This included the relations of equality or likeness. That ‘our people’ are synonymous with ‘humans rightly understood’ or ‘the real humans’ is nearly a universal trait of primitive peoples. Some even use the same word for ‘man’ and for (members of) their own tribe. This prejudice remained in more civilized societies in the ancient world. Aristotle remarks on the Greeks in this respect, also alluding to equality of likes: ‘Hellenes do not like to call Hellenes slaves, but confine the term to barbarians.’<sup>29</sup> The barbarians are said to be those who don’t speak in ways understandable to the Greeks; they then don’t think and act and organize the world as the Greeks do, but in an inferior way. Aristotle immediately extends the comment, saying, ‘Yet, in using this language, they really mean the natural slave of whom we spoke at first; for it must be admitted that some are slaves everywhere, others nowhere.’<sup>30</sup> ‘Nobility’ is his example of the same principle working, which he then reads it back into the question of slavery. ‘Hellenes regard themselves as noble everywhere, (...) but they deem the barbarians noble only when at home’.<sup>31</sup> Implied are two sorts of nobility and freedom, the absolute and the relative. Helen of Theodectes is prejudicial in the Hellenes’ favour: ‘Who would presume to call me servant who am on both sides sprung from the stem of the Gods?’<sup>32</sup>

In a way all the Greek are *in some way equal when* set above all barbarians. This is based on the understanding that ‘from good men a good man springs’, and it should persist. Observation of human or animal generation, however, indicates that ‘nature, though she may intend it, cannot always accomplish [it].’<sup>33</sup> Nevertheless, the ordering of the group, and its status, must be preserved in spite of the unpredictable disruptions of nature. That order takes into account either the natural freedom of those ruled or the lack thereof.

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<sup>29</sup> *Politics* I.VI. 1255a29ff.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

‘For there is one rule exercised over subjects who are by nature free, another over subjects who are by nature slaves.’<sup>34</sup> One could easily substitute ‘children’ in the place of ‘slaves’, to make sense of what he is arguing. Those who are by nature slaves can follow reason, but do not possess the ability to guide themselves by reason. Someone else must command them by way of reason. The Greeks, believing natural slavery to be something of the barbarians, will rule with a presumption of equality of likes amongst Greeks. Rule will be by those who are ‘similar in stock and free’.<sup>35</sup> The slaves that they do have among the Greeks are former captives of war, their children, and others who for one reason or another are *considered* conventional slaves, rather than slaves by nature (the Greeks don’t like to call Hellenes slaves, but they will if convention has provided the opportunity or necessity). Some of those might also be, on Aristotle’s terms, ‘natural slaves’. But there would be a reluctance to say that any sharing the same status (equality of likes) with the Greeks would be one.

In practice this might not extend much further than a preference for Greeks over any other sort of humans. One might more easily trust them with whom one can converse and correspond than those who fall outside of that *logos*. However, that preference and trust are the bedrock of life together, of trade and alliance, of self-interest potentially extending to include all Hellenes, notably *when there is a barbarian enemy*. We see here the limitedness of non-universal status as equals—the revolution in thought that modern values brought. There would certainly also be a great sense of the inequalities amongst and between the Greeks—or, more likely, of the hierarchies there present—but this does not fully extinguish the likeness that is the seedbed of relations *as if* equals.

This would be a completely intolerable situation to the egalitarian mind, with statuses given even before birth and rarely able to be gotten out of. That remained the way of the world until relatively recently. Three generations to access the ruling class, to ‘become a gentleman’ is scandalous. All who are qualified should be able to inhabit the office. The accusation of injustice wherever inegalitarian relations persist within one lifetime—that is, whenever goods are not available to one generation—shows us the high value placed on it the mobility between statuses. That mobility is a knock-on effect of universal equality. It also shows us that valuations are made using equality as the gold standard. That valuation did not fall from the sky. It replaced older

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<sup>34</sup> *Politics* I.VI, 1255b18-20; VII, 1325a27-30.

<sup>35</sup> *Ibid.*, 1277b8.

currencies wherein there were multiple standards: gold, silver, and bronze, if you like. It shows a move from ‘treating like cases alike’ (which is still a principle of equality under law, just with different laws for different statuses) to ensuring that all cases are treated alike. We measure all with the same stick. The stick, however, has tended to change over time.

The analogy of the court and ‘like cases’ that names this section is fitting. For, moral considerations have become all the more juridical in their tenor as we have simplified the irascible concept of justice to the sanguine notion of fairness. So much so that, Rawls tells us that ‘our intuitive conviction [is] of the conviction of the primacy of justice [as fairness]’<sup>36</sup> In doing so, we have placed ordinary rational animals on par with each other as moral reasoners. Each is the best judge in his own case, we believe. No longer are confession manuals or training in philosophy or knowledge of God’s will for man or any other conventional learning necessary to discern the Good or Right or good and right with certainty. *Natural* spiritual equality is fulfilled in equal moral consideration for all, at all times, everywhere. This leaves the question of how egalitarian minds will be ruled with many precluded answers. Such minds will not be ruled in any way that increases perceived or actual inequality. How will it be known which forms of governance are so anathema? They be asked, hopefully often. And those that are the ‘least of them’ will increasingly see the value of their answers rise relative both to the better off and also to the commonweal. The chapter on consensualism details the entry of this ideal into the egalitarian constitution.

### **By nature equal (in duty)**

Now I return to the natural equality which, when coupled with natural goodness, provides the conditions of consensual rule. If we were all equal, but all tainted by sin, then rule by some class of priests or ‘great men’ would be sensible. Those who by way of virtue or a divine grace or revelation could see further, and thus would be most fit to lead us. Since we are equal, and each is in principle pristine (only made wicked by society), no such external rule can be in our interest *a priori*, that is, unless we say it is, hopefully in full knowledge of what it is.

Early in the age that was to be dominated by the egalitarian mind, one begins to read direct statements about the equality of man in political and legal treatises. In the late seventeenth century Pufendorf, when discussing

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<sup>36</sup> *A Theory of Justice* (1999 [1971]), 4.

sovereignty, says: ‘since men are by nature all equal, and so no one is subject to another’s sovereignty, it follows that mere force and seizure are not sufficient to constitute legitimate sovereignty over men’.<sup>37</sup> The conclusion of this line of reasoning (which Pufendorf does not directly take) is removal of presumed natural rule of one over another, as when Aristotle put the ‘natural slaves’ under natural masters, by virtue of one being only able to obey reason; whereas the other could command and obey by way of reason.<sup>38</sup> Concluding his line of reasoning Pufendorf makes the now tautological point: ‘He who is not another’s is his own.’<sup>39</sup> This would seem to imply an original position of freedom, as well as its continuation in all (thus, equality), as long as something else has not intervened. Convention, contract, harm (delict), or some other human action that creates obligations could be inserted here. And Pufendorf does not stand against obligations arising from them. However, if it is posited that one cannot be in principle master of another, or that one could never have a master, then he is always ‘his own’. That direction of self-ownership will be where the argument goes as it enters its most influential period, transitioning to full-blown liberalism. First one will be said to own one’s own labour, and then one’s whole self. The argument will transition there from the most influential expositor of these or similar ideas, besides perhaps John Locke, between Grotius and Kant. Eventually the argument will not even need to be made, since the near-universal presumption of natural liberty will render arguments for and toward it obsolete.

But there is an interesting hold-over, which might seem like an endorsement of the older aristocratic constitution in Pufendorf’s work. His proto-liberalism is presented in a treatise that is premised on natural duty, first to God, then to oneself (self-preservation), and finally to others. In the discussion of ancient equalities above, common kinship of the one true God was commonly the route to declaring spiritual equality. Pufendorf’s ‘Lutheran reading’<sup>40</sup> of the political consequences of our common Father as well as of the uses of Tradition, cuts through all accretion of culture and history (the inherited constitution). It is tossed aside whilst he maintains a connection to those special parts of history deemed to accord with revelation and reason.

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<sup>37</sup> Pufendorf, *DING*, 1085.

<sup>38</sup> The latter phrase is not used by him.

<sup>39</sup> Pufendorf, *DING*, 1085.

<sup>40</sup> I call this a ‘Lutheran reading’, as opposed to the more radical, say ‘Calvinist’, readings that would take their inspiration only from the Bible or, for instance, those which refuse to deal in religion or history (the non-literally minded social contract school or the rationalist tradition that derives politics from [human] rights).

One might say that he has attempted to establish political theory that is not opposed to biblical teaching, rather than one that is fully inspired by it. Thus, Aristotle can comfortably be used by Pufendorf in a way that more severe Protestants could not for a time. For, Aristotle was deemed too Catholic. Pufendorf does this even whilst self-consciously rejecting Aristotelian-Thomistic doctrines such as the grounding of natural law in human nature.<sup>41</sup> Pufendorf places the emphasis squarely on each person, his duty given directly by God, and thus his equality amongst others before God, and from this his derived freedom. Like Luther, it is the freedom of the Christian, but now naturalized. Said differently, all of us, the able and the lame, the rich and the poor, men of the cloth and men of the world, are equally under the duty to obey God and preserve the life he gave us by any means we deem practically necessary within our duty to God and his created order. Unlike Grotius, for whom duties are derived from human sociableness, Pufendorf begins by locating us always already bound up in duty to God, oneself and others—and in that order. Differences and qualities abound among and between humans, but no one is free of the basic duty. Insofar as it is a general rule without exception, all are *equally* obligated.

Although it is not yet fully modern, Pufendorf's philosophy is an easy place to see the 'universal' beginning to displace any multiplicity of statuses. Equality is slipping out of its slots where likeness made for limited equality. It is about to spill out and collect like quicksilver coming back together. These philosophies of Pufendorf, Grotius before him, and Kant after, are (often unwittingly) building up justifications for fundamental social and political relations as equals. It is still the case that man's basic equality is not the go-to consideration for daily political life. Yet, when social order starts to be justified in terms that begin logically both with a common ancestor (a provision of monotheism) and with shared duties of care, materials are in place for equality to flourish. It will be Kant who imagines that 'perpetual peace' is possible under such conditions, and speak of a Kingdom of Ends, inhabited by other-regarding, free, equals—both individual persons and states

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<sup>41</sup> The many ways that allegiance to the Reformation was indicated included the removal of Aristotle, at least in name, from new treatises on nature and law. This was part of a broader rejection of Thomism and the Roman Church in which Aristotle had become revered as a sort of pre-Christian 'saint'. James Tully, introduction to Samuel Pufendorf, *On the Duty of Man and Citizen* (1991), xvii, xix.

that act as if they, too, were ends-in-themselves.<sup>42</sup> But I am getting ahead of myself.

Notwithstanding their power to compel (which we later hear in cries for ‘*Liberté*’), ideas can exist for hundreds of years, even ideas that could change the foundation of society, without disturbing, say, a profitable (if embarrassing) trans-Atlantic slave trade. Of course, slavery was once universal, and the universal outlawing of it got its authority from principles of Western civilization, including an extensive spiritual equality that became urgent in the political sphere.<sup>43</sup> Yet, we did not, in the end, take the path that Pufendorf laid out for us—or perhaps only Marxism and paternalist socialism did. We preferred, rather, to restore the Grotian consensus of deriving duties from rights, in the thought of John Locke.<sup>44</sup> This had the power to turbocharge Pufendorf’s ideas, since it located all of what was necessary for political and social life in the individual. When rights once given by an absentee creator can be taken advantage of legitimately by each and every person, a lot of the prudence that duty-based equality instils becomes superfluous. It is no wonder that the chief revolutionary document in France of the 18<sup>th</sup> century was an unsubtle bow to Pufendorf, with only one word swapped. ‘The *Rights* of Man and Citizen’ after his *The Duty of Man and Citizen*.

I won’t dwell here again on Locke, since the uniqueness of his contribution to politics, psychology, economics, and governance has been overstated already elsewhere.<sup>45</sup> But Locke’s influence in one area cannot be overstated: He translated the limited natural and spiritual equality that was

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<sup>42</sup> Kant, ‘Perpetual Peace: A Philosophical Sketch / Zum ewigen Frieden. Ein philosophischer Entwurf’ (1795).

<sup>43</sup> Recall the words of Toussaint Louverture’s 1801 Constitution. As governor-general of Saint-Domingue, a French colony, he wrote the third article declaring, ‘Here, all men are born, live, and die, free and French.’

<sup>44</sup> Both Marxism and paternalist socialism (and here I include ‘liberalism’ inspired by Rawls and carried over by Dworkins *et al.*) have the problem that they begin by assuming fundamental duty rather than fundamental rights. Said differently, one does not have property in anything in the world, not even one’s own person, if it is, in the most sympathetic example, more usefully employed to raise the status of the least well off. Confiscatory taxation of high earners can easily be justified in such regimes as an act of kindness: at least the rich were left with the free uses of ‘their’ bodies. Cf. Grahame Lock’s article ‘Self-ownership, Equality of Resources and the case of the Indolent Indigent’ R&R (1989) JRG 18 AFL 1. See the thought experiment at the beginning of this part. Laws on compulsory organ donation, even with the provision of an opt-out, are in part inspired by this logic: to each according to his need.

<sup>45</sup> Locke’s influence is frequently described as a malady or plague on us. It has been given the title ‘possessive individualism’, as if it were a spectre, by C. B. Macpherson *The Political Theory of Possessive Individualism: Hobbes to Locke* (1962).

widely believed and nearly nowhere practiced into a moral imperative. When Thomas Jefferson produced his ‘rough draft’ of the American Declaration of Independence, the Lockean nuts and bolts were exposed: ‘We hold these truths to be sacred and undeniable, that all men are created equal and independent, that from that equal creation they derive rights inherent and inalienable, among which are the preservation of life, liberty, and the pursuit of happiness’.<sup>46</sup> Those truths became ‘self-evident’ after the draft was rinsed in an equalitarian solution. And they got further and further from the ‘duty to God’ that Pufendorf thought firmly grounded all subsequent obligations and all possible rights.

It will be said with some justice that Locke and Jefferson were involved in black slavery. An implication is that they were tending the garden of vice while singing virtue’s praises. Or worse: it was only by presenting some with the vision of equally-enjoyed liberty that they could maintain the slave class.<sup>47</sup> The price of freedom was always slavery. And who does not like a promise of freedom? Locke seems to have merely been short-sighted, not seeing the contradiction. Jefferson, however, had a bad conscience about his continued holding of slaves.<sup>48</sup> We can make sense of the apparent hypocrisy of the architects of the egalitarian order when we understand how the movement of ideas from fundamentals to exoskeleton of personal and political considerations works. Jefferson was beginning society anew based on first principles within the confines of English common law doctrines, such as the liberties of an Englishman. Locke was participating in a messy, conventional system of common law, with no dreams of breaking it down and reconstructing it: What, after all, *should* go in the place of a civilization? A piece of paper with ‘Constitution’ written at the top? Said more directly: Locke was a reformer; Jefferson was a ‘founding father’ and perhaps a

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<sup>46</sup> Available in J.P. Boyd (ed.), *Papers of Thomas Jefferson*, vol. I, 423.

<sup>47</sup> Rousseau hints at this in *Social Contract*, bk III, 15. Orlando Patterson, in *Slavery and Social Death* (1982), alludes to the common Marxist accusation that ‘freedom’ is parasitical on slavery, or at least only understandable after slavery is seen in its full flower. The more practical claim that freedom of a certain kind, namely the leisure of a Jefferson or Locke having days free to read philosophy—is dependent on a slave class who does the labour, should be given full consideration. Petroleum and cheap labour now do for us much of what slaves used to for Jefferson’s ilk. Robots might replace them in the future.

<sup>48</sup> He had plans to free them during his lifetime, but he never had the resolve actually to unburden himself of the leisurely life unpaid labour afforded him. They were freed upon his death, with little thought to the quality of life that his posterity might enjoy. As he taught us, ‘the earth belongs in usufruct to the living’ to James Madison Sep. 6, 1789, in *Thomas Jefferson: Writings*. (1984).

‘revolutionary’. Most revolutionary’s lives are, it must be said, more uneven than their ideals are.<sup>49</sup>

The importance of this positive vision of equality, or any equality of goods, is its ability to inspire in its true believers’ new sense of the possible. Robert Kennedy famously said: ‘There are those that look at things the way they are, and ask why? I dream of things that never were, and ask why not?’ Hobbes had announced a negative equality, or equality in misery. That was to be the inverse of Lockean basic equality. In the latter, even the strongest share a good with the weakest in their fundamental rights to life, liberty and land. In the former, even the strongest share with the weakest the threat of violent death. Locke *lifts all up* into equality; whereas Hobbes, like the strongest crab in the bucket, pulls us all down into the pit of equality. When the egalitarian mind comforts its overly scrupulous alter-conscience with the assurance that ‘all men are created equal’, it is a Locke-like, elevating vision that it has in mind.

### **Inequality as original sin**

I have up to this point spoken of equality as a concept, only alluding to its obligatory function in the lives of modern persons, its religious dimension. This section introduces its claims on the believer.

The ancients described the unity of public and private virtues and ways of life as a ‘constitution’; what Tocqueville would call a ‘regime’. In this study I have preferred to speak of the same phenomenon as a constitution, but also variously of the values, dogmas, and *nomoi* that make it up. If there is one value that modern personal identity turns on, it is natural equality. This is dogmatically held to, as the compelling belief that the limited equality common to all humans *must* determine the just limits of the political project *as well as* those of personal relations.<sup>50</sup> The alter-conscience is always present in

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<sup>49</sup> Since ‘revolutionaries’ are still well loved despite their often deleterious effect on ordinary human life, one should regularly receive an antidote by reading, say, about the egalitarian relations between Simone de Beauvoir and Jean-Paul Sartre, or the wise administration of justice in Cuba of ‘*el Che*’; or, for some proper entertainment, obtain a copy of Lenin’s private letters.

<sup>50</sup> Liberalism has had problems separating other spheres of life, as Pierre Manent indicates in ‘The Crisis of Liberalism’, in *Journal of Democracy* 25:1 (2014). Liberalism, which is the political philosophy that has the good of natural equality at its heart (manifested in equal freedom for all persons), has unified the public and private visions of human excellence wherever it has become dominant. Even as liberalism is only two centuries old as a governing order, it has spread throughout the body politic *as* public and private virtue, if not usually *as* ‘liberalism’ per se. Very few modern westerners outside of the United States identify as ‘liberals’; there are a slew of other bywords for it.

personal and public life, raising consciousness about where inequalities persist. And the development of a habit of response—an attitude toward it all—is the development of the egalitarian mind. But it all begins with the acceptance of the knowledge of the alter-conscience as true, a conversion. The result is a condemnation of the world as it is, and a call for reform.

It was knowledge of good and evil that exiled our first parents from their innocence. It is likewise the new knowledge of inequality as evil that exiles us all from innocent participation in our native cultures. Our Second Fall is that into knowledge of the scandal of inequality. Like Adam before us, the result is a need to work the ground to make anything good come from it. The fallen egalitarian must discover how to till the wasteland of human culture and history wherein very little of value can flourish. It will take all of her being to make this so. And so, along the way, she dreams of a heaven where it is so, and attempts to direct herself and others towards it.

For the egalitarian mind equality is a *moral imperative* of cosmological import. Inequality is experienced as a wound in need of medicine, an existential sickness unto death. Unless it is medicinal pain, there is no good reason to suffer its pain. It must further the goals of equality at another level or stage, or it must be removed.<sup>51</sup> Then the wound like that of a surgeon, would be deliberately borne, rather than seeming like the sting of a wound from the enemy. For instance, what is commonly euphemized as ‘affirmative action’ in the United States is more properly called ‘positive discrimination’ in Europe and elsewhere, where the egalitarian motive of liberalism is more directly declared. Perhaps because of America’s uniquely modern tenor, any suggestion of unequal treatment, even for the sake of greater equality, is intolerable to some. Outside of extreme cases involving the ‘historically marginalized’, all attempts are made to ensure that the disposition is in favour of greater equality, both here-and-now and in the future—namely, in both opportunity and outcome. The wages of sin for our original ancestors was death. Life was regained only through salvation. In Christian salvation history that was gained through knowledge of God (given by God himself), and right action toward the restoration of our original friendship with him. Eschatology recapitulates protology: as it was in the beginning, so too will it be in the end. But the pre-Fall condition is not what the egalitarian mind intends. It is not a world wherein there is no knowledge of inequality and its

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<sup>51</sup> See ‘Equality: Concepts and Controversies’, the introduction to S Fredman, *Discrimination law* (2002), which goes a long way whilst failing to justify why this is necessary, never failing to indicate how important it is.

ills, but rather a world where inequality has been rendered harmless, hopefully by being extinguished. The original position of equality can be regained only in a future utopia. And it can be approached now only if we commit ourselves wholeheartedly to its manifestations in culture and personal identity. For, those are the human personal relations that touch on our shared identity.

Equality is often spoken about as the rule of law and procedural adherence to rules, which is a ‘culture’ in one sense. But more than that, it has the character of a virtue, connected to a real and perceived good.<sup>52</sup> Being an egalitarian means treating others as equals, at the right times and for the right reasons. It has formative and normative effects similar to the classical and Christian virtues. It also ranges through all areas of life like they do. Like the old religion that it replaces, ‘being an egalitarian’ is an ethos which has an ethic. If one really *is* an egalitarian, it has consequences for social, political, economic, ethical, personal, and societal relations. This is a full-time business, requiring the dedication of the whole person. More than merely a new religion (or surrogate for the old one), the egalitarian mind posits a new cosmology within which there is correct (that is, religious) and natural action and its opposite, sin. The great poet of egalitarian ethics, Rousseau, is always said to be going ‘back to nature’ in his restoration of original equality. He does nothing of the sort, unless ‘nature’ is not understood as ‘what was present in our human past’. He is positing that which is ‘natural’ is equality. That is, he is redefining nature. Nature can mean ‘all things that are’. And in this way, in positing natural universal equality, the egalitarian mind is doing cosmology.

The question is why it works so well? Why is it so convincing that natural equality is the ‘original condition’, when all evidence from history, anthropology, biology, and the rest, lead to the opposite conclusion.<sup>53</sup> How does the egalitarian mind trump all that we can learn from matter? How have we become such dualists in an age of ‘science’?—treating our bodies as evolved things that have an evolutionary history; and treating our selves as unicities that soar in an egalitarian mission toward their homes in a perfected future?

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<sup>52</sup> Lon Fuller’s argument that procedural adherence to the rule of law is itself part of the morality of law is made, I think, successfully, in *The Morality of Law* (1964).

<sup>53</sup> For an overview of the state-of-the-science literature at the time of his writing, see ‘The Liberty/Oppression Foundation’, 197ff in J Haidt, *The Righteous Mind* (2012), which draws on the work of Boehm, De Waal, Wrangham, Pilbeam, and Dunbar.

## I-You encounters

How does the egalitarian constitution trump any materialist account of our being? The egalitarian mind has the intimacy of ordinary human experience on its side. When teaching egalitarianism as a virtue this helps it to seem natural. Interaction with another without preconditions or prejudices, on terms derived only from the interactions themselves is known to permit the falling away of prior or assumed hierarchies and heteronomies. It is even one way that egalitarian virtues are taught on university campuses, through exposure to ‘diversity’. One does not need studies to show this; one merely needs to be a modern person subjected to other persons in daily life. The way in which friendships that form between persons of different status—for instance during the general enlistment in the First World War—make them reluctant to restore the former division indicates. This would seem to indicate that, insofar as they are friends, they see in each other a commonality that does not seek distinction. It seeks unity and some form of sameness.

Equality and unity are here connected in a way that is psychologically convincing: each person sees another self in the other, as Aristotle describes it.<sup>54</sup> Unlike Aristotle’s description, however, this is not only true in cases of friendships of the good or between the virtuous (assuming then that virtue was understood to be pursued chiefly by free males). Friendship, understood as broadly as possible, attaches itself to the belief in a basic equality of the other. This obtains sometimes even when the other is not of the same species. Children often befriend pets or animals – usually sentient beings but not always – and see another self in those creatures. They anthropomorphize. In an age as sentimentally egalitarian as ours it is no wonder that such a childlike (and sometimes childish) habit would continue into adulthood. The indications are everywhere: pet graveyards<sup>55</sup>, animal rights (mostly for the cuddly, cute, furry, or fearsome mammals; few fight for arachnid rights), and anthropomorphized back-stories given to animals. Remember the polar bear ‘Knut’ that Germans went mad about in the mid-2000s? Abandoned by his

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<sup>54</sup> Ronna Burger notes that the phrase ‘second self’ translated two Greek phrases: ‘*allos autos*’ which is ‘suggesting the replication of myself in another’; and ‘*heteros autos*’ where a friend is ‘a pair with me precisely because of the difference that makes him genuinely other’ in ‘Hunting Together or Philosophizing: Friendship and Eros in Aristotle’s *Nicomachean Ethics*’ in Eduardo Velásquez, ed., *Love and Friendship*, 50ff. Equality is closely related in many people’s minds to peace and harmony. But compare Hobbes’s equality in weakness that leads inevitably to war, where fear and discord are the associations man has because of a dearth. One locks one’s door so that everyone does not have equal access to my space.

<sup>55</sup> Antiquity, too, had its eccentricities of a horse a consul; the great Confederate general of the American South is buried near his horse at Washington and Lee University in Lexington, Virginia.

mother, hand-raised by zoo-keepers, he still died tragically young from an undiagnosed disorder.<sup>56</sup>

Philosophically, this tendency toward the unobstructed vision of the other as equal made its way round mid-twentieth century existentialist philosophy. It was a manifestation in philosophy of what had permeated politics and culture already as a modern virtue, and what had begun in a categorical ethics of the person in Kant's philosophy. Now it was to take on a fully-formed doctrine of how one should approach others. Martin Buber famously called it the *'Ich und Du'* encounter.<sup>57</sup> His phrase is often accurately but therefore poorly translated as 'I and Thou', which suggests a relation of one to a reverend other; whereas, the older intimate second person pronoun was used to translate the intimacy of the other through the intentionality of pronouns. 'Thou' is an archaic second person singular, that is less formal than 'you'. It would be used for kin and friends. However, upon the reception of the King James Bible in the early seventeenth century, 'Thou' became associated with God, and thus formalized, elevated, and then mostly only used to speak of or to God. Certain Quakers as well as some regional dialects in England are said to have retained the older usage of a familiar 'thou'. In its religious use it originally meant to show God's approach to man as a nearness of encounter person-to-person, which is what Buber also emphasizes in his existentialist uses of the German equivalent.

There is a tendency, even if I–You encounters begin in conflict, that they do not end there. For, once the parties are able to see the other as a person to be interacted with directly, the relations lend themselves to justice (as fairness) almost intrinsically. That justice is a relation in which each person acknowledges the right of the other to equal treatment.<sup>58</sup> The right to equal treatment is usually held fast to and persists between them. That is, so long as it is equally good treatment, i.e., equal access to good treatment or to goods. The disposition to seek equally good treatment can be based in desire to love another. Or it can be based in the desire to see oneself loved, or not to see oneself harmed, or not to see another harmed. It does not matter greatly where it comes from, but the claim made by moderns seems to stick: ordinary human experience is egalitarian unless it is made otherwise by convention, society, 'power', and the rest.

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<sup>56</sup> Amos, Jonathan. 'Knut polar bear death riddle solved'. BBC News (27-08-2015) [www.bbc.com/news/science-environment-34073689](http://www.bbc.com/news/science-environment-34073689).

<sup>57</sup> Martin Buber, *Ich und Du / I and Thou* (1923).

<sup>58</sup> Roger Scruton. *Face of God* (2012), 64

It is hard to get around that statement by argument or by example, since it is nearly always made by those who are already committed to egalitarian ways of life, and who notice the residual differences fall away when they, say, meet a new ‘friend’ in a shisha bar while backpacking in Fez. It is unclear whether two Bengal Indians of different classes or two Chinese, one Han and the other Weiger, would also see the basic egalitarian original position as the place they arrive and stop at whilst interacting one-on-one. They might just as well see it as a refreshing rest-stop on an otherwise well-marked road leading in two opposite directions, one for each of them.

The confusion of the part for the whole amongst egalitarians tracks well with studies of a glaring weakness in contemporary social sciences. These frequently use WEIRD people as their baseline subjects: Western, Educated, Industrialized, Rich, and Democratic.<sup>59</sup> Then they translate the results to all *homo sapiens*, nah!, to all moral persons (which could include non-humans). This ‘translation problem’ is not seen—and not a problem at all—if the WEIRD people are understood to be synonymous with all humans rightly understood; all humans who have not been duped into persistent inequality states by their cultures would react this way; all humans who do not yet have the salvific knowledge of the alter-conscience; all who cannot approach each other in I-You encounters, and instead substitute cultural artifice for the natural equality that we natively share.

### **Following equality**

The equality we are after is the same that follows us. It precedes us as goal and follows us as accomplishment. The modern by-words for equality in politics are ‘liberal’ or ‘egalitarian’, sometimes ‘progressive’, all depending on the context.<sup>60</sup> Those words and their various imports are important, but not actually at the heart of what equality means for moderns; nor is it what the egalitarian mind is focussed upon as its vision of the good life. Liberalism and egalitarianism are two political programmes the adherents of which believe to be bringing about a world of more equality, either of opportunity or outcome (in each case the phrases are just that vague), or both. A simple statement of the egalitarian principle has been proposed: ‘that all human beings should be treated with equal considerations unless there are good reasons against it’, or

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<sup>59</sup> ‘The weirdest people in the world?’, Henrich, Joseph, et al. *Behavioral and Brain Sciences* (2010).

<sup>60</sup> John Kekes, *The Illusions of Egalitarianism*. (2003), 1-2.

‘the initial presumption in favour of equal consideration’.<sup>61</sup> This gets part of the way to the egalitarian mind’s vision of what is downstream from equality. But it begs the question of what one gets ‘equal consideration’ to or for. It is as if it is known to be a good and desirable, even before it is identified. Equal consideration to corrupt practices is not what anyone wants. Some of the problems related to this were addressed above in chapter 4 above. Here I’ll deal with the good of freedom itself that the egalitarian mind seeks.

In the basic liberal vision, this consideration involves the presumption of ‘freedom’: hence, ‘*liber*’-alism. Freedom, however, is often opposed to equality both in post-liberal and pre-liberal settings, and both conceptually and psychologically. Or as Tocqueville related the opposition: ‘democratic nations show a more ardent and enduring love of equality than of liberty’.<sup>62</sup> But the egalitarian mind attempts to combine these in the alloyed illusion that ‘equal freedom is the fundamental political value’.<sup>63</sup> If universal equality is both true and good, and turns out to be possible (for instance, within the confines of the egalitarian constitution), then there are moral and political obligations that would seem to bind.

Those obligations, like much in modern personal identity, attempt to combine the seemingly un-alloyable. Bridging the Lockean and Rousseauian visions of negative equality and positive freedom, respectively, is a similar shared assumption of natural liberty manifested in politics, or even *as* politics. Behind much modern thought about rights of war, and personal autonomy retained after the peace, is the assumption of natural liberty that I detailed above.<sup>64</sup> It has a pre-modern provenance, it being the direct inheritance of late scholastic thought, and ultimately Roman in its origin and Christian in its ethos. Rousseau famously talks of ‘man born free, yet everywhere in chains’. Locke simply names the right and calls it natural. Natural liberty, again, is not in itself a politically relevant category. It can just as likely be banal and even anti-egalitarian. Hobbes’s state of nature requires a renunciation of rights in order to remedy it. The result is, thus, often less equality, and none in relation to those that oversee the pact (the ‘sovereign’). But as inherited, natural liberty has taken on the necessity of universality. Why, though?

Hegel gives us some indication in his brief genealogy of universal equality by way of equal freedom, returning first to proportional freedom, premised

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<sup>61</sup> John Kekes, *op. cit.*, 1-2.

<sup>62</sup> Tocqueville *Democracy in America* (1899[1835/1840]), Volume. II, Section II, Ch. 1.

<sup>63</sup> John Kekes, *op. cit.*, 1-2.

<sup>64</sup> Cf Pufendorf, *DING* 1297-1307.

on proportional equality. '[T]he consciousness of freedom arose among the Greeks', he says, but they 'knew only that some were free—not man as such.'<sup>65</sup> This meant all sorts of freedom-enhancing institutions were possible (which should not be confused with the material and efficient causes of freedom, as Patterson does). Hegel continues, 'The Greeks therefore had slaves; and their whole life and their splendid liberty was implicated with the institutions of slavery.' Although the legacy of the Greeks tyrannized the Germans intellectually and spiritually, the Teutonic peoples were not without their original discoveries.<sup>66</sup> Hegel notes that '[t]he German nations, under the influence of Christianity, were the first to attain the consciousness, that man, as man, is free.'<sup>67</sup>

The answer is found in the baptism of the German nations. Spiritual equality, plus the universalization of freedom, meant universal equality *in principle*. Notice what 'the German nations' is here thought to be definitional of 'man as such' (and Hegel as the apogee of the World Spirit). 'Man as such' is naked, but the German nations clothed him in fitting garments. It was a German monk who extended 'the priesthood of all believers' into an anti-hierarchical posture against the Roman Church. Luther was not, however, committed to freedom as a natural condition, especially not after humanity inherited the Fall. The resulting, ever-present 'Bondage of the Will' puts that to rest.<sup>68</sup> However, in other Germanic lands, particularly Holland, Erasmus and Grotius do extend the spiritual equality to include a general right of nature to all things that one comes upon, useful for preserving 'life, limb, and the things necessary for life.'<sup>69</sup> That is fundamental to the universalizability of the egalitarian political and legal order. For, where the law cannot reach, it cannot be cognizant. But if the law of nature is everywhere, dynamically present in each human individually—even Robinson Crusoe alone on his island—then there is no place without law. Such a constitution with individual at its metaphysical and ethical centre would have the pretence of being universal that need not remain a pretension for long.

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<sup>65</sup> G. W. F. Hegel, *The Philosophy of History* (1991) 18.

<sup>66</sup> It is not only in popular imagination that the German peoples seemed to be under the yoke of more civilized peoples, the Germans themselves felt it. For a small artistic sliver of this, see, E M Butler, *The Tyranny of Greece over Germany: A Study of the Influence Exercised by Greek Art and Poetry over the Great German Writers of the Eighteenth, Nineteenth and Twentieth Centuries* (2012 [1935]).

<sup>67</sup> Hegel, *The Philosophy of History* (1991) 18.

<sup>68</sup> Martin Luther. *De Servo Arbitrio / The Bondage of the Will* (2012 [1525]).

<sup>69</sup> Grotius, *DIBP* II.1ff

Moving from Grotius to Erasmus, the reinvigoration of the doctrine of the free will in theology could have in an even greater way carved out the space for universal equality to flower. Erasmus says that Luther rightly identifies a sickness in original sin's consequences, but that he confused it with death. A trustworthy will, free to follow God (and likely to do so if left unmolested), is an obvious beginning of a rejection either of voluntarist command-based or Aristotelian reason-based rule of man by man. Meaning: it is an obvious rejection of 'order as the first need', replaced with 'freedom as the first need'. It looks instead to the spontaneous order provided by the providential working out of self-interest.<sup>70</sup> It looks to equality—like parties to a contract—to provide a suitable law for all involved within very limited bounds of not causing harm.

While recognition of universal spiritual equality, and its translation through a religious revolution into a profession of faith in the Germanic lands cannot be excluded as causes, it is still hard to explain why 'universal' would take the sort of character it has in modern culture when modifying equality. We must remember that animals are currently being rolled into the sense of 'universal', with the legal and—more fundamentally—moral rights being extended to them. That is, insofar as possible when dealing with sentient but non-linguistic beings. When these beasts are not considered as moral agents, they are at least proposed as moral patients. Robots could join the fray in a few short decades if we find that their ability to relate to us reaches at least the level as that of our pets. Fundamental rights as currently construed in law and social practice are more or less designed for humans, and so we also call them 'human rights'. But there is not a reason that equality in the sense that we are after could not be extended *as far as possible* to animals and robots—meaning as far as their capacities allow them to enjoy the goods. Animals do, after all, have the same '[heavenly] father'. And the common origin has been

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<sup>70</sup> Russell Kirk says: 'In any society, order is the first need of all. Liberty and justice may be established only after order is tolerably secure', in 'Libertarians: the Chirping Sectaries'. *Modern Age* (Fall 1981), 349. Elsewhere, he says it is the first need of the soul. There is a long line of reflection on order arising from the good operation of self-desire, meaning, in specific instances, the will doing what is most in the self-interest of the person, for whatever reason, or no *reason* at all. This literature is largely Dutch and British in origin. Mandeville takes the radical position that private vice leads to public virtue in 'The Fable of the Bees' (1705). Adam Smith takes the more modest position that private interest leads to public benefit in *The Wealth of Nations* (1776). Edmund Burke makes this order nearly sacrosanct as an eternal contract of spontaneous assent and ordering through the generations of the living, the dead, and the unborn, in various places, but also in his *Vindication of Natural Society* (1756).

one of the motivating reasons for universal spiritual equality of human persons to expand to politics and to social life.

Part of the reason that animals might join the set ‘universal’ in universal equality goes back to the prioritization of the ‘I-You’ experience amongst and between moderns. It is formative of the consciousness of the egalitarian mind, which superimposes its experiences of the world onto the world itself. Moderns, especially in late modernity, are tempted to see persons in their most beloved animals. Listen to a pet owner telling the biography of his dog. Sometimes it is just standard happenings, a sort of rigmarole of doings. That is the traditional relation of humans to animals that are *known* to have no sense of their own presence in the world, no self-consciousness. We assume no autobiography is possible, and so we cannot really ascribe a biography to them either. However, once one does start telling our animals’ stories to ourselves and then back to them, a bridge has been crossed: ‘Molly *loves* her fluffy tail, but she resents us talking about it, doesn’t she [affectionate pet here given to the beast].’ This is not simple anthropomorphism, or at least not a knowing form of it; nor is it mere projection. It is ascription of *personal* consciousness—of a self that is conscious of itself as a self among other selves—to the beasts of the hearth.<sup>71</sup> Selves are one basis of equality, although usually only self-conscious selves. It is the same type of ascription we participate in when we recognize other human animals as moral persons.

It might also be the *recognition* of a ‘second self’ in the animal, a form of friendship. Dogs are said to be ‘man’s best friend’. In Aristotelian terms this could be construed as either a friendship of use (work dogs) or pleasure (lap dogs). But ‘friendship’ is now understood to be limited to friendship of virtue. A dog really *can* be my friend, even a better friend than you can!—‘My dog understands me’. Those with the means have pet health care. Surgeries to fix aesthetic or small problems with animals—or even serious surgeries like that of the heart, kidneys or back—are now routine. Time taken off work to care for an ailing pet is not uncommon. Companion animals on airplanes are commonplace. We feel their pain, and we want to alleviate it.<sup>72</sup> But we don’t

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<sup>71</sup> The older position on animal suffering, which distinguishes human suffering by its connection to knowledge of death and prospective further suffering before that time, is described in C S Lewis, *The Problem of Pain*. The Macmillan company (1944), especially, ‘Animal Pain’ 132ff.

<sup>72</sup> There are ancient antecedents to this attitude, but more begin to appear in Christian monasticism, where the ‘Peaceable Garden’ was attempted to be restored by care of animals and often through vegetarianism in the eastern Christian Churches’ monastic communities. St Francis’s communion with the animals is one example, as is his ‘Laudes Creaturarum / Canticle of the Sun’, with reference to ‘Brother Sun’ and ‘Mother Earth’. Some differences in quality between his spirituality

feel it as ‘their’ pain, as that of a species wholly other. We feel it as deserving consideration—at least similar consideration if not equal consideration. It is also ‘our’ pain. The old hierarchy of ‘humans first’ is now called ‘speciesism’ by the scions of the egalitarian mind.<sup>73</sup>

All of this is completely mad from the perspective of ancient virtues and classical personhood, as well as from Aristotelian proportional equality. But so was universal equality of humans considered mad, we must remember, not so long ago. Then only a few were of the egalitarian mind. How was it that humans—and not wicked humans but ordinary persons like you and me—enslaved one another, watched as others were whipped together with the beasts of burden, failed to have fellow feeling as others were sold. It was not ‘racism’ or ‘power’ or some other magical explanation, which simply names something with a descriptive flourish, and thereby pushes any explanation off to another level of mystery. It was much more simply that certain others were not included in the group of humans that deserved equal moral consideration. One did not see some others as like unto oneself, as a ‘you’ that was equivalent to my ‘I’. There were, it might be said, no possibilities for friendship of virtue, since it was thought that only some could participate in virtue, and not ‘those sorts’. Definitions and culture mattered too. For instance, if a society defines virtue as ‘courage in battle’, and then forbids both women and peasants from fighting, then this has a factual truth about it who *can* do it, rather than who *would be able* to do it, all things considered. Now it is possible for consistently-principled egalitarian minds to include a substantial portion of living things under ‘universal’, with a hand of brotherhood extended.

In this case the egalitarian mind is still unable to provide some others with equitable treatment in shared goods, and it believes it has good reason for this denial. One does not treat a rock equally, one cannot do so—well, at least not on the system of personal virtues that are built into the goods that equality is meant to distribute. These are both absolute and contextual, but always relative to the well-being of a living thing, a person, in fact.

Nevertheless, as we have become more modern, the equality we are after has easily extended to other sentient creatures, and it could even extend

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and the egalitarian disposition exist. For him, common paternity provided the basis of the moral vision that included the heavenly bodies and animals, but it did not universalize the special status—*dignitas*—of humans. The other creations of God were to receive consideration according to their status and shared paternity, but not equal consideration, or the same immutable status.

<sup>73</sup> A term apparently coined by Richard D Ryder, *Animals, Men and Morals: An Inquiry into The Maltreatment of Non-humans* (1971), popularized by Peter Singer, *Animal Liberation* (1975).

beyond them to nature itself.<sup>74</sup> But the virtues we value would need to be transmuted to match the new objects of affection. Ideas such as ‘environmental justice’ and ‘environmental inequality’ have bled into the conversation, and not merely where they touch on people groups disproportionately affected by human-induced changes to the environment. ‘Climate justice’ is one word for it. But the broader ecological movement announced to the world by the publication of *Silent Spring* in 1962, is that we are committing irreparable harm to the planet, which has something like an equal right not to be harmed.<sup>75</sup> Meaning, we say and feel ‘That’s not fair!’ We take the side of that which cannot speak for itself. But we do believe that there is some sort of ‘self’ there—a stoic moral patient—a moral entity, which could not be harmed with impunity. This is an extension both of the ‘I’ in the I-You relation, of the ‘us’ or ‘who we are’. It is inclusive in a way that something with the pretence of universality should be. And it shares the goods of equal consideration by means of the tools of justice. But it has not yet moved the moral reasoning beyond persons as the primary status that should share equally in moral consideration.

The equality we are after is the equality we follow, and that follows us. It focusses on persons’ share in the goods of life. Personal identity has been shown to be plastic enough to extend beyond humans. And ‘universal’ has meant that the natural world can even be considered up for equal moral consideration. This latter consideration, however, is still usually analogical rather than real. The consideration of great apes and other sentient beings as persons deserving of equal moral consideration, however, is a wholly consonant habit of the egalitarian mind with its alter-conscience.

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<sup>74</sup> ‘Environmental justice’, involving ‘environmental discrimination’ and environmental racism’, are still, however, limited to ‘disparate impact’ on humans, usually categorized based on traditional race, class, sex lines. See the US Environmental Protection definition: ‘Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.’ Further: ‘EPA has this goal for all communities and persons across this nation. It will be achieved when everyone enjoys: the same degree of protection from environmental and health hazards, and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.’ <https://www.epa.gov/environmentaljustice>.

<sup>75</sup> Rachel Carson, *Silent Spring* (Houghton Mifflin 1962).

## Consensual autonomy

Open ends means consent is required for autonomy, rather than it just necessitating some set of material and social conditions. What the egalitarian mind seems to be seeking immediately and in the more common extension of equality to all adult human persons, is not equality of any *specific* good or set thereof, but equity. Or, even more so, a reduction of inequity. This is the result of an application (and compromise) of the dispositive conclusions of the alter-conscience to the messiness of life. As the conclusions are applied, the focus also shifts from the mathematical world of equality itself to the personal realm of hopes and ambitions that are more or less frustrated. This is laid bare if the question is put to moderns whether they want to be happy or equal. The answer is invariably happy, unless they think that they or those that they believe to deserve equal consideration will be adversely affected by that answer. Only then is the answer 'equal'. 'Equal' is then a corrective, it is equity. If equality plays a part, it is that people want to be 'equally free to pursue happiness.' Whatever it might mean, it is most often distinct from traditional understandings of both freedom and happiness. This discourse on 'happiness' heads away from traditional concerns with human flourishing, which look for great agreement on ends. Amongst traditional people, there is also often—and perhaps necessarily—broad consensus on means to achieve those ends. If, say, *man* is meant to flourish and contemplate the good, some specific set of virtues is needed to get him in the position where he even has the time to contemplate. And not only in himself, but also in the society around him.

What 'equality' bleeds into in practice is the open-endedness of goods (besides the good of equality), including the non-definition of ends for oneself and others. We are equally free of coercive cultivation of appropriate ends, and thus free from *and free of* the necessary means to those ends, the virtues (that is, besides means that are also forms of equalization). This refraining from determining both means and ends is in tension with Rousseauian autonomy, which has as its ostensible end the self's achievement of its own happiness, and thus enforces the means toward a self-chosen end. This represents the tension between equality and half of modern autonomy, which I return to in the chapter on autonomy below. Locke is less coercive about ends and means with his understanding of corporeal autonomy. He is more concerned that the actions of the will—particularly one's labour—is able to be exercised without unnecessary external interference or coercion.

There is here then an obvious competition between Lockean-Jeffersonian open-ended *eudaimonia* and Rousseauian-Jeffersonian self-discovery preceding eudaimonic life ('...the pursuit of happiness'). Nevertheless, since authenticity in self-discovery is at the very least difficult to discern in individual cases (or even within oneself 'Have I really found my true self?'), and impossible to determine collectively, a political system that allows either for a Lockean or for a Rousseauian model should look substantially similar. They might be indistinguishable from the 'cultural' outside (as eighteenth-century pre-Revolution France and Britain could have been to non-Western cultures). Neither the Lockean nor the Rousseauian vision could, for instance, truly require inner assent to principles that are not obviously universal, neither could be too particular about appropriate ends of human life, without betraying their understanding of autonomy. Though we would expect that the 'militant lowbrowness' of Rousseau would result in more aggressive policing of the realization of basic personal autonomy<sup>76</sup>, neither could ultimately demand heroic sacrifice from its members without their consent.

When we find ourselves living as universally equal persons, we find ourselves needing to project something into the world—deliberate '*pro-jecto*'—to replace the givens that were, in fact, never given to us with a grand narrative of the self.<sup>77</sup> In trying to make sense of this 'throwing-forward-ness', some have asked how we can live with the thought that we create our own nature, our own values, our own purposes, since modernity 'has to create its normativity out of itself'.<sup>78</sup> Others have just focussed on deriving democratic ethics from the structure of human communication, irrespective of whether it is metaphysically anchored.<sup>79</sup> A self-created normativity is true not only on the level of groups but also especially on the level of natural persons, each of whom must write and communicate. After the narrative is constructed, we

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<sup>76</sup> It is important to remember that Rousseau intended to reform education and science for the instruction of 'morals'; whereas Jefferson's republican vision was substantially about reform of political life. Cf section 'Respect for Autonomy as Ground for Restricting Freedom' in D Kimel, *From Promise to Contract: Towards a Liberal Theory of Contract* (Hart Publishing 2003) 129-131; J Raz, *The Morality of Freedom* (Oxford 1986) 204: 'a person is autonomous only if he has a variety of acceptable options available to him to choose from, and his life became as it is through his choice of some of these options.; Raz deals with problems of autonomy, including whether ideals or visions of the good (perfectionism) can be present in a system the members of which are truly autonomous, *Ibid.*, 'Autonomy and Pluralism', 372-377. Choices are required for autonomy, but liberalism is not synonymous with increasing choices—even in Thomas Jefferson's form of it.

<sup>77</sup> Remi Brague does so in *Moderately Modern* (St Augustine's Press 2017).

<sup>78</sup> R Rorty, 'Posties', *London Review of Books* (3 September 1987), 11.

<sup>79</sup> Habermas, Jürgen. 'Discourse Ethics: Notes on a Program of Philosophical Justification.' (1990).

compete for equitable treatment of our own narrative against the narratives of others.<sup>80</sup> We work this out in consensual relations, for none other would be appropriate to those that we grant equal consideration of goods, and for those that we recognize as a ‘you’ that is also writing her own narrative.

Goods are frequently means. But sometimes they are (also) ends. An end in itself can also serve as a means to something else. Since we do not necessarily agree on the ends or the means, and we disagree on which should have priority, we must ask one another, negotiate the differences, and attempt at least not to ‘harm’ one another.<sup>81</sup> We must allow the results of those questions to become the fence posts of our field of action. In other words, consent is sought of other autonomous persons before we hold them to *moral* obligations. This is so, even as all other kinds of obligation persist without moral warrant, either because life must go on, or because moral reform of our obligations by the egalitarian mind, in order to put them in line with the egalitarian constitution, has not gotten there yet.

The egalitarian mind, as I have begun to describe it, has not yet collected enough reasons to see through that truth to a way of life. In the chapters that follow, consent and autonomy will emerge as essential to what the egalitarian mind envisions to be a perfectly moderated instance of equalitarianism, fit for everyone, everywhere. It will turn on the conception standing behind ‘person’, which for most equalitarians is closer in meaning to an anonymous ‘individual’, an ‘unencumbered self’ than it is to anyone with a name, and an address, and a dog that likes cats, and foot odour. Rawls makes use of such a thin metaphysics of the person as the very individual that we become when behind the veil of ignorance, in order to represent each and every one of us in the game of choosing the fairest society.

### **Unencumbered selves**

John Rawls has attempted to present a perfectly moderated vision of equalitarianism, fit for all *individuals* everywhere. Recall that, for Rawls, the ‘equal basic liberty principle’ takes priority, wherein each is given the ability to ‘frame, revise and rationally to pursue’ her own conception of the good. That sounds very *personal* indeed. However, the self is imagined to exist as its true

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<sup>80</sup> Multiculturalism could be read as an ideology that is attempting to prevent a clash of narratives more than a clash of cultures. It tends to exist in monocultures such as the Western academy, in which what really distinguishes one from the other is engagement with ‘texts’, rather than with whole ‘cultures’.

<sup>81</sup> Raz’s also sees this connection of autonomy, freedom, and plurality of goods, *supra* note 76.

self prior to its (chosen) ends. As one commentator argues, there is an ‘unencumbered self’ that is the metaphysical heart of Rawls’s theory.<sup>82</sup>

Unencumbered from what? By what? Well, first by any thick conception of the good. One will choose one’s ends—*eventually*—but not for reasons of personal identity. Identity is non-teleological. There is no ‘nature’ that is normative for human action, that is a guide to our ends. Rawls’s conception of the self is the result of cultural, spiritual, and psychological neutering of the person, a reduction of the person to the generic individual. That provides the cover of neutrality (each is an impartial individual) under the pretence of consensualism (each chooses her ends). It is thus a backdoor allowing a heavy dose of categorical moral reasoning to be snuck in. Thus, Kant is used to provide content for an essentially Rousseauian construct of the social contract involving unencumbered individuals (very different from Rousseau’s understanding of ‘man’). Rawls’s conception is thus well understood as Rousseau minus authenticity, plus rationalism. Following Rousseau, the social contract features largely. It is just now rechristened as the ‘original position’.

‘Social contract’ is for Rawls and Rousseau, a mental game that is used to convince the reader that he would have chosen a certain system as the best, given either the initial conditions (the rules of the game) are correct (Rawls) or that there is a correct understanding of human nature as the point of departure (Rousseau). Those rules are said to be in some way natural or the ‘real’. One necessity to this reality is a window onto the Peaceable Kingdom that one is meant to be pursuing. The fiction of a ‘veil of ignorance’ (Rawls) or a pristine original condition of our primitive ancestors (Rousseau) serve that need well. The individual in the original position is rendered ignorant of her own talent(s), status(es), and conception of the good, in the former case, and in the latter case, all three are rendered moot by the removal of the person from any civilization that she has ever known.

In Rawls’s telling, the self is unencumbered by its own conception of the good at just the point it is meant to determine what justice is, in the ‘original position’. This unencumbered self is Rawls’s version of Rousseau’s ‘noble savages’ (man before or outside of the corruption of civilization), who together eventually hammer out terms of engagement in a just society. But he has bettered Rousseau, since man can still get behind a veil; whereas Rousseau admits that man cannot ever return to savage innocence. Self-interest, tied to

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<sup>82</sup> M Sandel *Liberalism and the Limits of Justice* (1982), 119-123. Compare this to the ‘buffered self’, e.g., in Tocqueville, *Democracy in America* (1899[1835]), Vol. II, Sec. II, Chs. II-IV.

a practical reasonableness, and pity for others who might suffer from a bad system, all feature large in their idealized selves, who are meant to determine the best political arrangements by way of ‘justice’.

Rawls, like Rousseau before him, is attempting to justify the chains that purportedly naturally free men find themselves in—chains that are supposedly unjustifiable by the *facts* of nature. He is not looking to free us from chains. He is not a ‘liberal’ in that sense. Neither man is, in fact, a liberator. Each wants us to agree on the best chains for oneself and one’s compatriots (Rousseau) or for anyone and everyone, everywhere (Rawls), whilst considering also what is optimal for everyone (both Rousseau and Rawls). So, they give with one hand and take back with the other. As one commentator has said, for Rawls, ‘neutrality between conceptions of the good implies that individual conceptions of the good are morally arbitrary – i.e. [‘one’s] right is prior to the good. But if this is the case, how can the highest social virtue be that of enabling us to pursue our arbitrary conceptions of the good as fully as possible?’<sup>83</sup>

In Rawls’s game one stands behind a veil of ignorance so that one’s own self-interest, self-knowledge, and biography do not cause her to be partial. This is thought to produce justice as fairness. This result is expected on the analogy that if one knows in advance where one is to be located in a given system, one is likely to optimize the system to her own benefit, or to the detriment of others, or both. It assumes that self-interest is cunning, and that self-regard tempts one to pride, rather than that reason and altruism are able to be the possession of the autonomous person. Both Rawls and Rousseau are downstream from Jean Calvin on this point. Here we see yet another instance of Rawls’s swapping of Rousseau for Kant. There is maximal risk-aversion on the part of any individual in the original position. Rawls calls the ideal result ‘maximin reasoning’. One attempt to get the lowest position in society to be set at as high a baseline as possible regarding the availability of basic goods. One ‘maximizes the minimum’ just in case one ends up down there where one would never willingly place oneself.

Rawls tells us, echoing Rousseau before him, that determining a society’s basic institutional arrangement on such grounds, and without knowledge of one’s own talents, statuses, and conception of the good, will ensure freedom and equality are implemented. Ignorance of one’s own talents and status will guarantee equality, or at least ‘more equal’ outcome. The alter-conscience

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<sup>83</sup> Clare Chambers put this forward in a course on the matter at the University of Cambridge. Her lectures helped to clarify some of Rawls’s thought in this section.

insists on meaningful nonsense phrases like ‘more equal’, while usually meaning ‘more equitable’. This seems relatively straight-forward, when equality is defined in advance as universal equality. And the metaphysics of the person in both visions are fundamentally the same generalized individual. But that freedom could actually be guaranteed from behind the veil of ignorance by shedding knowledge of one’s own conception of the good, seems to strain credulity. Would it not limit freedom only to *potentia*, rather than actualization? Freedom is always present in the future, rather than being a description of present conditions. Freedom is what one could potentially do under certain circumstances, rather than what one is or has become, and it seeks to remain in an ideal (or at least improved) political order.

Since much of one’s identity is checked at the door, the unencumbered self is less a person than an ‘individual’ or, better yet, an ‘agent’. Like so many units in utilitarian calculus, there ceases to be a way to determine which goods should be considered goods and why. Rawls then imagines that persons can choose their own ends without knowing anything about a large number of their preferences: status, talents, and conception of the good are absent. Additionally, as one commentator put it, human persons often *discover* their ends, rather than choosing them, where ‘choosing’ means ‘creating’ ends. Within that set of discovered ends, certain ends are based in inherited conceptions of the good, rather than chosen goods and thereby chosen ends.<sup>84</sup> Some inherited conceptions of the good are integral to one’s identity. Some such inheritances come from a shared life with others, which is also tied up with one’s identity, and often cannot be disconnected from status. Status originally related to the family and the religion of the hearth. It then transferred to the allegiance to the state.<sup>85</sup>

The longest-standing conceptions of the good, such as what has been called the ‘Great Chain of Being’, begin with communal unity, and descended to the individual persons’ identities as members of that larger, eternal, body.<sup>86</sup> But like many a utilitarian before him, Rawls has boxed himself into not allowing a particular good to become *the good* of a (political) community. Along the way, he has boxed out large areas of actual freedom. Freedom, in one important sense, is belonging. It is the actuality of existing as something

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<sup>84</sup> M Sandel, *Liberalism and the Limits of Justice* (1982), 119-123.

<sup>85</sup> See N D Fustel de Coulanges, *The Ancient City: A Study of the Religion, Laws, and Institutions of Greece and Rome* (2012 [1874]), esp. ‘Religion was the constituent Principle of the ancient Family’ 40ff, and ‘Omnipotence of the State. The Ancients knew nothing of Individual Liberty’, 219ff.

<sup>86</sup> See A O Lovejoy, ‘The Outcome of the History and Its Moral’, 315ff, in *The Great Chain of Being* (1936).

formed for a particular role, rather than always being at a loss for one's identity, always having to 'project'. Aristotle talks about *endaimonia* in this way in the first book of the *Nicomachean Ethics*. It is something one had gained by a life-long possession of virtue; for, 'one swallow does not a summer make'. By excluding these large parts of personal identity from the individuals behind the veil of ignorance, including the actualities of a well-formed character, Rawls has ensured that those so veiled will be ignorant even of the freedoms that are no longer possible from the original position. For, as Aristotle says in the same book, it is only he who is educated in a discipline—meaning, disciplined enough to practice it—who can rightly judge it. Putting it in terms of Rumsfeldian epistemology, what is unavailable to Rawls's unencumbered selves is an 'unknown unknown'; moreover, it is an unknown unknowable.

With the slate of human nature now truly blank, she 'has to create its normativity out of itself', both for herself and for all others.<sup>87</sup> Universal equality will be the result. It can, in this way, be the only result. Some freedoms will attend it. And all who enjoy it will be educated into the knowledge that they have achieved morality as autonomy. But it will be a world bereft of possibilities for individual choice in line with one's own potentialities and actualities. Since all choices, in order to be just, must first lift up 'the least of these', no individual can himself knowingly choose the good for himself. Leave that to the social scientists, the new philosopher kings, says the academic Rawlsian. Leave that to a central authority, says his policy wonk technocrat.

In such an eventuality, the alter-conscience will have gotten more of its demands than it should have. With righteous indignation driving its alter-conscience, the egalitarian mind would become more incensed than the proverbial (but mostly fictitious) Massachusetts Puritan purging witches from the woods. Rawls sets egalitarianism up to be a revolutionary leveller, and finally to destroy its own thin conception of the good along with the thinner individual that chooses that good as justice as fairness: It keeps asking 'Who will level the levellers?' until there are none left to answer? Consensualism is needed to moderate equality. Asking actual persons what they would tolerate in order to achieve a more equal world is necessary. This means, asking which of their statuses, talents, preferences, and conceptions of the good are negotiable for the sake of equality is the only route to avoid a truly banal

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<sup>87</sup> R Rorty, 'Posties', *London Review of Books* (3 September 1987), 11.

procedural tyranny.<sup>88</sup> The next chapter will pick up with the value of consensualism.

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<sup>88</sup> Many of the crimes of the 20<sup>th</sup> century are more like the clerical ‘banality of evil’ that is depicted in Hannah Arendt’s *Eichmann in Jerusalem*. Eichmann rightly reported that he never killed anyone, nor did he order anyone to be killed. The violence was much more integrated into the institutional setting, namely, the proverbial camps, cattle cars, and ovens that was subsequently to terrorize our collective conscience.

## **PART III: Moderating values: consensualism and personal autonomy**

In the third part of this book I describe and explain the two chief values that moderate the equalitarian impulse. These serve to channel the energy of the alter-conscience, placing it in check: thus, an egalitarian mind is made out of a mere equalitarian impulse. The moderating values, then, completes the axiological set, making an egalitarian constitution into a conceivable model both of moral and of political governance, a proper regime. The inability to make decisions about the good based merely on equality will have led to the consideration of a solution with consent. Consent, likewise, is incapable of being a self-sufficient principle of moral and political life. That holds even when it is coupled with universal equality. Finally, personal autonomy, under a synthetic definition of ‘treating oneself as an end in oneself’, emerges as the linchpin value and virtue of modern persons, removing external ends, and making heteronomous obligations in principle impossible. The habitus of personal autonomy is the virtue without which none of the others can function sustainably; and with it, the other modern virtues flourish. Equality provides the universal status of persons, consent provides the ideal conduits of licit relations, but autonomy provides the content and limits of what equal persons can legitimately consent to, based on what they themselves manifest as their choices. It holds both the overweening excesses of equality and the open-endedness of consent in place in service of the person. A consonant mind might emerge from the interplay of these three values, but are the values and their attendant virtues enough to constitute and preserve an egalitarian constitution? That is the leading question of the last part of this book.

## Chapter 7: What is it like to be consensual?

Thomas Hobbes was the first to formalize the notion that only consensual obligations morally obligate. He says there is: '[n]o obligation on any man which ariseth not from some act of his own'.<sup>1</sup> Saying that obligation is based on/in consent includes duty for Hobbes. Said differently: they come together once one exits the *amoral* state of nature.<sup>2</sup> In the Hobbesian state of nature there is no good or bad, right or wrong, just aversion and attraction. After entering the pact with others, a moral necessity begins to unravel from the simple *do ut des* of the pact. Within it is included the moral obligation to do or refrain from doing such-and-such, so long as others agree to do or refrain from doing the same. This has been taken to mean my obligations are my own creation, arising ultimately from my consent, and after consent erects the pact, a moral necessity attaches to the original and subsequent decisions: I consent both to be active in consensual relations and to the content of such relations. True, Hobbes was offering a much less egalitarian reading of the facts, for one is compelled to play along with the pact not only by self-interest rightly understood but mostly by fear of violent death. Even if that reading of what came to be called 'social contract' was dropped by later contractarians, still the new prejudice of consensualism is fathered by Hobbes. It will define an age.

Like Luther before him Hobbes accepted the nominalist critique of scholastic realism and the ontological individualism that was central to nominalism.<sup>3</sup> This unites Hobbes, Locke, political philosophers of the Enlightenment, all the way to John Rawls and his followers today. All of them find the roots of political order as well as the motive for political obligation in a social contract – an agreement, either overt or implied, to be bound by principles to which all reasonable citizens can assent. Any breach does violence not only to the other but also – and most importantly for a philosophy based in self-interest – to the self. It is a repudiation of a well-grounded rational choice, where rationality is indexed to the utility of the individual. For Hobbes, however, is more direct. One is 'reasonable' strictly speaking insofar as one is a human animal that can calculate how to stop fear and pain by consensual relations for protection. Something closer to guile or cunning than to reason as a 'higher power'. As we have become modern we have become 'Hobbesian'; his philosophy has been so digested into the lives

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<sup>1</sup> Hobbes, *Leviathan* (1651), XXI.

<sup>2</sup> *Ibid.*

<sup>3</sup> Michael Allen Gillespie, *The Theological Origins of Modernity*. (2009), 249-250.

of corporate and natural persons, that no one need anymore even defend the positions he teaches. His books don't need to be read as part of a secular liturgy in order for moderns to continue to practice the virtues he teaches.

There is a deep truth in contractarian theories: consent is constitutive of any society that could properly be called human. Obligations, particularly moral obligations, are as well. Depending on the type of society and the stage of development, a varying degree of such (moral) obligations might result from consensual choices. These, too, are present everywhere that humans are. Contract is the universal formal manifestation of these human promissory powers in all societies. The fact that contract is a nearly universal legal phenomenon goes a long way in illustrating the ubiquity of consensual obligations and suggests their necessity for the organization of creatures that are only weakly determined by instinct, and this need much direction either heteronomous or autonomous. Not all contracts are consensual, properly speaking, but any contractual determination of obligation could have otherwise been non-consensually determined. Where contract *per se* does not exist legally – either because the society is primitive or because the area of human life is too private – there are nevertheless promises, both personal and public, to which one is held responsible, that is, obligated socially and usually also morally, based on one's word. Whereas all of these social realities vary greatly in prevalence and import from society to society, culture to culture, age to age, and even person to person, the underlying natures remain fixed and universal.

Specifically, the relative importance of consent and, *a fortiori*, its importance in determining one's basic obligations, does not change what consent, obligation, or consensual obligations themselves are. Just as 'sovereignty' when understood as, for instance, 'a will that cannot be voided legally by another human will', in Pufendorf's phrase, exists in both an absolute monarchy and a democratic republic, even as the areas of life that are subject to that sovereignty wax and wane based on the way it is held, and over what it is held. So, too, goes it with consensual obligation.

As we shall see, moderns routinely reify obligations that are consensual, and consequently shy away from most that are non-consensual, which are not only *not* thought to be real, but are also degraded into historical accidents with terms like 'traditions' or 'cultural practices'. 'Non-consensual' itself has become a pejorative, a by-word often for some violence against a person's will. In many contexts 'non-consensual' loses its plain descriptiveness and becomes a normative charge that wrong was done for no other reason than

because something was: ‘against my will’ or done ‘without asking me (and gaining permission)’.

The first part of the chapter explains what obligations are, beginning with a thought experiment about the preconditions of consensualism. The second part describes the increasing role of consensual obligations in modern moral life and self-understanding. I then explain how this provides a moral foundation and justification for political rule, and within such a realm, law-abiding behaviour of modern persons.

### **Thought Experiment: Self(less)-determination**

Imagine a small group of New Age religious adherents immigrate to your country from California. They number not more than one thousand persons in all. This cult, which calls itself *iNo* (pronounced ‘eye no’), rejects written texts as unnatural, including all that is written on screens. They profess to use texts, numerals, or symbolic representation only insofar as necessary for the survival of their community. Mostly, then, they begrudgingly become literate and numerate to the minimum levels merely as a concession to being allowed to persist. *iNo* asks its members to focus on action over contemplation, deeds over words, and community over self.

Texts are forbidden because they are both idolatrous and distracting. *iNo* believes that texts weaken both the mind and the moral character. Socrates and Jesus, the Buddha and Zarathustra: none wrote down their words for posterity; they, rather, spoke them out to their communities. The errors came when they were transmuted into written words, rather than imitated as deeds. *iNo* also forbids contemplation or quiet thought. One must express everything on her mind directly. Ideally, one should translate it into useful action or activity. Pantomime is their most popular pastime, which is always to be done in the presence of another. For these reasons, no one is ever to be left alone, whether waking, sleeping, birthing, bathing, pooing, or dying.

Like many progressive movements, *iNo* attempts to accomplish its goals, in part, by controlling the speech of its members. First person singular pronouns are only to be used for necessities. ‘Inner life’ is a temple of man, a superstition, another idol, a distracting ruin of Western metaphysics that remains in us. They add, following Foucault, inner life pretends to be our real self. But the external world is the temple of god, they believe, the temple of divine action through the body. Focussing on a linguistic construct like ‘I’ or

'you' only serves to involve everyone in the worship of our own illusory creations.

Such a stringent way of life of progressive enforced-poverty would be unsustainable without vast material resources. Their founder made her money in technology, founding the feminist technology firm *Peach*, and she has invested her income in a sovereign fund that now contains seventy billion dollars. The adherents have enough money to hire people to take care of all their daily needs, read to them, translate for them, all while they spend their time producing useful things like baskets and basketballs, hampers and hammocks. All necessary activity and relations with the state are paid for and accomplished by handlers; as is reading of texts and writing of necessary correspondences (literacy and numeracy being all but forbidden outside of its uses for labour-products). The sovereign fund will be able to support at least three generations of their descendants, even if they all stopped working today.

Would this be permitted as a form of education, religion, and way of life in any modern Western county? I imagine that it would not, and ultimately the argument against it would be that the children's 'autonomy' is impaired (using phrases like 'diminished life chances'), even though they have everything provided for them by a sovereign fund. As a result, they remain only functionally literate and semi-numerate; have no social use of personal indexical pronouns 'I', 'we' and 'me'; have no private space; and are forbidden from developing an 'inner life'.

Would 'equality' be able to defend this group's way of life and religion? Probably yes, it could in some way, if the 'freedom to determine one's own way of life' is appealed to as the content of equality. That use involves autonomy as self-direction, which could be used to guard against the forbiddance of *iNo*? But would that form of autonomy be more easily defended in terms of consensualism? Many fewer assumptions about the good and what constitutes a good life are required to defend consensualism. Rather than putting forward a theory of the self that is capable of, and best at, directing itself, one could more easily posit that it is not for us to lay obligations on others, that they should decide for themselves how they want to live. The conversation is then squarely about acceptable means. The need to seek consent will present many possibilities for getting around some of the excesses of the equality impulse. However, it also provides many ways around the good of the being at the heart of the egalitarian constitution: the sovereign self. Consensualism will show itself to betray autonomy.

## The door to obligation

Looking to consent as the door to obligations tends to look for persons who would be able to consent. ‘Adult human person’ is the type – preferably literate and numerate, preferably individualist in her analysis of values and justice. Those anthropological assumptions allow ‘self-interest’ to be ‘rightly understood’ to exclude all sorts of heteronomous relations. Thus, say, servitude is *unlikely* to be chosen without even having explicitly to forbid it. The spontaneous construction of ‘consentable’ situations is imperative for this nomos to become a living virtue. However, without actually having a god’s-eye view of the situation, the only way to *ensure* this is limiting in advance what is able to be subject of a consensual relation.

Voluntary slavery is often the spectre that emerges spontaneously in an extended discussion of consensualism. The paradoxes of willing what one cannot unwill, and having that will be respected – honoured even! – by one’s political community, is one pole of a libertarian spectrum.<sup>4</sup> It sometimes also emerges in multicultural discourse within consensual nomos, when defenders of non-Western cultures assert that one is not to judge the choices of other cultures based on one’s own standards – or a presumed universal standard, for that matter.<sup>5</sup> Who is to say that female genital mutilation or the euphemized version, ‘female circumcision’, is wrong?<sup>6</sup> Can’t the subaltern speak for itself?<sup>7</sup> However, those who most strongly argue for consensual slavery (they would shudder to call it that), such as advocates for liberalized sex work, insist that the choice must be made by an ‘informed adult’. The presumption is that shared by moderns at least since Pufendorf: if I have no master, then I am my own master. Whether one can even own oneself is not a settled question in modern philosophy; so, when self-ownership is denied, all the rights and privileges to control and dispose of one’s property-in-oneself are nevertheless routinely granted. Yet, even if as John Stuart Mill teaches, we

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<sup>4</sup> The serious a libertarian position (thus anti-Rawlsian) is Robert Nozick, *Anarchy, State, and Utopia* (1974).

<sup>5</sup> There is a buffet of names for those that disagree with the multiculturalist position: ‘Enlightenment fundamentalist’, ‘Eurocentric’, ‘ethnocentric’, and just the straight accusation of ‘racism’. Michael Walzer, *Spheres of Justice* (1983) and Alasdair MacIntyre, *Whose justice? Which rationality?* (1989) make non-multiculturalist arguments for tradition-based moral reasoning.

<sup>6</sup> It is almost *not* worth engaging philosophically with the point, except that it is everywhere in need of rebuttal. There is no philosophical defensible epistemology that seeks *truth* from the viewpoint either of ‘nowhere’ or of ‘just here’. Truth is definitionally total. If one wants something else than truth, then the view from nowhere or the view from my front window will do. However, neither is commensurate with truth, which insofar as it is true obtains everywhere.

<sup>7</sup> Spivak, Gayatri Chakravarty. “Can the Subaltern Speak?” (2003 [1985]).

are each self-sovereigns, that might not imply the possibility either of slavery or suicide. Sovereigns of states cannot generally hand over their rights of rule to just anyone. Nor do they have *ius abutendi* over the state.<sup>8</sup>

It must be said that when consent is used as a justification for political rule, it is frequently *post facto* consent. This reveals something curious about consent's non-factual nature in all sorts of circumstances in which the moral permissibility of an act turns on whether one 'would have consented to it'. The moral unease that we have about imposing obligations on individuals may disappear if, when someone is later asked whether he would have consented, he says 'yes'. Or if it is the 'kind of thing anyone like him would find in his own interest.' This is the manner that both John Locke and John Rawls justify the social contract. But it is also the way in which standard law regarding wills and testaments handle disputes about funerary wishes when there are doubts: If the deceased practiced as a Buddhist all of his life, and did not indicate that he wished to have the Remonstrants inter him, then he will get a cremation from a Buddhist priest who is willing to perform it. In short, moderns agree on the authority for moral obligations in the life of the individual person. Duties are another matter, both for the ancients and the moderns, and it will do us good to distinguish between duty and obligation in the remaining analysis.

### **Obligation and duty**

In English and other European languages, the words for obligation and duty are frequently used interchangeably. One could have an obligation to tell the truth, just as one had the duty to tell the truth. However, some recent philosophers rightly make a general distinction, at least in law, between obligations which are most often voluntary, and duties which need not be voluntary.<sup>9</sup> Civil law systems recognize a pre-legal 'duty of care' that can rarely be gotten around; they also recognize a large set of laws regarding obligations. But whereas duty excludes no person, one is only bound in obligation only when one *does some kind of thing* which could bring it about an obligation. This is nearly always voluntary (omission or commission). And it can only be ascribed to agents that could also be held responsible for actions: 'persons' under the law, rather than things or other non-personal beings, such as animals; or semi-personal beings, lacking some capacity for full personhood

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<sup>8</sup> 'Can I be my own master?' is a question of Pufendorf's at *DING* 1061.

<sup>9</sup> See footnote 35, *supra* in Chapter 5.

either temporarily or permanently, such as minors, the severely infirm, mentally incapacitated, etc. Whether a person commits a delict by negligently driving his carriage through a market due to inattention, or willingly contracts a marriage, he is presumed to have done these in some way voluntarily. This distinction assumed some level of consent contributing to obligations, and in that way shows itself to be downstream already from the modern consensualizing of obligations.

This conversation began in earnest in Plato's *Republic*, and its argument was substantially followed by Thucydides. Their focus was on justice. The just man was he who could 'see' his duty and then proceed to do it. That language replaced the customs and mores of the Homeric cycle wherein a different moral language is used than that of the 'just man'. The heroes, gods, and ordinary denizens of the various Greek *poleis* negotiated their separate obligations, which descended from different sources and relations. One might then have had a particular obligation to excel as a hero, or to observe an oracle, or to respect men of his own kind.<sup>10</sup> One might have been overtaken by a god, and now be at least obliged to follow that deity. With few universal duties—were there any?—and often conflicting obligations, there were conflicts. The Odysseus of the Homeric cycle, for instance, does not feel the need to work out which of his obligations are perfect and which are imperfect, and then prioritize them within a system of duties, each of which has ascending and descending importance. Said differently: obligation is a category of experience but not yet a category of rigorous cogitation for the very ancients.

As we approach Periclean Athens, and thus Hesiod, Solon, and Theognis, duty will be determined by the increased importance of 'justice'. All other considerations will pale in comparison. For instance, the great system of duties of piety and to *patria*, within which one found a place, had a status, and negotiated one's virtue—will be placed in brackets by the philosophers, and decimated by the mercenary equipollence of the Sophists. Some of those philosophers will evade the question, *What is justice?*, preferring to claim it does not exist; or that it is so simple as not to need elucidation; or that it is not fit to bother the time of a man who could be usefully employed in other things.<sup>11</sup>

We moderns have inherited the conversation about obligations and duties with its Greek philosophical rendering of justice and its Roman law

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<sup>10</sup> Richard Dagger and David Lefkowitz, 'Political Obligation' (2014).

<sup>11</sup> *Ibid.*

formalism both about social institutions of justice and procedural approach to solving problems. This admixture has not become truly ours without Christian sincerity being added in good measure during the years that separate the fall of the Roman empire and the rediscovery of some forgotten sources of our culture by the humanists.

Taking up the cognitive approach to morality (rather than the conventional reception of traditional practices), moderns believe that we have perfect and imperfect obligations, based mostly on voluntary agreement or activity. Perfect obligations are moral claims on a person to perform some specific action, probably based on a prior action (including a promise) she has done which is understood to be the originator of the obligation. Imperfect obligations are those which tend to call one to repair a situation that she is morally wrapped up in. For instance, if one is involved in a car accident, the obligation to help others who are involved is hard to enumerate in perfect obligations. What are the specific actions that one *must* do or refrain from doing? Must one further endanger her life in order to help those who were also involved? What one cannot generally do is just walk away without moral censure. Even as the specific remedy is beyond general enumeration, there is still *something* required of the persons involved in the accident to assist. Perfect and imperfect duties are likewise received as part of the social and moral fabric. The paternal duty to feed one's children, and the general duty of charity, respectively reflect this perfect and imperfect distinction, present in all known civilized peoples of the world.

When thinking about these terms, the question is in how far they apply to the preconditions and conditions of contractarian thinking. Do we have, as Hobbes suggests, neither obligations nor duties in nature, only acquiring them in the pact for mutual protection? Or is there some basic duty that even Robinson Crusoe would find on his island, as Pufendorf would argue? The division made between duty and obligation seems to have very little influence on the debate about moral responsibility to obey the law. In part this is perhaps because both ordinary language and philosophy are imprecise about their uses, often using them interchangeable. Compare 'I have a duty to keep this promise' with 'He has an obligation to tell the truth'. Nevertheless, John Rawls argues that when citizens who find themselves in a reasonably just political society have a 'natural duty' to support its just institutions, but no general obligation to obey its laws. That duty would tend to require obedience

to the products of those institutions, the laws and regulations.<sup>12</sup> So, ‘political obligation’, as it is sometimes called, ‘moral duty to obey the law’ is derived from a more general duty.<sup>13</sup> This background helps to situate the terms a bit, and to indicate that while moderns have quarantined moral obligation away from all non-consensual considerations, moral duty might still be out in public. I argue later that the large role that duty plays in modern moral values is the psychological lynchpin without which the mechanism falls apart. Personal autonomy inserts itself into the egalitarian mind as the metaphysical foundation of that duty. It is a generalized need to respect individual persons, beginning with oneself. That is returned to necessarily later, after I detail the weakness of consent amongst ostensible equals ultimately to protect persons from others (including governments) as well as from themselves.

### **The authority of consent**

All obligation appeals to some authority. The self is the final authority in consensual obligations. What that means is not wholly clear. Nevertheless, there could be another way to think about the grounding of the authority which does not deny that the final consulted authority is the individual person, but which explains why, as Leslie Green put it when commenting on Ronald Dworkin, ‘consensual obligations may at base be grounded in an unmentioned but necessary general duty’. Ronald Dworkin places such duty at the base of any obligation: ‘a duty to honour our responsibilities under social practices that define groups and attach special responsibilities to membership’.<sup>14</sup> The caveat: group members must ‘think that their obligations are special, personal, and derive from a good faith interpretation of equal concern for the well-being of all its members’.<sup>15</sup> We see that here, instead of personal autonomy, universal equality is used to bolster the necessity for consensual obligations. The alter-conscience is always attempting to direct all the constituents of the egalitarian mind. As becomes clear later in this chapter, equality is not enough to protect persons from consenting to all sorts of evil.

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<sup>12</sup> John Rawls, *A Theory of Justice* (1999 [1971]), 97; Also of interest is Also: John Rawls, ‘Legal Obligation and the Duty of Fair Play’ (1964).

<sup>13</sup> Richard Dagger and David Lefkowitz, ‘Political Obligation’ (2014).

<sup>14</sup> Ronald Dworkin, *Law’s Empire* (1986), 198.

<sup>15</sup> Leslie Green commenting on Ronald Dworkin, *Law’s Empire*, 201, in Green, Leslie, ‘Legal Obligation and Authority’, *The Stanford Encyclopedia of Philosophy* (Winter 2012).

In ordinary language the idea of ‘consent’ implies a normative power to bind oneself, which is always the property of a person or group considered to have the moral powers, if sometimes only *in potentia*. Those powers include the ability to direct responsibility for action onto themselves either now, in the future, or in the past. ‘Consent’ is about decision-making capacities and ultimately involves decisions of permissibility of action that could otherwise violate the (moral) law of persons or property.<sup>16</sup> Consent also involves time. There is a ‘wheness’ about consent. Or, at least that is what is sought if someone says she did not consent to something. The question is about when it was or was not given. It always has to be construed to precede the activity that is consented to, even when that is not factually true, as with the social contract after the first generation, when the consent becomes implied by something as mundane as not willingly leaving a territory for a stretch of time.

Politically, ‘consent of the people’ is a common way to justify political rule, and in our day, a state monopoly on violence is routinely justified in just that way. This serves for many theories as a test of legitimacy, ‘it being argued that the state or government would have no right to direct a person’s behaviour unless that person’s consent to be governed had been given.’<sup>17</sup> Notwithstanding its late popularity, there is a broader tradition of seeking the assent of the people that is very old. Appian of Alexandria in his *The Wars of Spain* [xliv] says that whenever the Romans granted certain privileges, they added: ‘This arrangement will stand so long as it is agreeable to the Senate and the Roman people’.<sup>18</sup> ‘Agreeable’ is here somewhere between assent and acquiescence. Although in some ways consensual or at least voluntary, two equal parties are not contracting for a relation of rule by one. Before the emergence of the modern value of consensualism, hierarchy, community, reason, and a number of other considerations ensured that consent played a smaller role in relations, and that when it did, it was nearly never between equals. The modern positing of universal equality pushes toward at least a *mythos* of consensual governance of, by, and for equals. In such a construal, the duty to obey the law in one’s particular community is morally obligatory because one has consented to it.

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<sup>16</sup> ‘Consent’ as: a noun is defined as ‘agreement or permission that something should happen’; as a verb as ‘to agree that something should be done’. A&C Black Dictionary of Law, 5th edition. P Collin ed (London 2007).

<sup>17</sup> ‘Consent’ in *The Concise Oxford Dictionary of Politics* (2009).

<sup>18</sup> Pufendorf *DING*, Bk. VIII, Ch. X, 1347.

As a concept consent is most often separated out from assent, acquiescence, submission, or a number of other terms for some sort of permissive attitude to activity.<sup>19</sup> Acquiescence or, more to the point, inward agreement, is what is meant. What is implied, but rarely spoken about is ‘the attachment of an agent’s will to a proposal, action, or outcome, such that the agent accepts (some share of the) responsibility for the consequences and/or legitimizes an action or state of affairs which, in the absence of consent, would lack legitimacy or legality.’ In this way, consent changes the character of the activity that is present in the world. What otherwise would be sexual violence becomes kinky sexual relations; battery becomes boxing; theft becomes gift. It should be clear by now that although the model of consent is the individual natural person, groups and corporations and states likewise consent as one part of ordinary contract, no matter what they might get called in practice.<sup>20</sup>

Both in morals and in law illegitimate actions can be made licit with the consent of he who is likely to be harmed by them. But the whole illegality or immorality of the act can rarely be removed in some cases. There can be ‘consensual victims’. And pleading in a court of law or morality that someone consented (and so there is no harm or crime) is not always a valid defence. That has been true always and everywhere for consensual harms, but particularly when the law or moral values in question are modern *nomoi*. Protections clearly derived from personal autonomy or universal equality often manifest themselves in law as consumer protection or anti-discrimination laws. Those frequently cannot be gotten round by consensualism. The law is paternalistic in this case on behalf of the persons of law whose liberty to consent in the future must be preserved. Onerous interest rates or unfair working conditions because of a racial difference would only perpetuate the inequalities of bargaining power and life outcomes between persons, thus preferring one group or conception of the good to others. It is understood that ‘[e]quality laws have traditionally been founded and legitimated in grounds that they further goals of State neutrality, individualism, and the promotion of autonomy’.<sup>21</sup> This was done, as we shall see, sometimes so that consensualism can preserve itself perpetually by outlawing non-consensualism of certain kinds. But it is more often personal autonomy that is brought in to curb the liberties of consensualism.

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<sup>19</sup> ‘Consent’, from *The Concise Oxford Dictionary of Politics* (2009), was used for parts of this paragraph.

<sup>20</sup> Pufendorf, *DING*, Bk. VIII, Ch. XI, 1350.

<sup>21</sup> S Fredman, *Discrimination Law* (2011), 14,15.

But *what* does one consent to? Sometimes, it is an action that I must perform in the future, or must refrain from performing. Or it is permission that something be done to me. It can be habitual, repeated, or one-off. There is a difference between ‘I consent to do/say/arrive ...’ and ‘I consent that ... be permitted to ...’ which is as morally relevant as the difference between crimes of commission and omission. It also changes the moral character of remedies for wrong-doing, as we generally see a failure to act as more serious than failure to permit another to act. Compare a construction worker failing to show up for a job to a person not allowing a construction worker to complete a project. Obviously, these forms of consent are in some ways so different that it is hard to measure them on the same scale. It is both true that ‘the whole of private law...is the law of consent’, and the understatement that the word consent ‘is not necessarily used in the same sense in all aspects of the law’.<sup>22</sup> Nevertheless, the point would seem to be sound that the consensual obligations that bind us more as moral obligations are those that require us to promise to act or refrain from acting, rather than those that permit another to act, in which we merely acquiesce to the action of another.

### **(Self-)knowledge and equity**

As a concept, consent can involve a broad swathe of attitudes regarding permissibility of action. It can be anything from grudging acquiescence to enthusiastic agreement.<sup>23</sup> When considering the legitimizing force of consent this fact cannot be forgotten. Explicit and express consent has plausible legitimizing force. When there is an inference from action that something short of express or explicit consent is present, many difficulties arise. How does one know at which point full consent ends and something short of it begins? One answer is that anything short of active dissent can be construed as (tacit or implies) consent. The problem is not new in law or politics; neither is the ‘quietist’ solution. The old problem in political philosophy is of consent to a social contract that never expressly or explicitly happened historically. Since no such ‘contract’ or ‘agreement’ exists in fact, there was no time or place when it could have been consented to expressly—it lacks a ‘wheness’. Locke recognizes this problem, and sees non-revolt and participation in the order that the agreement has formed as tacit consent, in

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<sup>22</sup> Peter W. Young, *The Law of Consent* (1986), 7-9 implies that wildly differing views—‘varied meanings’—obtain.

<sup>23</sup> ‘Consent’, in *The Concise Oxford Dictionary of Politics* (2009) was used for parts of this paragraph.

the way that those who continue to live by roads in some way consent to the risks of the traffic that passes by.<sup>24</sup> As a form of quasi-consent, this has not generally been interpreted as a satisfactory answer to the problem of the nature and causes of consent, either in politics or in private law, and especially not in personal relations. If I took the wrist watch of a guest at my house on a private island, and then argued that he forfeited it by the mere abiding on my island, there is little doubt that protests would be expected.

Regarding questions of knowledge and equity, since responsibility and legitimacy follow from consent in different settings, there has been much thought about the conditions in which consent may be given. Undue influence, coercion, duress, and other pressures on the will to decide outside of self-interest well understood, are considered in this light. We should remember that formally consent does not have to be free, but can be extorted.<sup>25</sup> It is unclear under modern *nomos* just how important consent ‘freely given’ is in *determining* obligations as well as determining the broader category of what is permissible. What would constitute unfreedom, and just how much liberty is needed for it to be considered a free choice, are open questions. Again, those relate to the open question of the doctrine of the free will, which is everywhere relied upon by moderns but insufficiently developed and had even been routinely denied by modern determinism of the natural science.

One way round this is philosophically problematic, but often convincing within narrow confines of choice theory. Pufendorf saw that: ‘everyone is presumed to know what he wishes to do’.<sup>26</sup> This presumption serves not only as the ultimate as the basis of personal autonomy but also as a point of departure for modern human sciences such as classical economics.<sup>27</sup> All the more, most persons are assumed to be right in thinking they are well acquainted with what they actually want, and that which they want (to do) is also in their own in best interest. In debates about euthanasia, for instance,

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<sup>24</sup> John Locke, *Second Treatise*, sec. 119; Patrick Atiyah, *The Rise and Fall of Freedom of Contract* (1979), 50ff (on tacit consent), 726ff (on modern ‘total consent’ [my term], wherein the law takes over in governing a relation according to status after initial consent is given. Atiyah sees this as a decline in consent from nineteenth-century consensualism; whereas I see it as a solidifying of the self-sovereign who stands behind the consent, whose word is law).

<sup>25</sup> Pufendorf, *DING*, Bk VI, CH. VIII, 1086. Patrick Atiyah, ‘Economic Duress and the Overborne Will’ (1982) 98 LQR 197, argues ‘that it was wrong to use the phrase “coercion of the will” in the test for duress. Duress does not eliminate free choice, it just creates a choice between evils.’

<sup>26</sup> Pufendorf *DING*, Bk., VII, Ch. VII, 1102.

<sup>27</sup> The *locus classicus* is George J. Stigler and Gary S. Becker. ‘De Gustibus Non Est Disputandum’. *The American Economic Review*. Vol. 67, No. 2 (1977), 76-90.

the question for moderns usually concern whether we are to respect a person's wish to die, not whether we believe that dying is really the wish of the person, or whether dying is the best or even a good option for the person.<sup>28</sup>

For a long time in European philosophy, at least since Karl Marx, there has been a strand that openly considers desires that were ill-gotten to be artificial and inauthentic—especially those derived from heteronomous relations to market(ing) or society. Latter-day Marxists have played up notions such as ‘false consciousness’ and ‘false needs’.<sup>29</sup> That participated in bolstering the Rousseauian cult and *cultus* of ‘sincerity’, with the converse accusation of ‘inauthenticity’ for the insincere in their preferences. One can be deceived about who one really is, and thus feel and act in a sort of ‘bad faith’ about what one wants and what is in one’s own interest. (I explore this Rousseauian strand in the chapter below on personal autonomy.) However, neither Marx nor Rousseau dismiss the possibility that a properly formed person could be completely attuned to his own properly-understood self-interest, could be fully autonomous, and therefore fully free. That is the meaning of *amour de soi* in Rousseau, and perhaps the opposite of ‘alienation’ in Marx.<sup>30</sup> In choosing a way of life one wants to avoid self-deception as much as avoiding harming others. But one need not be authentic in order to consent. Said differently, one can consent to something one does not desire, for instance, for instrumental reasons. I choose to work not against my will but against my desire to do nothing instead, because I want money more. And that desire for money bears little relation to my ‘true self’ or ‘authentic needs’. Alienation from one’s true self might be one harm (or at least cost) of relying too much on consent for the organization of the moral life of equals. It certainly seems to permit market relations to a degree which Marx and Rousseau would condemn.

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<sup>28</sup> I thank Prof Rocco Buttiglione for this example from a private conversation.

<sup>29</sup> Marcuse, *The One-Dimensional Man* (1991 [1964]), 9, illustrates the point: ‘We are again confronted with one of the most vexing aspects of advanced industrial civilisation: the rational character of its irrationality. Its productivity and efficiency, its capacity to increase and spread comforts, to turn waste into need, and destruction into construction, the extent to which this civilisation transforms the object world into an extension of man’s mind and body makes the very notion of alienation questionable. The people recognise themselves in their commodities; they find their soul in their automobile, hi-fi set, split-level home, kitchen equipment. The very mechanism which ties the individual to his society has changed, and social control is anchored in the new needs which it has produced.’

<sup>30</sup> Joshua Cohen. *Rousseau: A Free Community of Equals* (2010), 124-126.

For the moral certainty under consensualism that one is not, at the very least, manifestly harming another's self-understood interests, what is relied on is broadly speaking 'circumstances free from coercion or improper influence'. An asymmetry of knowledge between parties, or inadequate or insufficient knowledge on one or both sides can render influence improper, if not coercive. Adequate knowledge for the sort of decision that is being made is required, as well as sufficient knowledge of what the decision involves. Together those allow conditions in which 'informed consent' becomes possible. That is, 'consent given by a person who has the information required to give meaning to the attachment of his or her will to the proposal, action, or outcome.'<sup>31</sup>

After conditions for informed consent are met, the potential consentor is left to her own devices, and expected to do a full-faith analysis of things before choosing. But there is still a problem about choice. Like with autonomy, consent would seem to require a choice being actually possible. This is at times spoken of as a 'genuine choice'.<sup>32</sup> That need not be the language used, since the word choice already implies 'genuine' in the sense of there being more than one option, or at the very least the option to do such and such or to refrain from doing such and such. 'Genuine' is often being used further to indicate the need for 'circumstances free from coercion or improper influence'.

But there is a third sense of 'genuine' that tracks the meaning of 'authentic'. She who has the power of choice should be choosing what she believes to be her desired choice. It is not only that she should choose what is in her self-interest, rightly understood, but that as much as reasonably possible she desires the things that are in her interest. She should *feel* that those are the right thing for her to choose. Since her choice is then not only informed, but also formed by her 'true self', the metaphysical ground of being has now been brought to bear on the authority of the choice. How could it be doubted that this is the correct way to bind persons to promises? How could it be doubted that this is the one true source of moral obligations?

### **How can consent obligate?**

Well, for one, it is ground made of sand. Since consent is given by a certain authority, can't it be withdrawn by that same authority? Moreover, isn't the

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<sup>31</sup> 'Consent' from *The Concise Oxford Dictionary of Politics* (2009).

<sup>32</sup> *Ibid.*

ability to withdraw consent in fact essential to the perpetuation of consensualism? Otherwise, it could easily become a route to voluntary forms of personal servitude or despotic rule. In statecraft, the parallel testcase is whether a king can break his own oath, for example, in a pact that he has made. Pufendorf describes kings as being in a state of ‘natural liberty’, who can ‘refuse to be obligated’; ‘nor does he have to secure of the other a release from a thing which, of its own nature, is incapable of producing an obligation or right.’<sup>33</sup> Pufendorf later adds: ‘no obligation could be contracted if every man could reserve to himself the right not to perform it, if he so chose.’<sup>34</sup> Another way to ask the question, then, is: ‘If everyone were a king, how could anyone be obligated?’ It is said that ‘the will’ obligates. That is factually true according to modern values. But if the will remains unexplained, the assertion of its binding force either is a form of intellectual alchemy or it just names the problem and proceeds to push explanation off to another level of description.

In practice, consensual values function as a reinforcing cultural fact. As *nomos* and virtue, and ultimately as a moral value, they create conditions of obligation. A moral imperative emerges to stick by what one has agreed to, and a legal framework to enforce it, along with the reputation that one collects if he fails to abide by his word. Since consensualism is valued, it is also enforced, even upon oneself. The other *nomoi* participate in this as well, like back up laws of nature. For, autonomy and equality, as law-like practices of self-rule and fair treatment, are betrayed by not adhering to consensualism. Consensual obligations relate to what natural rights were founded upon, for instance: ‘the defence and assertion of my safety, my property, and my rights’, and rights belong to persons, those multifarious stations of autonomy.<sup>35</sup> Contract in the modern sense is the epitome of an instance in which there is a consensual obligation at work.

Natural liberty and natural equity stand behind consensualism, as I have suggested above. They also prove to be its weaknesses as an account of moral obligation. There is ‘natural equity’ under which commonly gambling debts fall; it relates to one’s honour. When everyone is a prince, then one must show that the prince ‘had obligated himself to pay it’, and that that should trump his natural liberty not to pay.<sup>36</sup> The presumption of natural liberty in all, which provides also the background for universal equality and personal

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<sup>33</sup> Pufendorf, *DING*, Bk. VIII, Ch. X, pp. 1342-3.

<sup>34</sup> *Ibid.*, p. 1344. Cf. Grotius Bk. II, Chap. XIV. 3.

<sup>35</sup> Pufendorf, *DING*, 1312.

<sup>36</sup> *Ibid.*, 1345. See Cicero *De Officiis*, Bk. II, xxiv.

autonomy, grants and removes the security of promissory powers. In two (or more) sided consensual obligations, *from which one can be released by another*, it also creates a very complex game theory approach by which one could get round obligations by promising certain things to certain persons in certain ways, and thus not really promising anything at all. It is patent that the presumption of liberty is necessary for modern values, but it does put each person both above and below the moral obligations that are necessary for life together. The paradox is that as authentic sovereigns, they are both able to loose themselves from obligations that are eventually not ‘pleasing’ to them; yet, they are also able *in principle*, to alienate even their own liberty from themselves.

Should ‘the good’ be understood as an authority here? Could it save the paradigm? Even the good under the auspices of self-interest rightly understood or ‘the good as it is understood by the agent’ might provide a manner to regulate what is otherwise only determinable by the will.<sup>37</sup> Again, in consensualist doctrine, any authority that is set up to check the will of the individual person is an imposition that must justify itself. Any justification that does not increase the consensualist consensus is an unwarranted imposition on the authority of the individual person. Personal autonomy and universal equality are both self-evidently in the service of greater consensualism and perpetual consensualism. Reason, the good, justice, or any other heteronomous consideration are manifestly not.

Remember that all of this sets out to moderate the alter-conscience, to tame equality by putting a gate in place at the door of the person. That gate is manned by she who would suffer when equality gets away with itself. However, the gatekeeper is not a reliable enough protection, neither against the egalitarian siege nor the vacillations of her understanding of her self-interest. Something more robust than formal equality and consensual governance is needed to make this egalitarian mind work as the head and conscience of an egalitarian constitution. Two obvious options are available: a deontological grounding that is argued to be prior to the self; or a context that so binds the possibilities of the egalitarian mind that it routinely works in the interest of the individual person. In such a case neither the alter-conscience nor the value of consensualism—nor especially the couple in

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<sup>37</sup> If Aristotle is right that men only do what they perceive to be good (acting ‘under the aspect of the good’), then it could work. The job of the legislature is then to train men in recognizing the good. If, however, Christians are correct that men do wickedness sometimes even when they know it to be bad for them or for others, then self-assessed goods are not necessarily a trustworthy guide.

concert—could hijack the life of the very persons that the egalitarian constitution is meant to benefit. Personal autonomy as a value purports to provide a deontological grounding. As a virtue, it provides the context of choice that makes one mind out of two otherwise disparate values. One chapter each follows, on personal autonomy as a value, ‘to be an end in oneself’ and as a virtue ‘being self-sovereign’.

### **From status to contract**

It has been said that society’s movement from ancient to modern is marked by a change in social organization ‘from status to contract’.<sup>38</sup> What could that mean for the moral life and personal identity of moderns? Although the *nature* of consensual obligations remains the same, the differences are marked between moderns and the ancients (and non-moderns, such as contemporary tribal societies in Afghanistan or Papua New Guinea). The extreme importance of consensual obligations to the experience of being a moral human, as well as being a legal agent – not to mention its political manifestations in liberal democracy (‘consent of the people’, the will of the majority) – make up a large part of what it is like to be modern. Very crudely, to be modern is to get to choose one’s obligations; not to be modern is to have them *handed* to you. ‘Modern’ here is opposed to ‘traditional’.

‘To hand (on)’ is literally what ‘*traditio*’ means. To be modern is to prize and prefer consensual obligations over those that are handed to oneself, and wherever possible to swap ascriptive obligations for self-chosen ones, both personally and as a matter of social and political policy. Where that is technically impossible, obligations are to be defended in moral terms approaching consent, which is actually the conceit of most social contract theories. It should be ‘as if’ one consents to political rule when he does not revolt or rebel; similar justifications are used for ordinary obligations within a social-legal system. Two somewhat extended examples may serve to flesh out the caricatures that I have so far been appealing to, one of a world in which the most important obligations are consensual (cf. in social contract doctrine’s imagining...), and another of a world of mostly non-consensual obligations. Those who find themselves on the side of the former would

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<sup>38</sup> Maine, Henry J. S., *Ancient Law, Its Connection with the Early History of Society and Its Relation to Modern Ideas* (1861). He makes more of a distinction between the uncivilized and the civilized, so that contract can already be seen replacing status in, for instance, Periclean Athens. However, the complete removal of all but a few universal statuses, and the contractualization of vast areas of human society, could be understood either as hyper-civilization or full modernity.

describe the difference as that between a world of freedom and one of duty. But as we shall see, it need not be so. Since the reader is almost certainly a modern person, she is probably favourable to the former and less favourable to the latter. So, I shall choose an example of the former that is a bit grotesque and that of the latter which is rhetorically voluptuous—thus, correcting for prejudice. For, we are not often good judges in the areas of life where we are eminently self-interested. Before the examples, a few more comments on the theme of this chapter.

Consent is about permissibility, and who gets to grant permission. It places the onus on the prospective doer of an act that affects other persons to have gained acceptance of the intended act *before* it can be completed *licitly*. The modern value motivating consensual relations is about consent in this sense. But it is also about much more than just granting formal and moral license to one's activity. It involves *who* gets to determine *the quality* of the activity, its utility. Consensual relations leave a very large part of human action in the realm of (moral) indifference. The determination of an act's or activity's quality, whether it be pleasing or painful, beneficial or harmful, good or bad, is determined by the person who is subjected to it, rather than by any account of the intrinsic goodness or badness of the actions. The amoralizing of large areas of human life is necessary if the assumption is that morality of an action begins and ends with consent. Else, moral obligation could be no respecter of consent.

Since under consensual rule as much of life as reasonably possible is meant to be determined by the person whom it most affects, consensualism then routinely turns to authenticity, or 'sincerity' as it used to be called, as an ultimate personal and then social arbiter of what any given person should do or be required to do.<sup>39</sup> In US Supreme Court cases, for instance, rather than an acceptable religious orthodoxy determining standing, phrases such as 'sincerely held religious belief' routinely are used.<sup>40</sup> The ideal, although not stated in the following phrase, is that permission to trespass beyond the boundary of the 'person'—however that boundary is defined in any given

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<sup>39</sup> Charles Taylor, *The Ethics of Authenticity* (1992), especially, 'The Sources of Authenticity, 25-30. 'The ethic of authenticity is something relatively new and peculiar to modern culture. Born at the end of the eighteenth century, it builds on earlier forms of individualism, such as the individualism of disengaged rationality, pioneered by Descartes, where the demand is that each person responsibly think for [herself], or the political individualism of Locke, which sought to make the person and...her will prior to social obligation. ...It is a child of the Romantic period, which was critical of disengaged rationality...', 24.

<sup>40</sup> *Cf. Burwell v. Hobby Lobby*, 573 US (2014).

culture<sup>41</sup>—can only be given by she who possesses what I bill ‘authentic sovereignty’. The meaning of the phrase will be worked out in this chapter. My claim is that the moral value of consensualism *supports* authentic sovereignty of the person, but not that consensualism necessitates it. The doctrine of consensualism as a modern value can be summarized as: ‘a moral obligation can only be acquired by agreement of the person whom it is to bind.’ Ascription or inheritance of moral obligations is impermissible; neither does nature bind us to behave in predetermined ways because of, say, our sex or age or descent. What I am identifying as consensualism, others have referred to in part as ‘ethical individualism’.<sup>42</sup> But I shall go further than they do in emphasizing the connection of arbitrary individual consent to the normative modern understanding of moral action.

### **Consensualism as value and virtue**

If an adult resident, of native stock, of any modern city, say, Rome, Warsaw, Duisburg, Lisbon, London, or New York, was stopped and was asked ‘Who are you?’, we might expect the answer to include three parts and not much more: name, occupation, and citizenship. If the resident were asked to say more about himself, we might soon hear about her children, where she lives, the type of home she has, about her ‘partner’, and other things that flow downstream from her choices. Only later would we expect to hear about her parents. Certainly, nothing would tend to be said about her grandparents unbidden. Ancestors quite likely have nothing to do with her self-understanding.<sup>43</sup> Educational attainment, wealth, and career success would probably feature largely as part of her identity, for instance, whether she has

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<sup>41</sup> There are substantial differences in what is counted as one’s property: in some places one’s reputation is closely associated with one’s person in a way that only physical property could be elsewhere. *Cf.* libel laws in English law that famously heavily police reputation to US patent laws that protect one’s property nearly four score after death.

<sup>42</sup> Ronald Dworkin says, ‘...so far as choices are to be made about the kind of life a person lives, ... he is responsible for making those choices himself.’ There is great permissibility in what is chosen, ‘so long as that life has not been forced upon someone by the judgment of others that it is the right life for him to lead’. *Sovereign Virtue: The Theory and Practice of Equality* (Harvard University Press 2002), 6.

<sup>43</sup> Tocqueville saw this already in the America of the early nineteenth century: ‘...not only does democracy make every man forget his ancestors, but it hides his descendants, and separates his contemporaries from him; it throws him back upon himself alone, and threatens in the end to confine him entirely within the solitude of his own heart.’ Tocqueville, *Democracy in America*, Vol. II, Sec. II, Ch. II (1899[1835/1840]).

university education, or was a small-business owner. She is probably not very religious, but if she is that may warrant mention, as it would be maintained mostly by a deliberate choice. And, although she may self-identify as a citizen of, say, Italy or Poland, it is just as likely that she would see this as incidental, and have chosen another affiliation or her primary occupation as constitutive of her identity. The same would obtain *mutatis mutandis* if the answers came from a man.

Now, imagine meeting a man on the streets of Geneva or Prague, Trieste or London, Oslo or Amsterdam circa 1600, and asking him who he is. Imagine that the city is within Christendom, and he is a native of it, being either Christian or Jew. His answer would probably include his name, religion, the political community or household of which he is a citizen or resident or servant. Next in order might be who his 'people' are: his family, probably favouring that of the father for identity, unless the mother was from nobler stock. At some point his occupation might get mentioned, depending what it is and how honourable it is. A mayor of the town, member of a religious order or of a guild, might find it very relevant. A shepherd, servant, or peasant might not—unless the house he serves in is honourable. There is literary evidence of much that would pass between the proverbial city dweller and the passer-by. *Don Quixote* by Cervantes is the uncanny, eponymous tale of the knight-errant and his squire Sancho Panza. Sancho is often portrayed as personifying decent peasant wisdom against the excesses of the erring knight. His prejudices for home, the Catholic Church, and inherited ways against all his master gleans from books of chivalry, indicates that he is serving as a foil for Don Quixote. He might also be serving as the narrative voice of a reasonable if incontinent man of his age. Whenever Sancho comes upon strangers he introduces himself in much of the way that I described above. He begins with his name, his service as a squire to his master, his Christian identity (which could have been more emphasized there than elsewhere because of the long presence of the Moors in Spain), his home town, and so on.

Notably, all of Sancho's identifiers involve webs of reciprocal duty, derived from moral or political, or social obligations, many of which are non-consensual or not fully consensual. Or, they were consensual upon entering, such as his service to Don Quixote, but cease to be consensual after the promise is made. Moral obligation is present in everything from the name (a baptismal name), his religion (conferred at the time of baptism and socially enforced), his employment (a consensual master-servant relation), his

residency (part of a fief or principality to which he is in some way bound to serve and cannot merely exit or renounce at will).<sup>44</sup>

Returning to the contemporary woman on a European city street: some may look at her answers in terms of ‘individualization’ that has occurred in modernity. That should not be downplayed. Individualization is, nevertheless, shorthand for many facts of self-understanding and social relations, values, and virtues. One such involves duties and obligations to others, where they come from, and how they relate to personal identity. If we imagine that they flow from certain self-understanding, so that an individualist, in Durkheim’s words, ‘organic’ identity would produce or participate in duty or moral obligation differently than a more traditional, again in Durkheim’s words, ‘mechanistic’ social organization, then we get one side of the picture.<sup>45</sup> We could also reverse our perspective, so that duty and obligation require the socialization, indoctrination, and enculturation of a compatible self-understanding—producing, variously, individualistic/organic and traditional/mechanistic identities. These are nearly never complete relational systems. Even under an individualist/organic self-understanding, mechanistic relations persist. But as one commentator put it, ‘[p]eople in organic associations do often feel obligations to other members, but we [now] normally seek an independent ground to justify them’<sup>46</sup>

For the individualist, the acquisition of obligations, and the duties that can be enumerated based on them, is not ‘given’ in any way. It is neither a fact of birth, inheritance nor history; neither nature, reason, nor cosmological order. Neither is it divinely mandated, nor is it based on status. Moral obligations are either based on acquiescence to a request (in both cases either express or implied), or on active ‘contractual’ engagement in the world (one

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<sup>44</sup> Patricia Crone, *Pre-industrial societies: Anatomy of the Pre-Modern World* (2015 [1989]), esp., the introduction, ‘What is a Complex Society?’ and the chapter on ‘Society and the Individual’.

<sup>45</sup> Both ‘organic’ and ‘mechanistic’ involve parts contributing to the whole that is their actual identity. Each has meant what contemporary thinkers mean by ‘organic’ at some point in intellectual history. In traditional societies there is a solidarity that is ‘mechanical’, wherein each part is similar to others in its class of parts (remember Gellner’s tripartite division of society into *Plough, Sword, and Book*). This commonality of members within each segment, and the use of each segment to the other segments, holds society together. Modern societies exhibit organic solidarity, with highly specialized parts, functionally differentiated like the *essential* organs of a body. Durkheim, *The Division of Labor in Society* (2014 [1893]), Bk. 1, Chs. 2-3.

<sup>46</sup> Leslie Green, ‘Legal Obligation and Authority’, *The Stanford Encyclopedia of Philosophy* (Winter 2012); in this connection, cf. Christopher H. Wellman. ‘Associative Allegiances and Political Obligations’, *Social Theory and Practice* 23 (1997); A.J. Simmons ‘Associative Political Obligations’. *Ethics* 106 (1996).

goes out and promises something, the promise is accepted, and thus a moral obligation arises); or they are tortuous, being based in some unforeseen or unforeseeable result of one's activity (if I run over your koala with my bike accidentally). We talk about both the acquiescence and the promissory powers in terms of 'consent', and the obligations that result from harm as tort or delict, the errors of negligence or omission. The philosophic position that tries to extend this form of relations in human life against ascriptivism is called 'consensualism'.

However, 'consent' or 'consensual' are not terms that most modern persons use to describe the world they want to live in, except perhaps in narrow conversations about sexual consent or contract law. 'Having a choice' or 'freedom', the 'right to vote', 'being heard', and other idiomatic phrases indicate what is sought without using the term. Some of those phrases carry along conceptions of equality or autonomy. All of them assume the decision should be taken by individual persons for whom the resulting activity might benefit or harm. It is generally thought that that very 'power of choice', which we call 'the will', should not be removed from the means of acquiring or exercising legal, civil, and personal obligations. But it is understood to be necessary for the acquisition of moral obligation: without it there are no such obligations. In rejecting obligations and most duties that come from without, we enhance the power of man. As Burke says, 'men love to hear of their power, but have an extreme disrelish to be told of their duty. This is of course; because every duty is a limitation of some power.'<sup>47</sup> In this case, the power of choice would be curbed. Consensualism thus teaches that relations not founded on consent are *ipso facto* under suspicion of being founded on coercion.<sup>48</sup>

Consensualism provides the normal form of modern obligations. But there is also harm. In the law, the words used for this are delict or tort, which I return to below. Before the modern age it was understood that most obligations, especially moral obligations, arose simply from existing *as a particular person in a given place and time*. Contract or delict could add to or subtract from these obligations. But one's inherited identity and ascriptive obligations were intertwined. Modern human rights have returned us partially to this identity-obligation dyad, but in a general way. *All humans* inherit the obligation to relate (or refrain from relating) in certain ways *qua* human being,

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<sup>47</sup> Edmund Burke, *An Appeal from the New to the Old Whigs* (1791), in 'The Tendency of Democracy to excess in the Exercise, and in the Desire, of Power'.

<sup>48</sup> Roger Scruton. *The Face of God* (2012), 64.

which might be better spoken of as a general duty. Nevertheless, in the two orders of obligations, the ancient tends toward ascription and inheritance, and the modern tends toward consensual acquisition plus generic duties as part of being human.

Law is the great non-consensual system that permeates both orders, if differently. As we became modern, there were increasing estrangements from the belief that law and moral obligation were regularly coterminous. Whereas only the Sophists had formerly taught the artificiality of the law<sup>49</sup>, in the early modern age it became fashionable to posit that, ‘the state, or polis, is nonessential: it owes its origin to a human decision, i.e., to a free contract, not to a necessity of some kind.’<sup>50</sup> A pre-political reality must lie behind our real world. This ‘state of nature’, whether portrayed in an optimistic light or a pessimistic shadow, is one wherein pure natural law is in force (Grotius, Pufendorf, Locke), or from which natural law can be derived (Hobbes, Rousseau). Having a rationalistic, pre-political natural law or law of nature to ground the order of society is very different from believing that the political community is ‘natural’. Thus, for ‘natural law thinkers’ following Grotius, much of what is later decided in terms of the arrangement of social life is a matter of indifference, namely, so long as the basic principles of natural law are neither betrayed nor rendered in principle impossible to follow. But note that society need not *ensure* that they are followed. This new foundation allows much more room for the input of the individuals who will make up society in determining what it consists in, including even their input in the original contract. In this light, Pufendorf sees two contracts, one for society, and then one for what sort of governance society will have. Consent becomes what is needed to originate and organize human social life. I belong to a society because I in some way ‘want to’.

‘Belonging’, which for the ancients was always already present for persons in a community that was itself ‘eternal’, has disappeared.<sup>51</sup> Membership, as a claim on a person, has thus been supplanted by individual will. Membership includes various statuses, as we saw in the discussion of proportional equality above, and St Paul’s usage of it in his corporeal theology of the Body of

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<sup>49</sup> Heinrich Rommen, *The Natural Law* (1998 [1936]), 26.

<sup>50</sup> *Ibid.*

<sup>51</sup> Cf. Burke, *A Vindication of Natural Society* (1756) offers a defence. Burke mocks the conceit of contractarian thinkers: ‘Society is indeed a contract...’, he concedes, and quickly defines away as ‘a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born’. So, not a contract at all. *Reflections on the Revolution in France* (1790), XX.

Christ. Those statuses relate to each other and gain identity through exchanges of honour, deference, service, and obedience. Even relations of enmity serve this function. But, ideally, such relations consist in friendship, kinship, as well as those between: man and woman, young and old, countryman and foreigner (often enough as host and guest), wife and husband, rational being and non-rational being, slave and master, freeman and freedman and slave, religious and secular, 'Greek' and barbarian, noble and common: all related through duty and obligation. Nature, history, and culture provide most of their content, and so they are wedded to the past on all accounts. Consensual relations work at the edges and sometimes between the ranks, and also fill out the actual lives of those who are related by status.

If relations are mostly contracted, the present remains more apropos to those concerned than the past does, and the personal more than the social. To see how little this affected the relations of the ancients, think of what Jason and Medea owe each other in Euripides's *Medea*? What do the heroes owe each other in Sophocles *Ajax*? Why? Status and membership dictate moral obligations in the first place, so that Medea's status as a foreigner and woman mean much more than they might under conditions of consensualism. Similarly, Ajax's nearness of relation to the other heroes, allowing for the intimacy that he betrayed by trying to kill them, must be taken in to account. He is not a man who simply did not meet the terms of an agreement, who thus should by general means be punished for the deeds under fair and impartial criminal law. Ajax betrayed the other heroes as only one of very near relations could have. It was a completely *partial* betrayal the punishment for which, if it is to be just, must fit the crime. Turning over both the nature of crime and the question of whether it is even criminal to the arbitration of individual will is not without its problems.

### **Could anyone consent to that?**

Germany gave the world probably the most famous recent case involving the final frontier of consent. Armin Miewes was discovered to have killed another man and, before doing so, to have co-cannibalized the many organ of the 'victim'. For this he is affectionately known as *Der Metzgermeister*. The other cannibal present was the 'victim' himself. Did Mr Miewes commit murder? No, said he, it was consensual, and he had videotape evidence to prove it. They had made an agreement before the acts were committed. In fact, the second cannibal, Mr Brandes, had answered an advertisement placed by Mr Miewes for just such a dinner date. They had co-conspired. Or, so as not to

bias the point by using a pejorative, they had *contracted* with one another for certain privileges.<sup>52</sup> And, as we know ‘*pacta sunt servanda*’.

This is an example of consent involving permission to do something which would otherwise immediately constitute the worst kind of violence to life and limb, as the moral character of what was done seems to turn on whether it was ‘consensual’.<sup>53</sup> The story becomes a murder when consent is absent. And there is a truth in this that even traditional societies understand. For instance, trespass, which is the general English term for tortuous crimes, ‘is almost impossible to maintain if the “victim” has consented to what has happened.’<sup>54</sup> However, there are plenty of legal and moral ways to cross land that fall outside of express permission by the owner or controller of the land. Consensualism renders innocent what otherwise could not be done in any case, so that *something different actually happens*, morally, socially, legally, and personally. The will is law. If one owns his own body under conditions of ‘equal freedom’, and if Mr Brandes has ‘self-sovereignty’, being fully personally autonomous, it only makes sense – once the logic is followed unflinchingly – that he should be able, at least in principle, to consent to being cannibalized and killed. This would be done literally ‘at his pleasure’, as was once said about kings. As Waldron says, we are all aristocrats now.

And who are *we*, society, to say that it is wrong? Not sharing membership in a moral vision of the world with Messrs Mewes and Brandes, such as Lutheran Christianity was once in Germany, we all must suspend our judgment in the face of the truth that *de gustibus non est disputandum*.<sup>55</sup> To be really modern, we need to revert from shared moral status to the procedures of private contract. If we were ethicists of the particularly modern sort, we might even argue that the relation between the parties is a pact or private contract—self-legislation through natural promissory powers, as it were. The consent that the killer gave could even have, *a fortiori*, created a moral obligation to fulfil his promise: ‘*pacta sunt servanda*’. The promisor might even

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<sup>52</sup> A 2004 German case with a retrial, between 2005-06, in the federal court, resulting in life sentence for murder.

<sup>53</sup> I return to moral obligations below, some of which are still non-consensual, and consent cannot remove the duty of care and other obligations, even where sometimes an *ius abutendi* applies.

<sup>54</sup> Peter W. Young, *The Law of Consent*. (1986), 3.

<sup>55</sup> This phrase is often abused to mean that one cannot judge the taste of another. However, it seems to have meant that taste was something that we are not going to argue about, since all those with good taste know what the good and the best are, and those without it do not know anything at all. Discussing it is thus futile; it is a category mistake to think it is something that can even be disputed in anything like the way that a proposition concerning whether taxes should be 15 percent or 53 percent could be. This is a point I gleaned from Bas van Bommel.

be found guilty, at least in the court of conscience, if he does not punctiliously perform his promised acts. Strange as it may seem, when moral obligation *descends from consent*, there is nothing intrinsic to the process preventing such contracts. The side constraints are only what is still recognized as a universal duty. Those duties, under modern values, increasingly function merely to preserve the prerogatives of the individual person, including her life, so long as she wishes to have them preserved.

Now, this is far from the experience of most modern human beings – even modern Germans – in all but two aspects. First, as a modern man one is tempted to respond even to this cannibalistic wish (after initial revulsion) with, ‘Well, if that is what he wanted...’ A less gruesome example would suffice, say, doctor-assisted suicide of someone who is tired of living with a disease. Second, consent is the glue that is supposed to make moral obligation stick to choices.

### **Privatization of public law**

This has resulted also in a privatization of the fundamentals of public law. Furthermore, it is not only in private or personal dealings that consent has come into the foreground in modernity. A common way that we now individually and collectively justify the monopoly of violence held by liberal democratic governments is ‘consent of the people’ (cf. Rousseau). Whatever it may actually mean in practice is beside the point of our high valuation of it. The moral neutrality, or non-judgmentalism about what is chosen, and the exclusive focus on whether it was consensually, that is, *properly* chosen, is a mark of what it is like to be modern. Hence, the extreme example of a tasteless Teutonic choice.

Consensualism is meant to moderate the excesses of equality, exhibited by the alter-conscience. However, as will continue to be shown throughout the rest of this chapter, consensualism is not enough of an augmentation, especially regarding the public law. For instance, if consent becomes the end all of permissibility, then according to Hobbes the state cannot injure a citizen. He compares it to a master-slave relation, and a master cannot commit an injury against his slave.<sup>56</sup> Pufendorf sees the implications of Hobbes’s argument as: ‘whatever is done by the state is understood to be done with the citizen’s consent; and of course it is a maxim that no injury is

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<sup>56</sup> The position of Hobbes in *De Cive* viii, 7. ‘Injury’ is used in a technical sense, including what we now call ‘harm’.

done him who is willing to receive it.<sup>57</sup> The Mewes problem of contractual sovereignty might be rare in private law, but it stands at the heart of the justification of the monopoly of violence in the state.

There are conceptual ways round this, but all of the obvious ones involve returning an ancient concept to the table. In the extended form of passage just quoted, Pufendorf disagrees that injury only consist in the violation of pacts. He also says that there is a pact between the monarch and citizen which has extra-contractual moral considerations. But Pufendorf makes these claims by restoring a thick concept of ‘duty’ from the ancients to the early modern world. He is attempting to smuggle a duty-based ethic with implied ascriptive obligations into a contractarian framework. He even wishes to place duty logically prior to contracting. Once the dual social contracts are in place (the contract for mutual support, and the contract for the type of constitution), the will of citizens is subjected to that of the state, interpreted and limited by the end of the state. Before that, however, there is duty in nature which cannot be foregone by mere contractual powers. If the goal of contracting is to preserve one’s life, that cannot be sacrificed for the sale of the contract. Or, as Pufendorf (after Grotius) says, ‘in moral matters that thing is regarded as necessary which is required to obtain some end, and that cannot be done which prevents or destroys this end’.<sup>58</sup> He agrees with the tradition that ‘no obligation to obedience arises unless another has a lawful power over me’, and that an obligation ‘is an intrinsic bond, so constraining the mind, that, if a man does not perform something, he is guilty of sin’.<sup>59</sup> It binds ‘by the intrinsic demand of conscience’. But, notably, he does not say that obligations *only* descend from consent. They come from ‘law’, ultimately derived from duty to God, to oneself, and to fellow man, ascribed as obligations onto our being at or before birth.

Again and again, ‘law’, that is justly placed logically before man, will return to attempt to pull the consensualist trend back into the fold of natural moral obligations (What else is human rights law but a law for personal autonomy?). However, it will ultimately only partially succeed once consensual moral obligations present unsolvable problems on their own terms, both in undoing autonomy (for, even slavery can be contracted) and in granting far too much power to political sovereigns on one side of a

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<sup>57</sup> Pufendorf *DING*, 1103.

<sup>58</sup> *Ibid.*, VIII, XI, 1352.

<sup>59</sup> *Ibid.*, 1113.

contractual relation, thus rendering equality a moot point for achieving individual happiness.

### **Consensualism needs autonomy**

Left to its own devices consensualism fails both to bring about more equality and to preserve the consenting person from (self-)harm. It cannot even preserve consensualism, for there are no external brakes against consenting to permanent non-consensual relations, which would almost always be inequalitarian as well. Finally, even the authority of obligating, which is seen to rest in the consent of the bound, dissipates when it is interrogated. First in is resolved into 'the will', and then into noting that can be a moral anchor. Consent has its uses for controlling the totalizing impulse of equality, instantiated as the alter-conscience. But it can do its work of moderating what is permissible only if it does not also have to be judge of what is permissible. Another place needs to be sought, another firmer value, that when active provides both the moral anchor and the content of the relations between equals, so as not neither to err on one side and betray equality nor to err on the other and to betray the self. Autonomy will serve as that axiological perfection and metaphysical anchor. Autonomy will also complete the egalitarian mind so that it can function amongst other minds in what can be called an egalitarian constitution.

## Chapter 8: What is it like to be autonomous?

‘This above all: to thine own self be true,  
And it must follow, as the night the day,  
Thou canst not then be false to any man...’

-*Hamlet*, Shakespeare

Polonius’s last piece of advice to his son on parting in Shakespeare’s *Hamlet* is justly famous. But perhaps it should be notorious. Would it not have been better for, say, Pol Pot to have been true to almost anyone else but himself? Be that as it may, when secondary-school pupils read Shakespeare’s lines in an age accented by various strands of romanticism, they are tempted to think it sage advice: one should remain ‘true to one’s deepest beliefs, one’s real self’. If the pupil later chases the romantic scent into a philosophy course, she will be told to seek ‘authenticity’ by Pascal, Rousseau, and Sartre. Such a positive assessment of Polonius’s sentiment persists in spite of the manifest ridiculousness of Polonius, and despite the horrors bred by romantic philosophy.

Being true to oneself in the romantic idiom invokes one’s ‘deep identity’, a ‘true self’ that is obscured, buried, stilled, or overcome by society; or by one’s own illusions about oneself, by outside impressions, by experience, and especially by formation at the hands of others. One needs ‘sincerity’ in place of convention; true desires in place of manufactured ones. Prince Nekhlyudov, Tolstoy’s blunt ideological weapon posing as a character in his novel, *Resurrection*, sees his downfall as having come about because he ‘stopped listening’ to himself. Authenticity is not only about thoughts, but also about actions. It is about obedience to oneself; about where moral authority is held. The romantic cult of authenticity connects with its forbear, the concept of autonomy – of proper self-direction, of being in a general sense morally ‘*sui juris*’. Both of these parts, as I shall show, form the modern value and virtue of personal autonomy, both keystone and cornerstone of the egalitarian mind.

But is it good to be ‘true to oneself’? What can it even mean? Going one level deeper: Is it better to be self-directed than directed by anything else? To be modern is to fall on the side affirming self-direction as a good in itself, no matter which direction is finally taken. That is implicit in consensualism. To

be un- or non- or anti-modern is to deny that. As I detail below, romantic self-direction is what is affirmed within modern culture, not merely the ancient tradition of being '*sui juris*'. The Kantian autonomy of legislating the universal law on oneself is almost never what is meant outside of rarefied circles.

What follows is not a complete conceptual definition of 'personal autonomy', but a sufficient working definition of it, with examples drawn from society, literature, and ideas of personhood. Instead of 'personal autonomy', I could have chosen 'individual autonomy', but that seemed both less attractive and less precise. For, autonomy, as it is understood in modernity, could only be possessed by something that can rightly be considered a 'person'. The word 'individual' usually is understood to modify an implied word: 'He is an individual'. An individual what? Cat? Koala? Moron? Mormon? Thus, 'personal autonomy' remains the preferred phrase.

In comparing autonomy and heteronomy so generally, a few things quickly become obvious. Firstly, not all 'autonomy' is fully 'autonomous'. Secondly, not all autonomy is personal. To the first, some forms of heteronomy might be said to be foundational to autonomy. It is worth considering whether heteronomous norms or conditions are part of such autonomy or a precondition for it. In either case the resulting autonomy would not be truly autonomous. But it is least autonomous in the case wherein heteronomous elements are part of autonomy. Nevertheless, the small differences between the two is not as interesting to me as the stark differences between autonomous agency and heteronomous participation in and obedience to something greater than oneself. It could be greater in goodness, extent, capacity, or any number of other goods. But, as I shall illustrate, it cannot merely be more powerful. Heteronomy is not mere coercion, just as autonomy is not mere freedom from coercion. To the second, autonomy of persons is as radically different from plain autonomy as the power of choice is from naked power (i.e., force). Personal autonomy brings the life-giving magic to the egalitarian mind, making a real boy out of a pile of sticks, and providing an inviolable and inscrutable centre that is determinant both of its own ends and of the means to get there. It is the 'person' of personal autonomy that will complicate and enrich what it means to be autonomous.

## **Toward a composite conception of autonomy**

The distinction between persons as rightly autonomous and persons as justly heteronomous is a line in the sand between what is modern and what is not. By sorting out what it can mean to be autonomous in modern cultural terms and what it means to be heteronomous in ancient cultural terms, we can identify the value and virtue at the heart of modern cultural identity, according to which consent and equality ultimately must operate.

A conception such as ‘personal autonomy’ is a composite of various philosophies which may never have been the possession of a single philosopher. It is, nevertheless, representative of a way of being in the world that the value seeks to enforce. When autonomy as romantic self-direction, with the position that each is to be an end-in-herself-for-herself, all sorts of ‘truths’ become obvious. Political manifestations of these truths frequently follow, including: the removal of external restraints on persons’ activities, especially removal of hierarchical relations that would enforce them; abolitionism, women’s liberation from family and ‘sex’, the ascendancy of property rights, expansion of the franchise, lowering of the age of majority, the eventual extension of personal rights as ‘human rights’. If other ideas and realities do not follow *necessarily* from a positive assessment of personal autonomy, they nevertheless routinely get a push. The tendency in modern law to permit nearly all that is not explicitly forbidden would seem to be one such instance. Hobbes, who announces consensualism also announces: under sovereign rule, all is permitted that is not forbidden. Since autonomy is not limited to natural human persons but also available to corporate actors, the relative freedom of states to make treaties on all that is not already forbidden in public international law could also be one such consequence. However, I restrict the chapter below to consequences for natural persons.

Personal autonomy as romantic self-direction is a river with three tributaries feeding it. Ideas are drawn from the three Johns: John Locke, John Stuart Mill, and Jean-Jacques Rousseau. Together their ideas form a composite Modern thinker and actor. The Johns support personal or individual autonomy of one form or another and to various degrees. This could be as modest as self-ownership of one’s body (Locke), as firm as self-sovereignty (Mill), or as daring as ‘everyone is entitled to respect for his own desires’ (*à la Rousseauienne*). But as cultural identity it becomes a form of romantic self-direction, an ethic of authenticity, and a politics of affirmation.

Personal autonomy has replaced an older tradition of heteronomy, represented by the two Thomases: Aquinas and Hobbes. The ancient

Thomases posit various forms of heteronomy, be it based in God or reason, or in both in variously-proportioned parts (Aquinas), or the passions and material necessity in some form (Hobbes's 'passions that incline to peace') resurrecting pre-Socratic notions of flux and determinism in an early modern idiom. And Edmund Burke will present himself with this set, to defend ideas of prescriptive heteronomy in natural society and an eternal political order of covenant-keeping (also standing against consensualism and equalitarianism). Immanuel Kant, with his morality as autonomy, cannot easily fall into either the ancient or the modern camp. For Kant, autonomy is the cause of human happiness, with obedience to universal reason as the route to autonomy. The ground and limit of autonomy is heteronomous adherence to universal reason. Kantian autonomy does not ground modern cultural identity. For, it is merely the moral body of ancient values dressed up in a modern suit.

Just below I shall begin sketching what autonomy and heteronomy mean as 'life philosophies', that is, ways of living based in competing dogmas. I could have called them 'religions', if the term were not so narrowly defined in contemporary Western thought. The dogma upon which the modern romantic self-direction is based, which could also serve as its shorthand definition is: 'To be fully human is to be a self-sovereign end-in-oneself'. As with any dogma, the truth lies in the explication.

### **Autonomy and heteronomy in brief**

As modernization has progressed there has been movement in emphasis from understanding autonomy as moral self-discipline to putting the emphasis on self-reliance. Self-regulation has always been part of the concept, but that morphed into self-determination. Self-control also became self-sovereignty; and the seed that was self-discovery flowered into self-creation. I shall not trace all of the changes, many of which take place conceptually long before they are clearly parcelled out to the terms. Here at the outset, however, the terminological vastness must be noted and met with some semblance of conceptual clarity.

### **Personal autonomy**

'Autonomy' is not an everyday word in contemporary popular culture—neither in politics, religion, nor self-understanding. But *it* is everywhere, with much of the discussion about autonomy going on without ever mentioning the word itself. Rarely will you hear someone complain, 'I just don't feel

autonomous in my job.’ Complaints are, rather, about choices or impositions: ‘I cannot do anything without my boss’s permission’ or ‘My wife won’t let me do that’. Parents from the credentialed class appeal to choice, again usually without using the word ‘autonomy’. ‘I want *them* to make their own choices’, one might hear about what to do when someone approaches your little boy and says something like, ‘He’s gonna break girls’ hearts’. The offense against the dogma is the assumption of ‘heteronormativity’. Parents want free agency to be developed in the child, so that ‘they’ – now a singular pronoun – can make ‘*their* own choices’. So, an appropriate response is to chide the presumptive person for boxing the child in without *their* consent. Again, these reservations are mostly about leaving freedom for choices to be made by the individual person, and freedom from restraints imposed by society – both of which are important to understand the functional concept of personal autonomy at work here.

This large domain of consent is not merely about freedom from uninvited obligations. The parents of the future heartbreaker are presumably not opposed to all kinds of heteronomous behaviour towards children. Should their children choose their own names? Is it wrong to give them citizenship that they did not choose? Should you make them wear clothes? Must they learn to read, *even* if they don’t want to? What if they don’t want to bathe? And, bordering on the absurd: What about teaching them a language, any language, that they never consented to? Autonomy as a value is not just about choices and freedom of the negative kind, but (1) some subset of choice types that are cherished and deeply associated with one’s identity; and (2) a ‘higher-order’ of choices than the very basics, about which no one gets to choose for himself, at least not as a child. For, the part of autonomy that involves choosing relies on certain foundations, including (1) the individual having reasonable use of at least one symbolic language, which implies (2) highly-developed powers of reasoning, as well as (3) an understanding of oneself as a self-reflexive moral agent in the world. Large parts of what Berlin calls ‘positive freedom’ are provisioned by society, family, and governments as basic education and enculturation.<sup>1</sup> But personal autonomy both the common type of foundation and the various houses that one chooses to inhabit atop the foundation. It is what Berlin means by positive freedom and so much more.

When the modern individual is autonomous, she is seen socially as a person. And she treats herself with the respect due to. If she is not, not yet,

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<sup>1</sup> Isaiah Berlin, ‘Two concepts of liberty’ (1969[1958]).

or no longer autonomous, he probably will not receive the protections of persons. The unborn and the un-dead indicate this in modern legal and moral orders, where killing of them is not always murder. Those who are not *known* to be able to feel pain (a *foetus* before 24 weeks), or to think (the unborn and those in vegetative states), or to choose for themselves (young humans or the infirm or the undead) are routinely marginalized from the protections afforded to the autonomous. The modern person rehearses a story of his identity in terms of choices made and self-development, of 'being true to oneself', and 'calling no man master'. Those who can do this have a claim to autonomy. Connecting freedom to identity, to be modern is to understand that one is free to choose for oneself, and that such a choice should be respected insofar as it does not impose on other autonomous selves. Mill would later name this habit of consideration the 'harm principle', attempting to render it not only harmless but beneficial by couching it in a buried sense of human dignity. But the modern auto-biography in literature is perhaps the truer condensed form of this raw self-image, untamed by liberal anthropology (for, to be modern is not necessarily to be liberal). Compare the very modern Adolf Hitler detailing his romantic struggle in *Mein Kampf* (1925) to the ancient John Henry Newman confessing an ancient creed *Apologia Pro Vita Sua* (1864). The latter author even distances himself from the subject matter by refusing the first-person pronoun in the title.

But autonomy in any of its modern forms is not merely about personal choice remaining free from external restraint (or coercion) and, where appropriate, choice facilitated by societal provisions of basic formation. To cover more of the conceptual space of personal autonomy, one needs to add: (1) a notion of self-directedness, (2) a conception of free will, (3) a private 'inner space' (where 'the will' also lives with my desires, memories, and secrets), which is inviolable, and (4) located 'inside' the body that I somehow 'own' and which is also 'me' (4), all of which together is mysteriously 'the real me'. These notions concerning romantic modern personal autonomy descend from all sorts of places. Yet, they have been given their lasting forms variously by the likes of Rousseau, Locke, Augustine, and Grotius, all of whom I return to in due course.

It is not only human persons that enjoy this autonomous status, but modern personal autonomy also has an institutional mode. This is the individual autonomy of self-sufficient and self-directed corporate entities. The justification for their coming into existence and continued action in the world is nothing other than to perpetuate their own existence. 'It is that it is', in a

certain way, like the God of the Hebrews, who says ‘I am that I am’—and like autonomous persons, who are ends-in-themselves-for-themselves.<sup>2</sup> Examples include the institutions of free enterprise, especially the modern corporation; modern political institutions, particularly the nation-state, but also political parties; and the university, as well as private voluntary organizations and societies. All such institutions might have other legitimate goals, and each *could* be justified on heteronomous terms of, say, serving the ‘common good’ or protecting the individual from foreign and domestic threats, or facilitating the personal autonomy of natural persons (in the case of the university). But just as human persons, they *need not be justified* in any extrinsic way in order to be considered legitimate. Which is another way of saying that they are personally autonomous.

Briefly, the relevant parts of personal autonomy to this study run as follows. First, autonomy in modern discourse becomes question of jurisdiction. Ultimately the answer to the question of sovereignty at the level of natural persons is self-sovereignty. As an answer it fails, since it really just poses more questions. But it does locate the conversation around the ‘self’, wherever that is said to be. As such, the most sovereign person would also be most autonomous, and vice versa. Second: autonomy is a self-contained moral status. This status tends to accompany another status, such as legal or moral personhood, so that one cannot be a moral person without being thought to be autonomous. As a legal value, autonomy is used to assess whether a person is being treated justly in certain cases. In many circumstances, both legal and moral, ‘autonomous’ has become a byword for ‘adult human being’: cf. ‘autonomous agent’ or ‘autonomous person’. These adult human beings are protected in their self-containedness, often called ‘inviolability’, by everything from human rights laws to moral proscriptions on non-consensual obligations. Third: autonomy answers the question of Which will? – that is, *Whose* will? – is to be obeyed normatively with that of the individual person. Fourth: autonomy involves ‘reason’ under sundry definitions, and therefore symbolic language, and vice versa. It is it is difficult to imagine what an autonomous person would be like without any possibility – past, present or future – of the use of reason or language. Hence, why neither Hobbes nor Hume, who elevate the passions in the order of the soul, are peddlers in modern personal autonomy. Moreover, moderns don’t assign personal autonomy (moral personhood) to non-rational beings, preferring to

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<sup>2</sup> Exodus 3:14 (KJV).

make certain preferred non-rational being ‘moral patients’ instead.<sup>3</sup> Fifth: as a value, autonomy is a moral prerogative, goal, and ideal. Modern man *practices* autonomy as a virtue. He thus flees heteronomy as if it were a carcinogenic vice. For all five reasons, the story of how modern values relate to everything that came before is told as one of liberation.

How these five stand together in the rejection of a the most heralded advocate of ‘autonomy’, Immanuel Kant. His 1785 essay “What Is Enlightenment?” answers the question as: “The freedom from self-imposed tutelage’. ‘*Sapere aude* / Dare to understand’, expresses the essence of his view. The enthronement of reason was ‘Enlightenment’. As such, it was meant to be a struggle against preconceived ideas and traditional authority.<sup>4</sup> This was anti-heteronomy. And, so far, it is compatible with the value of personal autonomy. However, Kant’s doctrine of autonomy as morality that follows the removal of self-imposed tutelage is neither typically modern nor actually a doctrine of *personal* autonomy. His extrapolation of autonomy as legislating the universal moral law to oneself is dependent on universal reason as the standard of the good and right. In one of his statements of how this categorical imperative to right action looks, Kant gave a beautiful outworking of his updated Golden Rule as a ‘Kingdom of Ends’, a place in which everyone is treated *by everyone else* as an end in himself. That is both noble and utopian, since it relies on the sense of duty in each person to become rationally self-interested, and thus to override whatever might be perceived to be in the broad self-interest of the person. Personal autonomy, on the other hand, is acquisitive; as a modern value, it instructs each person ‘to be an end in myself for myself’. Duty then overlaps with desire, allowing one to seek what one understands to be in one’s own self-interest, irrespective of whether it is what one would legislate for all persons.

Why not just ‘freedom’? If one is attentive to the movement of Western thought, she has no doubt heard the diagnosis that ‘it is a story of ever greater freedom’ or ‘the emergence of liberty’. So, in laying out what seems to be a

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<sup>3</sup> The Gaia Complex of modern ecology, as inherited in the culture, does seem to assign the status of a moral entity to certain non-rational things, such as ‘the earth’ or ‘the environment’, even trading in the absurdities implied in non-rational beings approaching the status of moral agents. But this status elicits the desire in us to protect the earth, rather than a real belief in its true autonomy. Said otherwise: environmentalists don’t actually live in a kingdom of ends with Gaia.

<sup>4</sup> ‘*Aufklärung ist der Ausgang des Menschen aus seiner selbst-verschuldeten Unmündigkeit. Unmündigkeit ist das Unvermögen, sich seines Verstandes ohne Leitung eines anderen zu bedienen. Selbstverschuldet ist dieses Unmündigkeit, wenn die Ursache nicht am Mangel des Verstandes, sondern der Entschließung und des Mutes liegt, sich seiner ohne Leitung eines andern zu bedienen. Sapere aude. Habe Mut, dich deines eigenen Verstandes zu bedienen! ist also der Wahlspruch der Aufklärung*’ (30 Sept. 1785).

particularly Western way of being in the world, why would 'freedom' not be the leading concept? Why all this talk of autonomy? Freedom, like equality, has always been with us, discussed and assessed from the procrustean days of the pre-Socratics. However, it is only quite recently that freedom in one or more of its senses has become a central value. Practical considerations also cannot be neglected. I suspect that the ascendancy of freedom in its relative valuation has not been based mostly in an attachment to freedom in itself. It is rather based in a vision of life in which one has negative freedom as the result of other realities and considerations, within a larger provision of positive freedom: for instance, a wealthier commercial society. Often the gradual groundwork of institutional, social, psychological, and religious provisions for autonomy have had negative freedom as a knock-on effect and an expedient to achieving broader goals. Alluding to Matthew Arnold, freedom is a fine horse to ride, but one must ride it *somewhere*. And the near-term goals have usually been about how to get us to some *somewhere*, with freedom being a means. Think of the suffrage movement. Voting is a form of autonomy in a democratic land, but it is not synonymous with freedom. Nevertheless, many freedoms have followed the expansion of the franchise.

Any conversation about personal autonomy is always also about freedoms understood as capacities and abilities to act in the world, removal of restrictions to action, and, where necessary, facilitation of such action. Some of these are 'positive freedoms' (a term I try not to use because of its over-emphasis on freedom), while others can be understood as forms of freedom but are not usually or best referred to simply as 'freedom'. And, lastly, freedom is simply not as essential to what it means to be modern as autonomy is, even if the most modern nation, the US, cannot stop singing its praises. Freedom has always been with us; any form of freedom that one can imagine has pre-modern precursors. Personal autonomy, however, is particular to the modern moral order. And any truly autonomous entity is also, in all important ways, free. But any free entity is not necessarily autonomous. The person free to take as many drugs as he wants whenever he wants quickly becomes particularly bad at the habits of personal autonomy.

### **Participative heteronomy**

Heteronomy is the great spectre of personal autonomy, it is the abyss that autonomy emerged from and back into which it can always fall. Something should be said here about it, if only to throw light on autonomy by contrast.

When I was a child, the small Reformed Baptist church that my family attended had a hymnal packed full of songs that were written in the early years of the Baptist movement. Many were late 17<sup>th</sup> century songs, but others were more recent. The hymnal was the central focal point for musical worship of God. The Bible was the test of the truths of the hymns, as interpreted by the sound doctrines of the Reformation, the witness of the very earliest biblical church, and the boundaries that the London Baptist Confession of 1689 had set. The pastor was important, and the sermon, usually an exposition and explanation of a particular passage from the Bible in light of the Gospel (namely, the message of unearned salvation of sinners by God through his life, death, and resurrection in the person of Jesus Christ), was central to the life of faith of the congregation. The congregation itself was not understood first as individual believers, but as part of a corporate person, ‘the church’, whose identity was fixed by God himself—actually ‘in’ God himself. The approach one was meant to take is illustrated in the hymn that was my favourite as a lad: ‘Trust and obey, for there’s no other way to be happy in Jesus than to trust and obey.’<sup>5</sup>

There could not be a command further from ‘*sapere aude*’ than ‘trust and obey’. Heteronomy is about the taming of the will, so that it meets a standard that is not of one’s own invention. Kant, as I have argued above, is no teacher of pure autonomy. His is a heteronomous autonomy, for the moral law is non-negotiable, and must be followed autonomously. The Grotian and Rousseauian or natural right autonomy that allows a great berth for individuals to find their own authentic happiness and then proceed to pursue it, is at the heart of personal autonomy. And that comes into relief when compared to ‘trust and obey’, a quintessential statement of ‘*amour propre*’, as I’ll discuss below. ‘Trust and obey’, and don’t *think* about the foundations *too much*, is an approach that heteronomy instils. It is no wonder that philosophers are almost universally mistrusted within heteronomous communities.<sup>6</sup> (It is not that the *truly* autonomous person likes to be told

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<sup>5</sup> Written by John H. Sammis and Daniel B. Towner, 1887.

<sup>6</sup> Strauss’s conducts a ‘sociology of philosophy’, studying philosophers as a class, routinely finds their *radical* investigation unable to moderate itself to affirm a particular political order. *Persecution and the Art of Writing*, 7-8. Steven B. Smith writes, in *Reading Leo Strauss: Politics, Philosophy, Judaism* (2006), 12ff, that ‘Strauss saw permanent and virtually intractable conflict between the needs of society and the requirements of philosophy’. The desire to replace opinion about all things with knowledge of all things ‘would always put philosophy at odds with the inherited customs, beliefs, and dogmas that shape and sustain social life.’ Modern values attempt to replace politics with pure philosophy, at least regarding principles of justice.

about the paradox of ‘authentic self-creation’ either, but I’ll return to that below). Examples are everywhere, but in many languages, such as Arabic, ‘philosopher’ is also a word for an untrustworthy person, more like a sophist or cynic than a truth-seeker. Lawyers are their near relatives, and they are opposite of the poets who build up and re-tell our tradition back to us as Homer and Vergil. Socrates found himself suspect when seeking the foundation of the conventional wisdom of the Athenian elite. No, ‘daring to think’ is not close to the heart of heteronomy. But we should not think that because it is often unreflective that heteronomy is routinely thoughtless or unthinking. What then lies beneath, or could justify the ‘trust and obey’ mantra?

Heteronomy has too many forms to be made into a neat taxonomy, many more in fact than autonomy. For, nearly anything or anyone could serve as a source of heteronomous action. However, all forms of heteronomy diminish self-direction in the individual person toward its own self-chosen ends. Individuals don’t get to choose their own ends, at least not ultimate ends. For, persons exist in and for something other than themselves. Heteronomy involves membership, participation, belonging, obedience, hierarchy, and trust. Persons and institutions that are heteronomous ground their choice in the will of another or the reason(ableness) of something that they did not create. They are creatures rather than creators, progeny rather than progenitors. And as such they are downstream both logically and usually historically from their source.

Heteronomy means that the self’s direction and identity come from without. Socially this could be from family, nation, religion, the habits of ‘one’s own kind’ or one’s ancestors, or even following the commands of universal reason. Psychologically, the way the heteronomous person tells the story of himself would be in terms of *relations* to persons, things, groups, the moral law, or institutions other than himself. The autonomous person, in contrast, speaks in terms of self-identifying choices that originate from within, like a fractal emerging and growing from a specific unseen point.

Institutions that support, or are themselves sources of heteronomous identity, value the structures that inhibit aberrant, or what may be more neutrally called ‘individualistic’, behaviour in their members. The institutions themselves that identify as heteronomous do the same in relation to their source. The Catholic Church, for example, claims it is instituting the will of God for man on earth. It is not self-directed in the way that a private yoga club in London or a modern corporation are. Whereas the Catholic Church’s

internal dynamics are not wholly determined by its heteronomous relation to the source of its identity, still they cannot but remain unaffected. The Catholic Church can change, but along certain clearly defined lines. Nevertheless, because of its claim to heteronomous membership in a particular God's being, the Church cannot become *just anything* its leadership wants. It cannot, say, replace Christ with a spider monkey, without ceasing to be what it is. Its own history and historiography also inhibit arbitrary change—that is, they inhibit autonomy, and reinforce the Church as a heteronomous organization.

The priority on the whole over the parts usually results in small numbers of leaders controlling the larger part of members. Still, it would be a mistake to look at heteronomy chiefly in terms of unequal relations between the guide and the guided, the leader and the led, the rule(r) and the ruled. Heteronomy is better understood in terms of participation in a given order, and the status that is acquired by and through that relation. None of which is free of considerations of (in)equality, but each of which is not reducible to the conceptual schemata of egalitarianism without a great loss of explanatory power. For instance, a traditional nuclear family of, say, the middle of the nineteenth century is a typical heteronomous institution. The father is the head and public face of the family. His name generally becomes that of the children as well as the family's name. The mother and father together are the wards of the children, having shared parental authority over them. Older children are in charge of younger. But it would be wrong to say that those power relations are what constituted 'the family' *qua* family. Inegalitarian relations of power were certainly *necessary* for the family structure, but its constitution involves much more. They were not sufficient in themselves to have a family.

To demonstrate the point, firstly, one could remove all of the functional relations of power by moving all the members of a family to the four corners of the earth, so that they have no active relations with each other. It is still the case that insofar as they are constituted as a family, the relation is one that relies on heteronomous participation in something that no single person involved created, and that no single person involved could destroy, either by design or death. It is, secondly and conversely, also the case that one cannot simply collect strangers of certain ages and place them in power relations called 'father', 'mother', 'son', 'daughter', and by some alchemical interaction get a family out of power dynamics. Ironically, and thirdly, although inequality is not materially necessary to what a family is, if equality of persons were

introduced into the definition of ‘family’, then the institution would cease to exist as anything but a form of common law contractual relations of a particular kind.

### **Autonomy and heteronomy as ways of life**

We are dealing with a religion-like phenomenon in modern cultural identity, against the secularization readings of modernity including Strauss.<sup>7</sup> ‘Religion’ is notably immune to clear definitions. But ‘dogma’ is one discrete way to talk about the beliefs through which the practices and institutions of religion are justified and perpetuated. However dogmatic it becomes, personal autonomy is a way of life that is cherished by moderns, just as heteronomous institutions and practices were cherished by non-moderns. But these are not fully parallel instances. For, there is a difference: what is cherished in modern values is *autonomy itself* and thereby practices and institutions that are autonomous. There is scarcely anyone praising heteronomy *per se* in pre-modern defences of the order. After the Revolutionaries attacked the *ancien regime*, there was a pushback that defended ‘aristocracy’ or ‘hierarchy’ in themselves. But what the likes of Edmund Burke do is praise the specific institutions that are later understood by the egalitarian mind to preclude autonomy. It was likewise with the counter-revolutionaries, who praised ‘the old order’, rather than heteronomous order itself.

In order to give flesh to these two competing visions of moral order, imagine two thinkers, one ancient and the other modern in prejudices. Each embodies a composite of ideas, ideals, virtues, and vices, understands the world in terms of either personal autonomy or participative heteronomy. The relations of autonomous persons form a large part of the modern’s understanding of the nature of public and private law, the limits of state power, the obligations that can be laid on her, the division of what is public and what is private, family life and how it can incur on her adult self, the relations of the sexes, and so on. The ideal of autonomous relations being central to human life, form a great part of her personal identity, and informs her obligations in relation to other persons. Contractarian understandings are central to what she is truly morally obligated to do. In order to know, she imagines that she should collect experiences, see things ‘with my own eyes’.

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<sup>7</sup> Strauss was wrong: modernity is not a form of nihilism, but rather a ‘political religion’. *Viz.* footnote 20 above in Introduction. Peter L Berger developed the ‘secularization thesis’ in sociology which equated modernization with secularization. Although he later withdrew it based on more evidence it remains a truism that to be modern is not to be religious.

She is not wholly sceptical, but her motto is ‘trust but verify’. She is a ‘man of action’.

Conversely, the ancient man departs from a point that he did not choose for himself. He appeals to authority not based on reason but founded in convention or nature or some reality that is thought to be as natural as the natural world. He has had many things handed to him that he intends to hand on in as near to the same form as he received them as he can. He probably bears the old prejudice that was built into Latin vocabulary wherein *novum* also meant ‘strange’. He has a place and a home, a family and a tribe to which he is bound. He need not love or even like any of them – his feelings about them are beside the point – but those realities remain personally definitional no matter what his affectual relation to them is. Together those realities form the points from which he cannot but depart when considering the world, and to which he is expected and probably expects always to return. His spiritual place and home are sometimes not his literal home, but they precede it in time and metaphysical order. It may be with the Greeks or Romans; the Hebrews or Goths; the Church of Rome or the Roman Law compiled in Constantinople. In order to know the world, he repeats, synthesizes and *discovers*; he catalogues and collects; but he does not routinely seek to ‘invent’, and he has heard of no one but God who ‘creates’. He is a man for whom contemplation is the highest human practice, even if he will never have the leisure earnestly to pursue it.

### **Varieties of autonomous experience**

Imagining oneself as both modern and perpetually subject to the will of another is impossible. ‘Autonomy’ is the word used for the freedom from the will of another that is cherished by moderns. But the word is not used precisely, even if the general sentiment of ‘self-rule’ is constant across its senses. Five kinds of autonomy should be distinguished so as to fasten down the sense that I am explaining to be typical of modern personal identity. Since a standard taxonomy of autonomy does not seem to exist, I have posited descriptive terms that cover the psychological and the social experience of these five sorts of autonomy.

There is the first the literal ‘*auto-nomos*’ understood as self-direction. Or better as ‘self-custom’, since it is not merely about a single choice but about habits and dispositions. It has its formal equivalents in law (being *sui juris*, or having the age of majority), and in culture (being an ‘adult’). Both the cultural and the legal sense mean something closer to how Pufendorf describes *sui*

*juris* as being one's own master.<sup>8</sup> This should not be read as complete 'self-sovereignty', which comes about in another form of autonomy. It is more about *control* than ownership; and it is a formal category with no necessary connection to morality. Any rational creature could be said to be autonomous in this way, in that it can follow the commands of its own reason.

Secondly, there is what could be called 'disinterested imperial liberalism', which understands morality as autonomy. It takes different forms, but Kant is the prophet of this autonomy as legislation of universally-valid morality onto oneself in imperatives (either categorical or hypothetical). The first formulation of the categorical imperative is a secularized version of the Golden Rule, a 'universalizability principle': 'Act only according to that maxim whereby you can, at the same time, will that it should become a universal law.'<sup>10</sup> He hopes only for the modest goal of 'perpetual peace' by way of those autonomous creatures all choosing well by choosing the same. Mill continues this with a totalizing narrative against 'harm' (whatever that may be), necessitating merely control of political and social life so that it does not crush the thousand truth-seeking blossoms that are the autonomous person. Rawls's 'veil of ignorance' is one such modernization of a Kantian universalizability imperial principle at work.<sup>11</sup> The kingdom of ends wherein justice is the first virtue of social institutions, and wherein justice is nothing more or less than fairness, has a logical end in a world empire.

A great competing political vision of autonomy, and thirdly, does not construe it as the essence of morality but as its precondition. 'Acquisitive liberalism' is a good enough name for the moral-political order received variously as Grotian, Hobbesian, or Lockean. Despite differences, each bases his understanding of society's justification on a 'acquisitive personhood', which has been described more negatively as 'possessive individualism'<sup>12</sup> Original acquisition and continued ownership are related to the work of the will. Through taking and holding (Grotius) or 'mixing one's labour with' (Locke) or 'power' (Hobbes), one possesses the thing as owner, or at least as

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<sup>8</sup> Pufendorf, *DING*, VII.VI,1083.

<sup>9</sup> T N Pelegrinis, *Kant's Conceptions of the Categorical Imperative and the Will* (1980), 92.

<sup>10</sup> Kant. *Grounding for the Metaphysics of Morals* (1993 [1785]), 30.

<sup>11</sup> I originally thought it was a conceit of, or at least a *reductio* on, the absurdities of social contract. I did not know then that amongst contemporary political philosophers Rawlsian have the least feel for humour. Religion tends to be the enemy of humour, after all. There is a basic problem with Rawls's metaphor: veils can generally be seen through. What is needed one eminent Polish philosopher told me privately is an 'Iron Curtain of Ignorance'.

<sup>12</sup> C B MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (1962).

'*dominus*', however it might be translated into contemporary terms. This includes self-ownership through self-direction, particularly of that chief instrument of secular autonomy, the body. This freedom is construed as necessitating certain types of relations with others, those of mutual deference to the property of others. Autonomy is bounded by the limits of the other's control, and usually begins with the boundaries of the body and that which extends from it. The natural right tradition that is part of this type of autonomy has 'life, limb, and the things necessary for life' (Grotius) or 'life, liberty, and land' (Locke) or just life itself (Hobbes) as what is never to be foregone by the individual, thus ensuring a minimal autonomy in any imaginable state or state of nature.

The fourth kind of autonomy is a form of self-discovery called 'romantic inwardness'. Versions of this include Augustine's neo-Plotinian 'inner self'<sup>13</sup>, wherein the Forms and ultimately God can be found, and Rousseau's legislation of a self-chosen law onto oneself. Rousseau illustrates this well in a passage from his novel *Emile*, wherein he connects the subjective character of such knowledge to its universal applicability as a way of knowing through acting:

...he follows what he calls the "Inner Light" which provides him with truths so intimate that he cannot help but accept them, even though they may be subject to philosophical difficulties. Among these truths, the [he] finds that he exists as a free being with a free will which is distinct from his body that is not subject to physical, mechanical laws of motion. To the problem of how his immaterial will moves his physical body, [he] simply says "I cannot tell, but I perceive that it does so in myself; I will to do something and I do it; I will to move my body and it moves, but if an inanimate body, when at rest, should begin to move itself, the thing is incomprehensible and without precedent. The will is known to me in its action, not in its nature."<sup>14</sup>

Knowing one's will here means knowing one's desires (*voluntas*) that precede one's choices (*arbitrium*), plus knowing that the desires are *truly* one's own because one has discovered them to have been there within oneself. We would call this 'authenticity', what Rousseau called 'sincerity'. And legislating them onto oneself as morally right is called autonomy (not by Rousseau but

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<sup>13</sup> Phillip Cary, *Augustine's Invention of the Inner Self* (2000), 28-30, 63-76.

<sup>14</sup> Rousseau, *Emile* (1979 [1762]), 282.

by me). Romantic-inward autonomy requires an ‘inner space’ which is also the true self or wherein the true self can be found. Augustine gave us that conception not regarding the true self but as that place through which one travels to get to that which is really real. It was an open space, an agora within, where one could ‘look up’ to see the Platonic Forms and eventually go beyond them to participate in God himself. Rousseau put a roof on that agora. Now one explores until he discovers his true self, studies it, and then goes out into the world to try to satisfy its needs. Contractual relations amongst equals are the only possible relations that could be imagined in a world of many such autonomous selves. For, by which principle could one rightly rule countless unicities without that rule being a violent imposition on their selves? This is the epitome of autonomy as self-discovery.

Lastly, there is autonomy as self-creation. The juvenile nihilism of the Nietzschean or Foucauldian ‘hermeneutics of suspicion’ need not lead us to believe that this is a ‘philosophy’ suited only to first-year philosophy undergraduates. There is a serious sense in which the belief that all is plastic except for the power that I bring to bear on the world is a form of autonomy. It is what Jean-Paul Sartre puts forward as radical freedom opposed to the heteronomous *mauvaise foi*. Such ‘bad faith’ occurs when a person convinces himself that a role or manner of life is synonymous with his deep identity, or that he even has some deep identity to be discovered.<sup>15</sup> Nietzsche saw as much when he set the new men, including himself, against the rest, the last men: ‘We, however, want to become who we are – human beings who are new, unique, incomparable, who give themselves laws, who create themselves!’<sup>16</sup> This could be construed as a form of self-discovery, but the ‘discovery’, especially with Sartre and de Beauvoir, is that there is no deep self, that one must create the self that one wants to send into the world to be recognized. One discovers the will through action; one thus becomes what one chooses to do. Needless to say, the aspiration to self-creation is not absent from the modern value of personal autonomy. But its role is limited. The alter-conscience balks at its native anti-egalitarianism. The last men prefer tamer sorts of autonomy that can rest in equality, rather than the domineering Nietzschean tendencies. Moreover, self-creation is intrinsically unstable. Consensualism was not grounded enough to check the alter-conscience. Personal autonomy needs to be a metaphysical anchor that a self-creating self is not.

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<sup>15</sup> Jean-Paul Sartre, *Essays in Existentialism* (1993 [1965]), 160-9.

<sup>16</sup> Friedrich Nietzsche, *The Gay Science* (2001 [1882]), 189 or *Die fröhliche Wissenschaft* (1882) §336.

Daily, one bumps into all these autonomies in the modern world. Yet, the two that seem most readily involved in the life of modern persons are the third and fourth: acquisitive liberalism and romantic inwardness. If one (somewhat incorrectly) takes Locke and Rousseau as their respective founders, they can even become shorthand for two ways of doing Western political theology. Acquisitive liberalism dominates in the Anglosphere, and romantic inwardness on the Continent, with both places nevertheless sharing in each. Taken together as one composite form of autonomy, romantic, inward, acquisitive, liberalism, means that I should be or become ‘a self-sovereign end in myself’. ‘What a noble work is man’, says Shakespeare, and we moderns know that this is true. But we begin the search for nobility not with heroes but with ourselves. We work out our faith in within our authentic, acquisitive selves in ‘fear and trembling’. It is not a God above or Hell below that instils the fear, but that of the Fall back into heteronomy. In this respect, one can rightly think both of Kierkegaard’s book and the Bible verse on which it is based. But in the modern reading, hell is other people, as Sartre rightly says. To be an end in myself naturally makes the political order and potentially all others potential means, if not impediments. A Kingdom of Means reverses Kantian moral reasoning. The claims that routinely bring about these means are called ‘rights’.

Attempting to get at a definition that accounts for all the notions of autonomy that have come together to form the modern virtue of ‘being autonomous’, without taking in any of those notions that have been left aside, is a tall task. Rousseau, Locke and Mill need to be in, while, say, Kant needs to be left somewhat to his own devices, for reasons that are now apparent. So: the modern virtue of autonomy is ‘treating the self as the end in itself’. The ‘self’ is here understood as jurisdictionally sovereign over itself, and all such selves are presumed to be equals. Psychologically, this might mean a form of selfishness in which one is busy ‘treating oneself as *the* end in itself’. However, this autonomy does not preclude other ends – it is a matter of priority: but that one should at least be working chiefly to treat oneself as an end-in-itself.

Meanwhile, other persons should be treated in ways that do not prevent them from attaining this form of autonomy, and that do not prevent oneself from achieving it. For instance, by avoiding forms of altruism or commitments which would be conventionally self-sacrificial (rather than *authentically* self-sacrificial based on one’s true self). But one need not *per se* treat others as ends in themselves. The anthropological basis of this value is

the belief that no one is bound by necessity, but, as Rousseau says, ‘exists as a free being with a free will’. The universalization of a strong doctrine of the free will elevates individuality in the person. Whereas reason was definitional of ‘person’, the will is definitional of *this particular person*. If I speak of you in terms of what is good for you as a ‘person’, then we are more alike than different. I can know what is good for you and me *qua* person. But if I speak of you as a particular person, then your desires, choices, consensual activities are all your own. We are then more different than alike. Those acts of the will cannot be known by others in advance of being told or seeing evidence of them in the actions that they manifest.

As an end in yourself, you seek to be in a world in which you can safely bring as many of the will’s choices into existence as possible. Not being powerful enough to rule all, you seek consensualism. The fact of equality in weakness partially inspired Thomas Hobbes’s reasons for one entering a pact with others for protection. However, I understand modern cultural values to include a modified form of his anthropology, which includes a robust understanding of the will—something he lacked, saying it was just the ‘last appetite’ in a chain of contention, the victor. This corrected anthropology is understood to include a helping of Jean-Jacques Rousseau’s and the Romantics’ shared emphasis on the unicity of persons, especially based in their perspective on the world and the choices that follow from it. ‘None have ever been like me. I may not be better than any of them, but at least I am different!’, to paraphrase Rousseau and his ilk. Difference, if none are in authority over others, requires negotiation for peace. It also requires recognition of these differences insofar as possible in some amalgamation and averaging of the wills of all into some general will. That is the logic both of Rousseau’s politics. It is also the logic that brings about modern democratic sentiments.

To summarize, at least within modern moral philosophy, the ability to impose moral obligation on oneself is considered autonomy. This is also true of the value of personal autonomy that I here describe. Yet, unlike the ‘autonomy as morality’ position, modern autonomy is free of the necessary tutelage by reason: one is not compelled to legislate merely what is universally reasonable onto oneself. Kant’s autonomy is based on a heteronomous principle of universal reason, which one is required to adhere to if he is to be moral and thus free. In a sense, there is more ‘freedom’ in personal autonomy, as activity in line with the true self than in autonomy as morality. Politically speaking, personal autonomy involves a range of areas in which

one is ‘*sui juris*’, such as within private law of contract in modern contract doctrine.<sup>17</sup> There is a certain philosophy of freedom behind personal autonomy. In some way each is a *law unto herself*, a self-legislator, in contractarian relations. Both Rousseauian and Lockean understandings of self-possession as autonomy are sources of this value, as are older Roman law principles.<sup>18</sup> The difference to keep in mind is autonomy understood as legislating *the* law unto oneself versus autonomy understood as legislating a self-chosen law onto oneself. The latter can sometimes be understood as ‘doing whatever one pleases’. That is too far afield. If there were no regularity, it would hardly be regulation. If there were no determinate ends chosen and pursued based on the choices of the will, it could hardly be considered an *auto-nomos*. There is regularity and consistency, and it even seems workable for many moderns.

In the next chapter, the composite concept of autonomy that has been laid out in this chapter will be described in its formative role as the axiological cornerstone of the egalitarian mind, and as the arbiter of ends and the means necessary negotiate relations among and between other autonomous equals.

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<sup>17</sup> J Gordley, *The Philosophical Origins of Modern Contract Doctrine* (Oxford 1991), especially chapter on modern will theories.

<sup>18</sup> Wim Decock, *Theologians and Contract Law* (2013), 166ff.

## **PART IV: Reconstructing the Egalitarian Mind**

### **Chapter 9: Being my own end**

The modern autonomous self has a few distinguishing characteristics that are detailed in this chapter. It insulates the world from the exacting rationalism of the naked alter-conscience. Through consensualism and a focus on gaining recognition of its own dignity, it refuses to become merely an egalitarian alter-*consciousness*, but seeks instead to be recognized as the unique being that it is. This chapter and the one that follows together identify those characteristics by way of an analysis of the contributions of Rousseau, Augustine, Mill, among others, to the structure, working concepts, and content of the mind that has become the modern self. They have been causes of the formation of the egalitarian mind that dominates our age. But I maintain the position throughout this book that once consent, autonomy, and equality are accepted by rational animals as core values, that mind will emerge in due course. It is what the recipe containing those three ingredients produces.

That mind which dominates our age includes self-sovereignty, self-discovery, self-expression (including claims about the divine origins of those and in spite of its agnostic pretences); as well as a strong doctrine of self-development relating to Rousseauian teachings on identity and social recognition of the true self. That modern mind becomes epistemologically central to its own being and happiness through the complete inversion of the heteronomic system, beginning with the autonomy of enquiry, which is also aggressed below. This is all ‘packaged’ within the body, which is reluctantly accepted as the vessel of the egalitarian mind, for instance, as ‘hardware’ in the most recent metaphor. But the dream since modernity’s inception was to become independent of physicality, since it is nature’s last great determiner of personal limits, the last great heteronomy.

In the concluding chapter of this book, the question is asked as to whether the egalitarian mind is tenable when scaled to a constitution. It might be fine if we all are all individually modern, especially if we live as Robinson Crusoe or in outer Alaska or like Rousseau. But a free community of equal sovereigns could pose intractable problems, some of which will be interrogated. I begin immediately below with the central claim of modern personal autonomy.

## Self-sovereignty and the *liber*

The sovereignty of the people is, according to Tocqueville, the ‘Foundation of almost all human institutions.’<sup>1</sup> Sovereignty in law is the equivalent of formal autonomy in personal relations. Sovereignty as conceptualized in the work of early modern political theory, however, is the closest thing that one could imagine to straight-forward autonomy, in the sense of being a law unto oneself and being free to act as one pleases. That is, one’s acts cannot ‘be made void at the discretion of any other human being’s will’.<sup>2</sup>

The popularization of the idea of ‘self-sovereignty’ would seem to be John Stuart Mill’s doing.<sup>3</sup> But before him there was reflection on the constituent parts of self-sovereignty by *inter alia* Descartes (founding knowledge through the *cogito* plus one’s sole perception of ‘clear and distinct’ ideas), Leibniz (the monad, each having its own perspective), Grotius, Hobbes and Locke (each with natural right, beginning with first possession as total control, and continuing in consensual relations amongst these *petite* sovereigns), Rousseau (legislating onto oneself a self-chosen law), Bentham (individual utilitarian calculus, namely, self-determination of the good), Jefferson (natural rights and an open-ended ‘pursuit of happiness’). These and others got moderns thinking in terms of the individual units that make up society, and their respective goods. Moderns would eventually invert the old priority that was placed on the common good, as the heteronomous relation that once commanded the obedience of members. This provided opportunities for self-sovereignty, both of the human and the corporate persons, each of which could now choose to exit the political community at will to join another, or to join none at all.

Mill’s self-sovereign emerges as part of ‘liberalism’, which focusses on the liberties, freedoms, and rights of the free individual, the *liber*. Liberalism is an overwhelmingly *politically-directed* philosophy, in that it sees removal of conventional and non-consensual, i.e. heteronomous, power as its goal. It

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<sup>1</sup> Tocqueville, *Democracy in America* (1899[1835/1840]), Vol. 1, Ch 4.

<sup>2</sup> Pufendorf, *DING*, Bk. VII, CH. VI, 1055.

<sup>3</sup> ‘The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. ... In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.’ *On Liberty* (2008 [1859]), Introduction.

does through the powers of a semi-sovereign secular state, and not much more. Liberalism is pro-individual, making it also anti-traditional, and anti-religious, or at least against public religion as compared to private religion. But there is not, say, a well-developed liberal family philosophy, liberal justice, or a liberal social policy. Although, there are liberal-inspired policies in many said areas. Outside of protecting the purported goods of the individual, liberalism is a 'thin' philosophy. That limitation also counts as a virtue and makes it a portable philosophy. Japan, India, Australia, Fiji, all can become liberal irrespective of their cultural, social, political, religious, historical, or educational, points of departure. It will, however, confront all of those traditions and seek to dismantle them insofar as they are perceived to inhibit the individual person's flourishing. In this way it becomes a philosophy of negation.

The centralized state had a monopoly on violence in the era immediately preceding the rise of liberalism. Remember that it was the unprecedented age of 'divine right of kings' in Europe, in which Louis XIV *might* have (if incorrectly) said '*L'Etat, c'est moi.*'<sup>4</sup> The Christian religion had snuggled up with the state, notably in Protestant lands, that separated themselves from Rome while opting for state churches. So, the traditional in its early modern caesaropapal form state became the chief point of attack for liberalism. As it tried to extend the scope of individual liberty, much of the fuss was naturally about law. Not accidentally, it is in areas connected to law or policy where these early forms of liberalism survive today as a public philosophy. For evidence of this, look at any international criminal court, all of which are set up on liberal principles of protecting individual rights.

What has been called liberal legal theory 'holds individual liberty to be an overriding moral and social value'.<sup>5</sup> It is not a unified set of principles and goals. Rather, theorists who can be so classed understand the boundaries,

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<sup>4</sup> This citation is disputed, but the age of Louis, whose dates are 1638-1715, is one in which such a sentiment could have been held. It was also the age in which Thomas Hobbes could comfortably assign the sovereign – be it one man or a legislative body – the prerogative of dividing property however it chose, so long as peace was kept. Republican thinking also allowed for vast powers in the hands of the ruler(s), for the sake of the common good. Compare Machiavelli permissiveness for rulers with religion, virtue as classically understood, and even with the truth, in *Il Principe* (1513 distributed/1532 first printed, after the author's death) to *Hamlet's* classical qualms about vice at the head of the body politic: 'Something is rotten in the state of Denmark'.

<sup>5</sup> Kaveny, C. *Law's Virtues: Fostering Autonomy and Solidarity in American Society*, 17.

requirements and, indeed meaning of ‘individual liberty’, diversely.<sup>6</sup> Generally there is a ‘presumption in favour of liberty’, by which is meant ‘the absence of coercion’; or, at least, the absence of coercion without it being justified (or justifiable). Since the background assumption is natural liberty, or self-sovereignty in a state of nature, not only coercion, but also infringement upon any individual liberty requires justification.<sup>7</sup> Notable liberal legal theorists – and here I just select one representative thinker – say it clearly: ‘liberty should be the norm, coercion always needs justification.’<sup>8</sup> This has been called the ‘law as police officer approach’. It stands against many approaches, for instance the understanding of ‘law as teacher’, which one can find evidence for in both Thomas Aquinas and in some contemporary concerns about instilling virtue in individuals through law, particularly the virtues of autonomy and solidarity.<sup>9</sup>

Protections of the individual are present in this liberal approach to law, since they are meant to protect the sovereignty of the individual. That may seem like a strong statement at first. However, consider how one prominent theorist describes the innocuous ‘liberal position’. It involves the harm and offence principles, which are usually (but not exclusively), employed regarding the moral limits of criminal law.<sup>10</sup> When rightly understood and qualified, they can be used safely to limit liberty. A more radical position would only accept the harm principle as a justified reason for criminal prohibitions, but this ‘extreme liberal position’ would fall outside of the modern dogma of autonomy.<sup>11</sup> The point is emerging that modern autonomy is partially liberal, but there are many non-modern forms of liberalism. As exemplary of the liberal position which is also modern:

The Harm Principle: It is always a good reason in support of penal legislation that it would be effective in preventing (eliminating, reducing) harm to persons other than the actor (the one prohibited from acting) and there is no other means that is equally effective at no greater cost to other values...

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<sup>6</sup> John Stuart Mill, *On Liberty* (2008 [1859]). A key late-twentieth-century discussion took place in: H. L. A. Hart, *Law, Liberty, and Morality* (1963); Patrick Devlin, *The Enforcement of Morals* (1968); and Lon Fuller, *The Morality of Law* (1969).

<sup>7</sup> Kaveny, *op. cit.*, 17.

<sup>8</sup> Joel Feinberg, *The Moral Limits of the Criminal Law, vol. 1, Harm to Others* (1987), 9.

<sup>9</sup> Kaveny, *op. cit.*, 17ff.

<sup>10</sup> Feinberg, *The Moral Limits of the Criminal Law, vol. 4, Harmless Wrongdoing* (1988), ix–xx.

<sup>11</sup> Kaveny, *op. cit.*, 39n17.

And:

The Offense Principle: It is always a good reason in support of a proposed criminal prohibition that it is necessary to prevent serious offense to persons other than the actor and would be an effective means to that end if enacted.<sup>12</sup>

These are principles, and they coalesce into a position particularly in liberal democracies in the understanding of autonomy as rights.

But where does this idea find its origins, of essentializing of each individual unit, each monad, as a sovereign? It has been argued to rely on certain philosophies of the state in the early modern age. Two common elements of sovereignty would seem also to apply to autonomy: (1) that one is not *liable* to give reasons for one's action to others, (2) or to be punished by other men for deeds in areas in which he is sovereign. One is not accountable to others outside of harm and offense.<sup>13</sup> One is both a king and prince according to ancient sources. Sallust says, 'To do with impunity what one fancies is to be a king'. Pliny says a prince is 'beyond the reach of compulsion'.<sup>14</sup> Universal equality makes princes of us all – at least in part. Sovereigns keep equals in check through moral censure, and the keeping up with reputations and the like, but not through force or similar means—'since equals have no authority over one another'—that is, unless they voluntarily enter into a treaty or pact for greater protection or greater trade, etc, just social contract theorists imagine individual persons do.<sup>15</sup>

Indeed, recent scholarship has looked for the origins of self-sovereignty in the devolution of state sovereignty to the members. It has been said that 'the modern sovereign self owes a good deal to the modern territorial state. It is as if that entity got parcelled out to constitute so many mini-sovereigns—ontological individualisms—in much of modern theory'. There is the additional wonder 'whether there might be a connection between prior constructions of state sovereignty, with notions of a possessed and inviolable territory, a kind of autarchy, and the celebrations of self-sovereignty and

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<sup>12</sup> Feinberg, *op. cit.* (1988), xxvii–xxix, especially xix.

<sup>13</sup> Pufendorf, Bk VII, Ch. VI, 1055.

<sup>14</sup> Sallust, *Jurgutha*, xxxi; and Pliny, *Panegyric*, vi. I. as quoted *Ibid.* Jeremy Waldron speaks of the universalizing aristocratic privilege in the extension of rights in Jeremy Waldron, 'Dignity, Rank and Rights' (2009).

<sup>15</sup> Pufendorf, Bk VII, Ch. VI, 1061.

triumph of the individual will to power in which we are currently awash' All of this contains an immodest sense of how much we 'define and control our very selves'—the conceit at the heart of self-sovereignty.<sup>16</sup> Being an end in oneself is connected to the simple fact of self-sovereignty.

When one has been on the receiving end of the culture of personal autonomy, it is common enough to read the virtues anachronistically back into history, and to see the opposing vices of bygone ages all the more readily. We tend to think that the question whether the whole or the parts are more fundamental and should be treated as such has an obvious answer in the parts. All modern law is grossly individualistic compared to ancient law, designed to support self-sovereign natural persons. The most modern of all legal thought, American, consists in 'an ultra-individualism, an uncompromising insistence upon individual interests and individual property as a focal point of jurisprudence'.<sup>17</sup> When we moderns ask about moral goodness, we tend *not* to think of it chiefly in terms of maintenance of social order and the good of the whole as the ancients did. Said differently, politics is excluded from ethics. If we are very serious indeed about it, self-perfection is our goal, and the polis is here to assist.<sup>18</sup>

There is an irony, then, in this borrowing of the concept of sovereignty from politics to self-identity. Machiavelli and Hobbes, and many in the modern 'realist' tradition, think that morals are for ordinary people, for subjects not rulers. The Prince, the sovereign, was better as a preserver of the republic, a sword enforcing a pact that he himself is not party to, or a class of persons that operates on its own terms, or even as a class of one. Rulers were able to be devils, so long as the common good was taken care of (they could not be 'villainous' because that would preclude glory). Before the age of autonomy, which is necessarily the age of the elevation of the dignity of the individual person, every individual belonged first to a sovereign group. The claim is stronger. Individuals were 'made' by the group, as the first and best produce. But the group, community, or polis was prior, both historically and logically, as Aristotle famously argues in his works and everyone following him up to the modern age echoed. And its preservation at all costs was the promise of the tradition that gave us the modern doctrine of (self-)sovereignty.

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<sup>16</sup> Jean Bethke Elshtain. *Sovereignty: God, State, and Self* (2008), xv.

<sup>17</sup> Roscoe Pound, *The Spirit of the Common Law* (1963), 37.

<sup>18</sup> J. B. Schneewind, *The Invention of Autonomy* (1998), 12.

There are obvious and great breaches. Modern metaphysics from Descartes onward tracks radically differently from ancient doctrines, as does epistemology, notably also for Cartesian reasons of deriving authority from the recognition of clear and distinct ideas. Politics and ethics following Hobbes use individual man as the point of departure. John Locke's understanding, which was brought to the fore by David Hume, of human self-identity persisting through time merely by self-conscious memory of experiences, is a depiction of a lonely whole, that is also wholly in charge of its continued existence.<sup>19</sup> Autonomy here is freedom of that persistent self-remembering to move reflectively within the mind, and by its listing where it pleases without (by controlling the body) to acquire what it truly wants. This is where the sovereign self ceases to be merely a description of the authority and source of activity in the world, and where it becomes the throne of sincere dealings. It is where authority gains the honour of authenticity. When the two are brought together, we call it 'romanticism'.

### **Romantic self-discovery**

For a sense of what is meant by romanticism, one should compare two of the most famous quotes, one each from two different *Confessions*, Augustine's and Rousseau's. The Christian saint says, 'Thou hast made us for Thyself, O Lord, and our heart is restless until it finds its rest in Thee.'<sup>20</sup> Rousseau retorts: 'Myself alone! I know the feelings of my heart, and I know men. I am not made like any of those I have seen; I venture to believe that I am not made like any of those who are in existence. If I am not better, at least I am different.'<sup>21</sup> The supernatural sense of resting in God, of completion in the heteronomous adherence to the perfect being's commands, of the beloved resting in the lover, has been replaced by Rousseau not with atheism, for he was a vehement deistic and anti-atheist—but with a sense of the *naturalness* of

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<sup>19</sup> John Locke, says in a Cartesian register, in *An Essay Concerning Human Understanding* (1975 [1690]), 'On Identity and Diversity', Bk 2, §9, 335-345, '...a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing, in different times and places; which it does only by that consciousness which is inseparable from thinking, and, as it seems to me, essential to it; being impossible for any one to perceive without perceiving that he does perceive'; and '...in this alone consists personal identity, i.e., the sameness of a rational being; and as far as this consciousness can be extended backwards to any past action or thought, so far reaches the identity of that person; it is the same self now it was then; and it is by the same self with this present one that now reflects on it, that that action was done'.

<sup>20</sup> *Confessions*, Bk 1.

<sup>21</sup> Rousseau, *Confessions*. (1903 [1782]). Bk 1.

human life in a world full of the goodness of a resigned, but still loving, God. This truth of being can be visible to the self alone, once he is freed of the vestiges of an ill-formed civilization and its ill-intentioned formation. Rousseau connects his vision of self-differentiation with his understanding of God<sup>22</sup>:

During my walk I offered a prayer, which did not consist merely of idle, stammering words, but of a sincere uplifting of the heart to the Creator of this delightful Nature, whose beauties were spread before my eyes. I never like to pray in a room: it has always seemed to me as if the walls and all the petty handiwork of man interposed between myself and God. I love to contemplate him in His works, while my heart uplifts itself to Him.

The self in nature for Rousseau listens not to others, but to itself, and to its ‘God’, the God that created it. It listens within, not with actual ears, we presume. It is the voice of conscience, the true self whispering the words of God to one’s deepest self.

Rousseau is most famous as the proponent of the social contract, which may seem at first to conflict with this form of naturalistic autonomy. Linking the Leibnizian monad to the social contract becomes necessary for understanding Rousseau. Monads, which are separate ontological wholes, do not start out facing in the same direction. Each has its unique or direction of focus, each has his own perspective, and each will head in that direction, even to the detriment of others.<sup>23</sup> The differences will not in themselves lead to peace, harmony, or good, either in common or individually. Now imagine the countless monads are individual persons. Social contract is a way to ensure individual autonomy, ‘making men free’, by asking them all to agree to head in the same direction, beneficial to all, but most importantly *beneficial enough to each* person that they see it as their *best* option. This monadic understanding of being gets filled out in Rousseau’s anthropology.

Understanding Rousseau’s thought, meaning his social and political theory, might not even be possible if his understanding of human nature is excluded. Three elements are evident: perfectibility, self-love, and free will.

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<sup>22</sup> *Ibid.*

<sup>23</sup> G Leibniz, *G. W. Leibniz’s Monadology*, Nicholas Rescher tr (Originally published in 1714 in French, University of Pittsburgh Press 1991) §47ff; D Burnham ‘Gottfried Leibniz: Metaphysics’, Internet Encyclopedia of Philosophy, <<http://www.iep.utm.edu/leib-met/#H8>>.

These are natural and distinctive features of humans. Moreover, they are central to man's life as an individual and as part of a community. After tracing these in Rousseau, I shall step back into Augustine to note both their differences in content yet surprising similarities of approach to what is really real. Moderns find themselves almost wholly on the side of Rousseau in an Augustinian register. Rousseau's *Discourse on Inequality* contains his most detailed description of 'natural man', and *Émile* or *On Education* his major work on education, contains many of the implication of that doctrine of man. In it he discusses the rearing of natural man in civil society.<sup>24</sup> In *Considerations on the Government of Poland*, Rousseau gives some indication of his thought on the relation between the governing body and its citizens. In all this, he generally connects the soul and the state in a similar way to how Plato does: a given constitution will rule both state and soul alike. The more in concord their rule is, the greater the chances of peace.

Concerning perfectibility, Rousseau did not share the negative assessment of man *sub luna* of the Calvinist Christianity of Geneva where he was a citizen. Man was thought to be lost to his own devices, in need of external salvation, and only perfectible in the hereafter. Man is a mixed bag of good and evil, for Rousseau. Yet man is basically good, if particularly weak and inclined to self-corruption when it comes to external influences. As he puts it, man is naturally good, *men* are bad.<sup>25</sup> There is plasticity in humans that can be used for good or ill.<sup>26</sup> Being all selfish or all altruistic would be better than the composites, one of which is 'civilisation'. In the 'state of nature', however, we had the purity of the virtues and vices. (He has no vision of corruption of all parts of man, or 'total depravity', as the Calvinists call it.) But no return to the state of nature is possible.<sup>27</sup> So, we must approach that state as much as is possible from a post-natural condition, mostly by retreating from the badness that 'men' try to instruct us into. The narrative reads more like reconstructing Arcadia in small *poleis* than seeking salvation in the Heavenly Jerusalem.

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<sup>24</sup> *Émile ou de l'Éducation* (*Émile* or *On Education*) (1762) contains 'Profession of Faith of the Savoyard Vicar' in which are his 'views on metaphysics, free will, and his controversial views on natural religion for which the work was banned by Parisian authorities.'

<sup>25</sup> Rousseau, *Discourse on the Origin of Inequality*, henceforth '*Second Discourse*' (1992[1755]), Appendix.

<sup>26</sup> In our age, 'social construction' is used to assist latter-day disciples of Rousseau in ridding the world of *amour-propre*. Cf. Ian Hacking, *The Social Construction of What?*, on the many meaning of the term, from arbitrary, plastic, that which could have been otherwise, can still be otherwise, and was obviously wrongly-decided.

<sup>27</sup> Rousseau, *On the Social Contract* (1920 [1782]).

Rousseau navigates the self in relation to others with two forms of self-love: *amour-propre*, a sophisticated form, where esteem is dependent on the opinions and judgments of others. *Amour-propre* can corrupt, inclining us to vanity, vice; it can cause great misery or just make one remarkably superficial. 'Pride' is a name we assign to *amour-propre*. *Amour de soi*, conversely, is self-love that is independent of the opinions of others. This more basic form of self-love is possible when man does not judge himself in comparison to others, for instance, in a condition outside of civilization or society. This was the case before the appearance of society, when 'noble savages' are said to have flitted about. *Amour de soi* might also be possible now if one goes it alone, living a life outside of the confines of society, as Rousseau seems to think he has done. It is the *feeling* and *habits* that lead to autonomy. It is what we would today call 'self-esteem'.<sup>28</sup>

For Rousseau, the flourishing of the self is the goal. But flourishing is neither what the Germans call *bildung* nor what political communities everywhere understand as becoming a well-enculturated ('contributing') member of a particular society. It has no heteronomous components, no indoctrination, and no doctrine external to life's heuristics. All excellences of the arts and sciences are part of *amour-propre*. 'Astronomy was born from superstition; eloquence from ambition, hate, flattery, and falsehood; geometry from avarice, physics from vain curiosity; all, even moral philosophy, from human pride', according to Rousseau.<sup>29</sup> Flourishing is self-reliance. Self-reliance is autonomy.

While Rousseau is against the inauthenticity of *amour-propre*, he does not flee other-directed action *for the sake of* self-expression. He says he is after morality and virtue, and tries to train chastity, courage, and wisdom into Émile and Sophie in *Emile*. Recall that this novel is also his seminally influential 'treatise on education'. He seeks self-discovery of the authentic self, which it is not a form of self-creation; neither is it a social construction, in the sense of being arbitrary, or that it could have been otherwise. Society and civilization lead us away from uncovering that which really is inside us. But careful, disciplined parsing of the good from the bad, as it is experienced to be, is what is needed. For, humans are basically good and free by nature.

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<sup>28</sup> Rousseau, *Second Discourse* (1992[1755]).

<sup>29</sup> *Discourse on the Sciences and Arts* (*Discours sur les Sciences et les Arts*) (1750), Vol. I, p. 12. 'First Discourse' henceforth. The First Discourse submitted to the Academy of Dijon, to become the winning response to its essay contest question, 'Has the restoration of the sciences and arts tended to purify morals?'

Convention has corrupted us both within and without, left us in physical and mental chains.<sup>30</sup> Breaking them is not a once-for-all event but a retraining of the self so that it can listen to itself and then follow itself.

I shall return to Rousseau below and to his doctrine of free will, after tracing some of his beginnings in St Augustine's philosophy of the inner self. But first I must step through one modern idea and one ancient idea, each of which will be necessary components to the romanticism that modern persons hold to be imperative to their autonomy: self-expression and humans as *imago dei*.

### **Stuck between Jean-Jacques and John Locke**

Being modern has come to mean being stuck between John Locke and Jean-Jacques Rousseau, with both of them providing for part of our cultural identity. The former has secured the needs of the body and the acquisitive character of our wills by enshrining rights (*ius*) as property (*dominium*).<sup>31</sup> The latter thinker has encouraged 'sincerity', which we have come to call 'authenticity', a process of autonomy by retreating from self-esteem based in the judgments of others, to self-esteem based in the right judgment of oneself according to the ordinances of nature and nature's disinterested and providential god. Kant will carry over the torch later, defining it as autonomy, and that as 'freedom from self-imposed tutelage', with other translators preferring 'nonage' and 'immaturity' to 'tutelage'.<sup>32</sup> Publicly, Locke provides moral instruction on how the world is ordered for self-protection; privately he gives guarantees of not being interfered with, so long as one leaves 'enough, and as good left; and more than the yet unprovided could use'.<sup>33</sup> This is the groundwork of our understanding of privacy, which will later be enshrined in rights. Rousseau tells us what to do with that privacy. Once we have used it to discover who we are supposed to be (in the dialogue between nature and the self), he provides an open-ended, republican political vision of contracting for all possible goods. Both Locke and Rousseau would support a strong, central governmental power to guarantee the preservation of these individual selves.

The limits of the modern are seen here between self-discovery and self-creation. The former requires knowledge of the self, otherwise it cannot be

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<sup>30</sup>Rousseau, *Second Discourse*.

<sup>31</sup> Richard Tuck, *Natural Rights Theories* (1979), 7-13.

<sup>32</sup> Kant, *Was ist Aufklärung? / What is Enlightenment?*. Berlinische Monatsschrift. Dezember-Heft (1784). S., 481-494.

<sup>33</sup> John Locke, *Second Treatise*. Ch 5, 'Of Property', Sec. 33.

authentic. And one is not infinitely plastic; nor does one come into the world unformed. Locke's *tabula rasa* is roundly rejected by moderns, even if it is entertained as an interesting prospect. A real self with native content is posited and defended. Self-creation, however, need not be 'authentic' (one reason Rousseau would have rejected the idea). One could create any self she saw fit. I could, for instance, decide that I am really a clown. The fulfilment of Locke's *tabula rasa* has leapt over the modern and found a home in post-modern philosophy. Said differently: whereas moderns attach great importance to human nature and the rights that can be found in it—thus forming both public discourse and private relations—the post-moderns claim all this talk of 'essences' to be sleight of hand.<sup>34</sup>

### **Self-expression**

There are, however, places where the margins bleed. If one looks at newspapers or academic literature on anything connected to sexual politics, the battle between the post-modern and the modern is being waged. Recent 'trans-' issues put paid to the lie that all is well beyond heteronormativity. 'Sexual-orientation' has been the preferred way to speak of gay and lesbian issues in public forums for at least the past twenty years. This replaces both 'sexual preference' and understanding it as deviance. For, if it is natural, an 'orientation' that one was headed in from birth, then it is 'natural', meaning 'good'. On all modern accounts, autonomy is considered essential to personal identity. Recently, personal identity is considered 'properly and legitimately constituted around sexual orientation'.<sup>35</sup> However, 'sexual orientation' is being 'problematized' in the literature, by 'performative aspects' of gender and sex.<sup>36</sup> This can be found everywhere from Classics to social theory.<sup>37</sup> And it is manifesting itself in self-understanding, indicating that there is a cultural move toward something beyond modern personal autonomy.

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<sup>34</sup> Note on the 'non-essentialist' trend in postmodern and feminist theory tending toward the gnostic. Judith Butler, for instance resented the 'materiality' of the body, which is impossible to fix. Fixing it would be making it conform to non-essentialist notions of human relations in which 'biology was not destiny'. J Butler *Bodies that Matter* (1993) ix.

<sup>35</sup> Stanton L. Jones, 'Same-Sex Science' *First Things* (February 2012).

<sup>36</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (1989), 175ff.

<sup>37</sup> Vincent Farenga, *Citizen and Self in Ancient Greece: Individuals performing justice and the law* (2006) indicates the trend beginning in the study of the theatre's relation to the legal life of *personae*, beginning before the heroic age and ending with 'Democracy's Narcissistic Citizens: Alcibiades and Socrates', 471ff.

In his lectures on the topic of the roots of Romanticism, Isaiah Berlin warns of existentialist autonomy, the unpredictable will that emerges from the cult of authenticity.<sup>38</sup> He opposed Romanticism not only because of twentieth-century political abuses of this doctrine of self-rule, but also because it presents a fallacious image of man as ultimately one thing, discoverable only to himself. With a focus on authenticity, it also stands against the value pluralism that Berlin believes is essential to peace and prosperity. Finally, it stands against man's essential political nature, which Berlin does not directly affirm but tacitly accounts for in his affirmation of the goods of political life, which need to be open to all on shared terms. Elsewhere, some of Berlin's opposition to positive freedom, and affirmation of human society rightly ordered, comes from his wish to flee from the enforcement of standards of the good against those who do not conform.<sup>39</sup> One would then put him on the side of defending the self-expressivists along with Mill. Mill suggests that room is made for 'experiments of living', that is more than just self-expression.<sup>40</sup> He was offering liberty against encroaching social democracy (i.e., the programme of positive liberty of reformed socialism). But both men find themselves in the ironical position of having to enforce—often with a very strong central state and the moral censure of society—the prerogatives of unfettered individuals. They are forced, also by the Lockean element, to go beyond the romantic tolerance that Herder and Lessing offered. That was a respect for searching for truth *in an individualized* form, rather than respecting merely other traditions or ways of truth-seeking.

But self-expression often manifests itself in exhibitionism of the Oscar Wilde variety. It makes teenagers of us all.<sup>41</sup> But it cannot be limited on the combined Rousseauian-Lockean principles merely because its 'manifest

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<sup>38</sup> Isaiah Berlin, *The Roots of Romanticism* (1999 [1965]), in 'The Lasting Effects', 118-147, esp. 139-142 & 144-147.

<sup>39</sup> Berlin, 'Two concepts of liberty' (1969[1958]).

<sup>40</sup> Mill, *On Liberty* (2008 [1859]), ch 3.: 'As it is useful that while mankind are imperfect there should be different opinions, so is it that there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when any one thinks fit to try them. It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself. Where, not the person's own character, but the traditions of customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress.'

<sup>41</sup> Phillip Blond makes this point in many places. For a more serious treatment, see his introduction to *Post-Secular Philosophy: Between Philosophy and Theology* (1998). John Milbank and the Radical Orthodoxy movement, chiefly in the Anglican Communion, make this criticism of liberalism from a theological standpoint, some of which is also evident in Millbank's chapter in the same text

unseriousness'. Pliny said that 'in the body politic as in the natural, [...] disorders are most dangerous that flow from the head'.<sup>42</sup> What might happen if every head in a given polity thought she needed to express herself, that she must be heard, that *others must listen*? What forms of intervention, coercion, manipulation, (re-)education, would need to be in place to ensure that this were the case? Imagining those helps to envision a world in which personal autonomy is realized. Naturally, a policing of 'offenses' and 'harms' related to expression would become necessary in ever more censorious sorts of anti-discrimination laws, as is already come into existence in all Western countries.<sup>43</sup> But even more importantly is the warning of Berlin: the existential element would need to be kept in check. Individuals would need to be made to express a self that is 'really there', rather than experimenting in self-expression as the whim hits them. If society is meant to bend its habits to protect and facilitate the declared ends of these selves, it must be assumed that there are routinely good-faith actors with relatively consistent self-knowledge. The assumption will have to be of a nearly divine centre of the self, more easily seen in some but present in all. It is the modernized form of the ancient Judeo-Christian doctrine of *imago dei*.

## **Imago dei**

Whereas in some civilizations the tribe or extended family unit is sacred, and in others the 'nuclear family' is sacred, in ours the self is sacred.<sup>44</sup> If Spinoza wanted to make his famous point through prostration today, it would not be the temple that he would lay down in front of, but an image of man. He might even lay down before his own graven image. For, we have all followed one teaching, now inflected: 'Do you not know that your bodies are temples of your own Holy Ghost?' The doctrine that matures into the human being as

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<sup>42</sup> Pliny, *Letters*, Bk. IV, ep. xxii.

<sup>43</sup> S Fredman, *Discrimination Law* (2011) contains a chapter that details the moral and philosophical ideas motivating discrimination law. Autonomy is not chiefly at issue; 'equality' is. However, 'equality' is said to be about affirming the boundaries of certain kinds of personal identity. So, it is not about 'equality' at all, but about autonomy; Harvey and Parry, *The Law of Consumer Protection and Fair Trading* (London: Butterworths 2000) has overlap with Fredman concerning the issues at hand, in this case restoring bargaining power, which can be couched in terms of 'equality' or at least 'equity'; but the ostensible goal is bargaining between two of more autonomous equals.

<sup>44</sup> Carle Zimmerman, *Family and Civilization* (2009[1947]) is a revealing study of the relation between civilization type and family organization. He identifies the 'trustee family, 'domestic family, and 'atomistic family, from the most socially embedded and culturally heteronomous to the least embedded and autonomous. On the one side is greater trust in authority and on the other is greater scepticism of received wisdom. Each relates to a type of civilization.

a fitting dwelling for the spirit of God, is a doctrine cherished by Judaism. Seeing where the doctrine of *imago dei* can lead, it is understandable that a hyper-heteronomous religion like Islam, would reject the doctrine as heresy.

Yet this notion is foundational to the belief that autonomy is most appropriate for individuals. Remember that it is neither society nor the state, but God himself that grants us this image.<sup>45</sup> And it has been a beneficial anchor: ‘Without this religious source, any notion of the human is lost, and the exercise of freedom swings wildly between complete individual license and total state control.’ Without the notion, it could be said, autonomy, as conscious, moral self-regulation is hard to imagine. One would either have to accept license and its attendant moral chaos—i.e., ‘harms’ either real or in Derek Parfit’s words ‘hidden’—or complete heteronomy. European and American classical liberals (Locke, Kant, Jefferson, and Adams) all shared this positive notion of man’s divine status, and ‘it still provides the strongest grounds for the defense of human rights and dignity’.<sup>46</sup> Yet, even as ‘the mutual understanding and respect for individual rights upon which constitutional patriotism depends presupposes a respect for the human person, [it provides] no account of the person that would warrant such respect.’<sup>47</sup> ‘Autonomy’ through *imago dei* stands like ‘universal equality’ as a dogma that must be affirmed either on the strength of the vision of life that it is said to be part of or based on the fear of its opposite gaining ground.

Still, one needs to distinguish the question of why autonomy should be recognized in others (such as its being a divine gift), from whether and how this sense of autonomy can be a guiding principle (not to mention dogma or central value). If the image, and perhaps likeness, of God is visible in every human, it would seem to need be manifested in some capacity or possession. For, no one but the enemies of the doctrine argue that the image is just that: an actual divine image. It has been argued that *imago dei* relates to what the Greeks understood as the ‘*logos*’ in humans. *Logos* is that which makes us rational animals, and also allows us to become political animals. Rather than theoretical reason, which has been imaginable in ‘automatons’ since at least the time of Descartes, scholars have argued that the synthetic capacities of our practical reason are better identifiable as the *imago dei*. As God is our

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<sup>45</sup> Marcello Pera, *Why We Should Call Ourselves Christians: The Religious Roots of Free Societies*. (Encounter 2011), 46.

<sup>46</sup> Andrea Maccarini notes this in the review of Pera’s book in *First Things* (May 2012).

<sup>47</sup> *Ibid.*

creator, we are most ‘godlike’ when we co-create.<sup>48</sup> Novel solutions to moral problems are one example; penicillin is another, the penning of ‘The Ride of the Valkyries’ could serve as a third. Co-creation is not creation *ex nihilo*. Originally, *imago dei* was deployed to direct us *to* a heteronomous source of morality and goodness, not to create morality or goodness in our own image.

Yet when we access this source of great possibility, we are tempted to believe we are our own creators. The Silicon Valley ‘genius’ who has ‘created’ a new ‘smart’ device trades in the ‘giddy feeling of omnipotence and absolute freedom’. It ‘at first elates him and then depresses and degrades him.’<sup>49</sup> This could be called the Frankenstein effect of certain kinds of co-creative activity that tempt to believe they are *sui generis*. So, absolute personal autonomy cannot be a guiding value, or we risk the devolution of our interactions into exploitation and coercion.<sup>50</sup> The move in technology from offering a ‘game-changing’ device to the world, to making it impossible to live a normal life without this device, is one such coercive temptation. Likewise, the affirmation of *imago dei* means something different when it is a source of unfettered autonomous creativity than when it is a source of creative obedience to the moral law. Kant seems to mean something similar to *imago dei* when he locates our moral centre in autonomy as morality. But he never meant the image to become disconnected from disinterested divine Reason. Detached autonomy is exactly what personal autonomy has come to mean, when it is view as too godlike.

Yet, none of the moderns are ultimately responsible for the final loosing of autonomy from shared moral ends. Augustine gives the lasting sense of *imago dei*, connecting it to inner life and communion with God therein. ‘The mind’, Augustine says, ‘is capable of Him, and can be partaker of Him; which so great good is only made possible by its being His image.’<sup>51</sup> This is the model of the self that moderns employ for their autonomous ends, but it now has become a temple without an immortal god in it.

### **Augustine’s ‘inner self’**

Talk of personal autonomy assumes an ‘inner self’ of some kind. Our civilization holds it as a matter of faith, which had religious beginnings, but

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<sup>48</sup> Robert P George, (2001) ‘Reason, Freedom, and the Rule of Law’, *American Journal of Jurisprudence*. V. 46: Iss. 1.

<sup>49</sup> Pera, *op. cit.*, XX.

<sup>50</sup> Maccarini, *op. cit.*

<sup>51</sup> Augustine, *De Trinitate* (1887 [400]), XIV:8

was accentuated and stripped of its confessional particularities in modernity. The mystic in the ancient world and then the poet in the modern world were two ways of being in that inner space. Thomas Merton, Trappist monk and poet wrote well of this space and its psychology:

If the intuition of the poet naturally leads him into the inner sanctuary of his soul, it is for a special purpose in the natural order: when the poet enters into himself, it is in order to reflect upon his inspiration and to clothe it with a special and splendid form and then return to display it to those outside. And here the radical difference between the artist and the mystic begins to be seen. The artist enters into himself in order to work. For him, the “superior” soul is a forge where inspiration kindles a fire of white heat, a crucible for the transformation of natural images into new, created forms. But the mystic enters into himself, not in order to work but to pass through the center of his own soul and lose himself in the mystery and secrecy and infinite, transcendent reality of God living and working within him.<sup>52</sup>

In the modern age the normal experience of being human tracks closer to what only mystics and poets were once encouraged to experience; of the two, the poet is closer to the modern person since its content is often cast in a secular register. Inwardness has been a noted feature of modernity, a refuge perhaps from the alienation brought about by machines talking over much of life.<sup>53</sup> But this inwardness also has its intellectual roots in the Romantic revival of an old Augustinian vision of a mystical ‘inner self’, especially by Rousseau. It is an inner architecture familiar to Western Christianity, especially where inflected by Plato. For, the ‘intelligible works’ that he opposed to the material world must be somewhere. It seems likely that it would be where ‘intelligence’ also is, namely, within you and me. Unlike the Christian vision, the romantics of Christendom did not find God or the Forms inside themselves after clearing away the detritus. They found the truth about themselves, a ‘sincere’ goodness, and a way forward for living against the expectations of the world. That is, after conducting some *auto-poesis* within their inner sanctum.

Like Augustine, this involved a conversion, literally a ‘turning away’. He turned from the ‘flesh’ and desires that brought him, with limp will, to say,

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<sup>52</sup> Thomas Merton, ‘Poetry and the Contemplative Life’ *Commonweal* (4 July 1947).

<sup>53</sup> M Eksteins, *Rites of Spring*, Chapters 1-2.

‘Give me chastity and constancy, but do not give them yet.’<sup>54</sup> After turning away, one then can become who one always truly was. The ‘world’, or better the ‘age’ with its ‘worldliness’, was what he fled from. In seeking what Rousseau calls ‘*amour-propre*’, or any ‘other-directed’ standard, one is in a similar sense chasing after that which will never fulfil him, the transient, impermanent. ‘*Rumor volat*’, we know, not only from person to person, but it also morphs along the way. Judgments and *mores* change. If one sets one’s morals to the weathervane of public opinion, one will only ever be as certain as what one happens to detect on the wind. One must ‘convert’ to *amour de soi* – literally ‘turning toward’ or ‘turning with’. One must look inward for the truth.

Some say that the exacting saint ‘invented’ the inner self. That claim need not be defended in order to see that his variations on a Plotinian theme of the agora within the self gave lasting form to inner life of his intellectual and cultural progeny, and the spiritual life of Christianity, including its secularization of mysticism in the romantic poet. Within oneself one can ascend—for, an agora has no roof—now past the Forms and to God himself. It is a process of going ‘in then up’.<sup>55</sup> This became a model of spiritual practice and self-understanding in the strands of Western Christianity that followed, allowing everything from the poetic imagination of St John of the Cross’s ‘dark night of the soul’ to the psychological terrain that would bring about a brooding character of distressed contemplation such as Shakespeare’s Hamlet.

The inward religiosity was to be found not only of those who remained within what became known as the Roman Catholic Church, but also those in the tradition of the reformer and former Augustinian monk, Martin Luther, as well as the man who understood himself to be restoring more or less ‘Augustinian’ Christian principles, Jean Calvin. The Reformed tradition that follows Calvin famously produced inward spiritualists, such as the Puritans. They kept ‘providence journals’, of the sort that one looked for God’s work in autobiographical details, such as a terrible situation that one was saved from after fervent prayer—especially in the terrors within the soul. These journals, such as those kept by the English Puritans of the Massachusetts Bay Colony, depict a spirituality in which all outward sacramental life has been turned inward. The confessional is now seated within the soul, and one goes there daily, not to confess oneself to oneself (as it would a few generations

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<sup>54</sup> Augustine, *Confessions* (2001 [ca. 398]), Bk 8, 7.

<sup>55</sup> Phillip Cary, *Augustine’s Invention of the Inner Self* (2000), 38-44.

later for Rousseau), but to confess oneself to God—just as Augustine had typified so many generations before.<sup>56</sup>

When moderns think of themselves, it is hard to imagine (1) that there is no inner space, and (2) that that inner space is not ‘who I really am’. It is also hard for moderns to imagine others being wholly human without having that inner space, to go into and contemplate oneself. Some of the convincingness of an unseen and unseeable universal equality lying beneath all of the manifest inequality might be based in the belief that each of us really is whatever is in the inner space. The ‘lived inner life’ in John Searle’s terms is what moderns mean by consciousness, and even materialists puzzle at the perhaps intrinsic inexplicability of it on strictly materialistic terms. It is what makes moderns uncomfortable agreeing with the Turing test or functionalist accounts of what it is to be human.<sup>57</sup> One cannot merely ‘seem’ conscious and indeed self-conscious to others. One must experience oneself, with that inner knowledge of the self, in order to be a person. Rousseau linked this to our capacity for empathy, rather than mere cogitation or performance of certain tasks. For this reason, it is likely that personhood will be more readily extended to lower hominids with bodies and natural gestures like ours than robots, which we know to have been programmed to *seem* like us. We can more easily imagine that we feel the ape’s pain, and that it just might be able to feel ours within itself.

A curious amalgamation of notions makes up this secularized inner life. Our knowledge of it does not descend from the natural sciences. But nor does it come from a ‘soul’ that temporarily inhabits the body—neither of the dualistic (Platonic/Christian) variety nor the Cartesian imagining. Nor is it a residual belief from early modern psychology. In fact, no set of *ideas* are really involved, neither really are any self-consciously held concepts of the self. ‘Notion’ is even too big of a word for what one is conscious of when one knows oneself to have an inner life. The word ‘inner’ should give us a clue, the agora within: it is an *image* of what is believed *to be a real place* (a thing in the world), where a certain sort of central and incommunicable activity goes on.

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<sup>56</sup> J Bunyan, *Pilgrim’s Progress* (1678) is the classic of this sort of working out of one’s faith in the English language. Full title gets even more to the point of the inward spirituality, namely, of the dream: *The Pilgrim’s Progress from This World to That Which Is to Come; Delivered under the Similitude of a Dream*.

<sup>57</sup> Dictionary definition ‘a test for intelligence in a computer, requiring that a human being should be unable to distinguish the machine from another human being by using the replies to questions put to both.’ See: [en.oxforddictionaries.com/definition/Turing\\_test](http://en.oxforddictionaries.com/definition/Turing_test)

Locating it is easier. Somewhere between the head and heart, certainly the top half of the body, there is a temple in which are kept the sacred things of the self. Some of those things might point to a God above, but they need not. What is there is *holy*, in the sense that it is kept apart, rather than in the sense of it being necessarily good. I appeal here to the classical sociological definition of ‘holy’, and to the Hebrew words on which it is based. This space is where I can truly ‘be myself’—where the virtue of autonomy is at its utmost. For, it is where no contingency or command imposes itself, save what I have self-chosen, a space of true freedom from the will of others, a place where self-contemplation is possible, and coercion is impossible, where *auto-poesis* connects directly to autonomy.

One set of ideas that do present themselves are political ideas made personal. For, my inner agora is a place where I am ‘sovereign’, and from which I can ‘reign’ over my life. And, when all goes as it should, I will be a law unto myself, as Nietzsche suggests in *The Gay Science*; or in the most sympathetic reading, I will participate in the autonomy that is self-interest rightly understood, as Tocqueville and the classical liberal tradition construe it, learning liberty by being truly at liberty. Modern natural persons sense that this inner agora is a real place, often with a roof so that the divine and higher things also do not interfere with the self. For they would make heteronomy of a place desired for its autonomy. That is the obvious difference between the Augustinian and the Rousseauian agorae within. Augustine’s is where he goes to learn how to obey; Rousseau’s is where he goes to learn how rightly to command himself. What has given each modern the confidence that the agora within is not merely an illusion of grandeur? Why does she believe we are better off trusting each sovereign self to enact her self-interested decisions from this place of contemplation? Why does she believe that the ordering of society through consensual binding of oneself should have a positive rather than deleterious effect on the moral order? In short? why do moderns believe that this sort of autonomy is good for us?

## **Conscience**

We have retained a faith in an older Christian notion of conscience. ‘Deep within their consciences men and women discover a law which they have not laid upon themselves and which they must obey’<sup>58</sup>, reads a papal encyclical, recalling the old belief. Its message is embedded with the hope that

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<sup>58</sup> *Gaudium et Spes, the Pastoral Constitution on the Church in the Modern World* (1965), n16.

Augustine's inner-self inspires in believers. It could be altered only slightly to apply not only to 'people of good will', as the Catholic Church calls those who seek and follow the law 'written on their hearts', but also to all modern persons: Deep within *themselves* men and women discover a law which they have not laid upon themselves and which they must obey (and which is the self). 'Conscience' is literally anglicized Latin of '*cum + scientia* / with knowledge'. But knowledge of what? Right and wrong, good and bad. In short: the moral law. The standard is heteronomous. Conscience itself was also once thought to be 'objective'. The spiritual jurisdiction of law over the soul was removed from the Protestant church with the abolition of confession.<sup>59</sup> With the removal of an external check on the *forum internum*, conscience was gradually 'personalized, privatized and subjectivized'. Yet, 'the rules of conscience were originally thought to be almost as objective as legal rules'<sup>60</sup> (Recall, for instance, that the English Court of Chancery is also called the Court of Conscience, which means little when referencing modern notion of 'conscience'.) Conversely, objective legal rules were applied to matters of conscience. At the height of the influence of moral theology, '[a] theologian claiming to be able to solve a case of conscience without the support of the civilian and canon law tradition was considered to be arrogant.'<sup>61</sup>

Now, the knowledge of conscience is practical and intimate—the line connecting it to an external morality is cut. When 'conscience' is removed, in the sense of that part of humans that accesses knowledge of the moral law, the law-like proclivities, habits, beliefs and realities of the self become truth. '*Veritas facit legem* / Law is truth', as the ancients had it. They would be nonplussed by the reduction of 'truth' to 'self', following Rousseau, but the logic remains unchanged. Although, following Hobbes, one might instead say that the ancients got it wrong, '*auctoritas non veritas facit legem* / authority, not truth, makes law'.<sup>62</sup> We have moved the authority from without to within. And that authority can only be re-externalized by each self consensually—which is more or less how contractarian theories envision a defence of political order. For moderns, who are by definition personally autonomous, conscience has become a byword for the self-sovereign, that is, the legislator and its law, rather than the truth and the objective arbitration, that is, the judgement and the judge.

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<sup>59</sup> Decock, *Theologians and Contract law* (2013), 27-28.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, 40

<sup>62</sup> Hobbes, *Leviathan* (1651), II, 26.

## Moral self-governance

There was from at least the time of the Reformation an increasing move away from morality understood as obedience, and towards understanding it as some form of self-governance. Different flavours of this formerly abounded, from the ancient juridical notion of natural humans understood as *sui juris*, to the nominalized Thomistic natural law of Hugo Grotius. But none of them went so far as simply ‘listening to oneself’. Frequently, there was a theological notion of the ‘spirit of God’ or conscience that was invoked as a trustworthy guide to right action. This change was especially evident in the places where the spiritual direction of the father confessor was replaced by a biblically-motivated and informed conscience. Although claiming to be more objective than the old order that was liable to corruption and worldliness of confessors, the interaction between the believer and the Bible leant itself swiftly to subjectification.

Formerly casuistry allowed the confessor to judge the sins of the penitent, by beginning in their particularity and reasoning based on similarity or analogy to known cases of right or wrong-doing. He may have had a book of cases, in which ‘Mr Badman’ or another suitably named character commits many sins in all sorts of ways. Even as well-documented abuses did abound – the Jesuits have a bad name to this day based on ‘casuistry’ – the charge that this was a form of moral relativism because of the manifold ways to obscure wrong-doing does not stick. It was ultimately a method of employing a strong command-based form of morality<sup>63</sup> onto the messy particulars of everyday life. Complicating the matter was that the chief command was ultimately Jesus’ unattainable law to love neighbour and God completely. With the removal of the sacrament of penance from the lives of ordinary and elite members of society, the court of individual conscience took over, to varying degrees, the work of the confessor’s determination of objective conscience. Self-governance eventually seems more believable as a form of moral reasoning for ordinary persons, if they do not need to report to their father confessors for regular purging, and no longer participate in a tradition of objective understanding of conscience.

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<sup>63</sup> The lasting jibe at (Jesuitical) casuistry came from Blaise Pascal, in *Les Provinciales: Pensées et Opuscules divers* (2004 [1656-7]). Yet, recognizing a way round moral absolutism as well as moral relativism through a form of casuistical reasoning, Jonsen and Toulmin penned, *The Abuse of Casuistry: A History of Moral Reasoning* (1990). It is notable that the English law functions to this day on a form of casuistic reasoning, as did early Roman law, bridging absolutism and relativism.

This shift was not merely one from a ‘command’ form of morality to a ‘self-directed’ form of morality. It was about emphasis. Both conscience and a firm moral law that is in some way ‘written on the heart’, are old ideas – the latter being as old as the Bible. But the stain of sin was usually understood to cause us to, again as the Bible following Plato teaches, ‘see through a glass darkly’. Or as Aristotle taught even earlier: we are poor judges in our own case. Revelation and right reason were not equally distributed through the human stock. So, God had put powers over us to teach us through command: parents first and then ecclesiastical and civil authorities later in life. For many persons, those authorities were the chief and most reliable way to ensure that one lived a moral life, or at least to know what was moral in practical terms.<sup>64</sup> Threats of punishment and guarantees of reward, were also provisioned or promised by such authorities. These tamed and instructed conscience, not to be legislator over which actions were right, but to become a good judge that could discover and correctly apply many heteronomous authorities in the proper order and to the proper spheres of life. The resulting actions would then be morally defensible. The increasing importance of private conscience diminished the role and import of heteronomous determiners of morality, and of moral prioritizing based on any objective standard.

With the emphasis less on the external guarantees of moral order surrounding the confessional, and more on the formation of conscience for self-direction under certain biblical principles, the emerging vision of moral order by the end of the eighteenth century – especially in Protestant lands – was of ‘all normal individuals being equally able to live together in a morality of self-governance’.<sup>65</sup> When such a term is employed, it can easily be forgotten that ‘self-governance’ carries much wider connotations than moral matters. Everything from one’s choice of clothes or preference for rye over wheat bread, or one’s employment, can fall under it. In all this, everyone has ‘an equal ability to see for ourselves what morality calls for and are in principle equally able to move ourselves to act accordingly, regardless of threats or rewards from others.’<sup>66</sup> The diminishment of the external determination of moral rectitude was followed by a diminution in punishment in line with the wills of those determinants. The United States Constitution, which was birthed by late eighteenth century moderns, did not need to justify why they formed a nation in which both the forbiddance of ‘cruel and

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<sup>64</sup> Schneewind, *The Invention of Autonomy* (1998), 4.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

unusual punishment' and the guarantee of the 'pursuit of happiness' were present. 'Happiness' does not need a clear definition *in advance* of individuals themselves living out their lives under the law. And if great areas of human flourishing were to be self-determined, then very little justification could be had for coercive punishments.

This is the practical recognition of an autonomy opposite of paternalism, and as the principle of good order in society. In everyday life this would appear as the assumption 'that the people we live with are capable of understanding and acknowledging in practice the reasons for the moral constraints we all mutually expect ourselves and others to respect.'<sup>67</sup> The ancient assumption that one was under the yoke of obedience *unless* one was elevated in some way to leadership or command, has been inverted. To support autonomy means to assume that others are 'equally competent as moral agents unless shown to be otherwise'.<sup>68</sup> No one begins under the yoke of obedience except insofar as it is necessary to educate her in personal autonomy.

From such basic assumptions, one could hardly imagine a return to command morality. Meaning, one would find it scarcely acceptable not to seek consent from others, express or implied, when subjecting them to moral obligations. Autonomy of conscience came to the fore in an age of social contract thinking, and with the expansion of the freedom to contract, especially as commerce expanded throughout all classes, as Adam Smith predicted and hoped would.<sup>69</sup> The granting of a *prima facie* 'equal moral competence' is perhaps the 'most pervasive difference' between moderns and that which preceded them.<sup>70</sup>

Liberalism is the end political and social product of much of the openness to this sort of autonomy. Moral self-governance provides at the very least a social justification for liberalism. Being liberal differs from being modern in ways that are important to note. First, liberalism can be adhered to with little attention paid to all the meanings of autonomy as morally legislating self-discovery that Romanticism peddles. Romanticism has often also justified

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<sup>67</sup> Schneewind, *The Invention of Autonomy* (1998), 4.

<sup>68</sup> *Ibid.*

<sup>69</sup> 'No society can surely be flourishing and happy of which by far the greater part of the numbers are poor and miserable', *The Wealth of Nations* (1776), Bk 1, Ch 8, Sec. 36. 'Of the Wages of Labour', where he continues: 'It is but equity, besides, that they who feed, clothe, and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, clothed, and lodged.'

<sup>70</sup> Schneewind (1998), 4.

aggressive regimes that guarantee autonomy but which, and for that very reason, are incompatible with liberalism, from socialist oppression to contemporary social democratic administered autonomy. Many of these regimes could find inspiration in a re-phrased version Rousseau's infamous phrase, in which the words now mean what they say: 'If a man won't be autonomous, then the state should make him so'.

Here once again the great impediment for Kant as a forefather of modern personal autonomy is his understanding of morality as autonomy, and autonomy as heteronomously anchored in universal reason. Kant simply does not allow autonomy to be autonomous enough for moderns. Autonomy for him necessitates contra-causal freedom, and 'he believed that in the unique experience of the moral ought we are "given" a "fact of reason" that unquestionably shows us that we possess such freedom as members of a noumenal realm'.<sup>71</sup> 'Freedom' here means obedience to universal reason. It means belonging to a world of persons in which much of what one wishes to do – even when we wish it sincerely – is precluded in advance. Moral self-governance of moderns is Rousseauian, for it is 'beyond good and evil', objectively construed.

## Identity and recognition

There are contradictions inherent in founding autonomy on a self-seeking self, which I return to in the conclusion when I ask whether the centre of the egalitarian mind holds. For now, if one follows Rousseau's logic, a farmstead is the proper place to live, unbothered by the proprieties of society, able to grow in virtue by heuristics, and allowed to perfect one's *amour de soi*. One might live like Jean-Jacques in long-term monogamy, cemented only in mutual consent, unbothered by the conventions of fatherhood (he handed the five children whom that monogamy produced over to the church orphanage).<sup>72</sup> One could perhaps do all this. But why then spend much of one's time defending a public image? Why grow paranoid that one has been

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<sup>71</sup> Schneewind (1998), 3.

<sup>72</sup> In an early feminist salvo, he does condemn the excesses of the patriarchy in the appendix of *Discourse on the Origin of Inequality* (1992[1755]), noting their role in marrying off children for reasons of gold rather than suitability. Perhaps he saw abandonment as the only way to remove the potential participation in patriarchal sins. We might see his presence as a 'citizen without a nation' as an overzealous way to avoid the sins of civilization by checking himself out. See Robert Spaeman, *Rousseau - Mensch oder Bürger* (2008).

misperceived by the very Parisian society that one has exited? Why publish as Jean-Jacques defending Rousseau, or the reverse?

The irony of romantic inwardness is that in failing to achieve the very independence that it so cherishes, it turns its attention to gaining another sort of independence. It attempts to make the world dependent on it, insofar as possible, on its self-image, based on its sincere knowledge of right and wrong (private conscience) and the *nomos* by which life should be lived (the rule of the true self within). 'Recognition' and 'respect' are the words that get thrown around as personal autonomy conquers the public space. The irony of romantic individualism is no different than the irony of 'private art'. If it is meant to be merely private, why produce artefacts that are capable of outlasting oneself? If the romantic self is meant to become self-sufficient, and not to bend itself to the will of others, then why must identity seek recognition and respect?

One hallmark of the Romantic movement is a criticism of heteronomy as other-directed identity. Once the criticism is levelled, something must be presented in the place of the established order. Even in the most sophisticated attempts, an impoverished, partial identity is presented, which pretends to be total identity. Unless the person is mad, there is a realization at some point that one cannot be wholly self-sustained. Rousseau, for instance, seems not to have been able to survive if no one respected him. Thus, the latter part of his life defending his legacy. One then asks the society she has rejected to recognize, affirm, and respect her, to prefer her even to the vision of virtues and habits that society believes good and true. Lacking internal architecture for one's agora, society becomes the flying buttresses of one's identity, thus allowing the sanctuary within to appear from within to be self-sustaining—like a cathedral that one has only experienced from the inside. In this way, some semblance of a persisting inner life can be forged. This explains the continued success of romantic inwardness in persisting through the generations. Because it never fully lives on its own terms, but rather survives in a sort of unacknowledged symbiosis with the society it rejects, the pretence of independence is plausible. The proverbial romantic artist who rejects society but not so much as to avoid fame or infamy is, case-in-point.

There are places in the modern world where this logic is most evident. In the United States, the most modern of societies, this has been working itself out ever since individual independence from society was proclaimed in the Declaration of Independence, which is not formally part of the US Constitution, but without which its axiological constitution could scarcely be

understood. ‘Life, liberty, and the pursuit of happiness’ were promised, without a word about what else besides life and liberty could be said to constitute ‘happiness’. The ideological part of American identity, an open-ended understanding of ‘happiness’, pushes each person to become (too) self-conscious, to interrogate the world for her place in it and now finding it, to retreat into the inner life. One seeks in the self an anchor in a dynamic society that does not metaphysically anchor its law in an ultimate vision of the good; otherwise, it would define ‘happiness’, and thus have common ends, making the common good more than merely the collected goods of the members, and identifying some set of acceptable means within which practical reason could work to achieve the agreed-upon ends and ultimate end of flourishing together.<sup>73</sup> The American, failing as Rousseau did to secure her self by herself, then returns to society with the request that it recognize and respect the partial ‘true self’ that was half-discovered in the darker spaces of the soul.

### **Recognition as rights**

The phrase that Jefferson uses is an edited version of John Locke’s defence of ‘life, liberty’ and land/property’. It is an unexpected blending of the romantic and Lockean sides of modern cultural identity in that the Lockean phrase is the vehicle that most perfectly *communicates* romanticism to modern persons. Leaving aside the Lockean aspects (which I return below when dealing with the body), this self-consciousness of the responsibility to seek happiness for oneself and in and through oneself provides a whole way of being in the world that replaces an older model of participative heteronomy. The older model as evidenced in the philosophy of Samuel Pufendorf<sup>74</sup> or earlier in Cicero<sup>75</sup>, presents identity in terms of duty that begets obligation, responsibilities, prerogatives, and then after a long chain of reasoning, perhaps rights. But those rights are really only another way to talk about someone else’s duties.<sup>76</sup> To the traditional world it was an historical travesty that the French revolutionary documents substituted ‘*droit* /right’ in place of

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<sup>73</sup> For details of differences between ancient and modern understandings of what belonging to a community means, see Robert Nisbet, *The Quest for Community* (2010 [1953]), for instance, ‘The Political Community’, 137ff, wherein the difference between the Rousseauian understanding that all wills need to be brought into line with their average, the ‘General Will’, as compared to the understanding that one is to make one’s will that of another, who is superior, whether God or one’s betters or even in a Kantian way, the will of one’s best self.

<sup>74</sup> Pufendorf *On the Duty of Man and Citizen According to Natural Law* (*De officio hominis et civis*) (1673).

<sup>75</sup> Cf. Cicero, *De Officiis*.

<sup>76</sup> Tuck, *Natural Right Theories* (1979), Ch. 1.

‘duty’ when borrowing Pufendorf’s famous title for their rights-based theory of governance, and thus upended a long precedent of placing the group before the individual.<sup>77</sup> For, once happiness was self-defined and right was logically prior to duty, all other models of collective organization besides contract would be excluded on moral grounds. The world then would belong to the living, at least in usufruct (as Jefferson believed it really did), if not in its totality. It belongs to those who can negotiate its boundaries based on their perceived self-interest.

The new model thus begins politically with a provision of rights. But logically, it begins with the ongoing conclusions that take place in the inner agora, involving the self, one’s private conscience, one’s desired harbour in the world, and one’s vision of happiness and the good. US Supreme Court Justice Kennedy’s midrash on Thomas Jefferson’s weak concept of happiness lays bare what is on offer in this social-legal-political-moral order. One must ‘define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.’<sup>78</sup> Identity-recognition necessitates a provision of rights which are not merely the implications of reasoning about the duties of others. These rights are shorthand for a set of entitlements, freedoms, and public recognition that allow the self to be present in the world as she best sees fit. It does so in order that she might develop herself or, to borrow from twentieth-century psychology, to actualize herself and ‘become [her] potentialities’.<sup>79</sup>

The new model is one of self-discovery within oneself and self-assertion and creation in one’s public life. These require careful negotiation of where and when the government and society should intervene, and where and when each should hold back. Mill wants ‘society’ to be held back, if necessary, by force from exercising its judgment against such individual enquiry, expression,

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<sup>77</sup> Pufendorf’s *De officio hominis et civis* and the revolutionaries’ *Déclaration des droits de l’homme et du citoyen*.

<sup>78</sup> During the US Supreme Court case, Justice Kennedy gave legal form to modern values. His full statement is: ‘These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.’ *Planned Parenthood of Southeastern Pa. v. Casey* (1992).

<sup>79</sup> For actualization, Abraham Maslow’s ‘Hierarchy of Needs’ comes to mind as the popular form of what was explored in the work of Carl Rogers, *On Becoming a Person* (1961), 350-351. He dedicates a chapter, ‘To Be That Self Which One Truly Is’, 163ff. He is transforming, ‘self-actualization from a descriptive notion into a moral norm’, Paul Vitz *Psychology as Religion: The Cult of Self-worship* (2010 [1994]), 54.

and self-discovery—namely against autonomy (although, he prefers ‘liberty’).<sup>80</sup> And so the self vacillates between either a necessity to recognize and respect and facilitate (following Rousseau) or to tolerate and let be (following Locke).

Self-development first becomes self-creation regarding one’s public life. But there is no sense that one really ‘creates’ one’s self. One creates one’s public image or ‘*persona*’ in the traditional use of the term as a publicly-facing mask. At its best, the fused Lockean-Rousseauian vision of autonomy allows one to move into the world with self-understanding, built on self-knowledge, where one finds social-political life that does not reject that ‘honest mind’ in advance of experiencing it. This will be experienced by such a self as obedience to one’s own conscience as the model of moral self-direction, in place of the obedience of one’s conscience to the dictates of a greater authority, whether it be God, reason, law, or the will of a superior.<sup>81</sup>

What was inherited from Rousseau plus Locke involves a sort of unrefined honesty and even modesty about oneself and the world one finds oneself in, and about possibilities for governance. This is why both are pro-republican and anti-monarchical. The hands-off approach to governance of human happiness that Locke offers, coupled with Rousseau’s rejection of fashion and convention – Isaiah Berlin names him the ‘greatest militant lowbrow in history’ – makes the world safe for enquiry (i.e. safe for Mill) and development, in a series of peaceful republics. That is, so long as moderns are right: (1) that sin is safely expunged from the natural order once the ordering of ourselves according to nature is accomplished (that men are wicked whereas man is innocent); and (2) that love of self (e.g. *amour de soi*) will lead both to personal and collective happiness. Together these lead to (3) a strong inclination to trust the free will of individuals. Those three positions form one great leap away from the faith of their fathers. But that leap of faith is one

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<sup>80</sup> J S Mill, *On Liberty* (2008 [1859]).

<sup>81</sup> Cf. Richard Price, the great English nonconformist clergyman and defender of the principles of the French Revolution as a model of reform that England might well follow. D. O. Thomas, *The Honest Mind: The thought and work of Richard Price*. Oxford University Press (1977), esp., ‘Obedience to Conscience’, 87ff, quoting Price: ‘In the nature of [conscience] is implied (to speak after Dr. Butler) that it belongs to it, in all cases, to examine, judge, decide, direct, command, and forbid; that it should yield to nothing whatsoever; that it ought to model and superintend out whole lives; and that every motion and thought, every affection and desire, should be subjected constantly and wholly to its inspection and influence.’ This is not only the priority of personal conscience but the dictatorship of uncheckable conscience. The alter-conscience plays just this sort of role in the moral lives of those downstream from Price.

which most moderns are happy also to take, as they turn more of life over to the prerogatives of the romantic self.

### **'Haven in a heartless world'**

I want to make it clear that self-creation is not and cannot be part of the values and virtues that make up the egalitarian mind. Else, it ceases to have the metaphysical anchor in a truly autonomous self, that it needs in order not to become completely unmoored. There are not only philosophical problems with self-creation, there are also physical impediments. In order for the egalitarian mind to settle into a secure 'peace of mind', it must enjoy not only the metaphysical anchor that a 'deep identity' provides, but also a place in the world that secures its perpetuation, a 'haven in a heartless world' to borrow a title to completely different effect.<sup>82</sup> That safe space is found only within the body. All the talk of the 'inner self' always implies an unmentioned body as a sort of fortress surrounding the self. And from within the corporeal harbour an autonomous enquiry can begin. Its chief purpose is to determine its own ends and idea of happiness. But it often attempts more. Following Descartes, it might also attempt a new epistemic founding of all the sciences, or at least of the 'science' of the self.

The great freedom that is assumed to be native to the self is actually provided by the facticity of the body as the location of the self. Nevertheless, that assumption of the freedom being *sui generis* out of the fact of the free will persists. It is perhaps a necessary *mythos* and article of faith for the egalitarian mind to persist. Below I elucidate the doctrine of free will in its Rousseauian register, as the capstone of this phenomenology of modern values. That doctrine brings out all aspects of the egalitarian mind as it also intimates the egalitarian constitution that will be formed when these minds combine socially and politically. In Rousseau's hands the doctrine of free will becomes a general theory of natural liberty and original innocence. This is a restoration of the likeness of god to the *imago dei* that is each self-sovereign end-in-itself. And it goes a long way in adding a quasi-theological reason that the self must be really real. As judge (conscience) and legislator (sovereign), it lives up to its claim to be a shard of the divine.

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<sup>82</sup> Ironically, Christopher Lasch's 1995 book by the same title laments the decline of the family under various modern pressures.

## Self-creation

By the end of the nineteenth century the ideas, notions—and, importantly, visions—that I have described or alluded to had worked themselves out to their logical conclusion in one place or another of the North Atlantic nations. Total freedom of contract regarding marriage was seen briefly after the French Revolution, for instance, in order not to restrain anyone artificially.<sup>83</sup> Friedrich Nietzsche eventually limited the universalizability of the cult of authenticity to self-creation amongst the great (although, Descartes's epistemological autonomy should not be forgotten as a backbone of Nietzsche, and I return to it in 'autonomy of enquiry' later in this chapter). This was later overtaken and again democratized by existentialists like Sartre and postmoderns, each for different reasons. Sartre saw 'The Authentic Person' to be one who wills his own desires, as commitments, rather than just 'having' them.<sup>84</sup> Whether he got round the problem that Schopenhauer identifies, that 'man can do what he wills, but he cannot will what he wills' is for another to decide. Both the cult of self-discovery and that of self-creation have operated as parallel visions, not always teaching separate doctrines, but beginning and often ending in different places. Self-creation has remained throughout modernity the province of elites, this is in part by design. Its relation to the modern value of personal autonomy has been suggested in that which preceded.

Nietzsche, the father of twentieth century thought on human plasticity, imagines a world in which only some few can ever self-create. Unlike the 'last men', namely, the ultimate victims of Rousseau's *amour-propre*, they 'want to become who we are – human beings who are new, unique, incomparable, who give themselves laws, who create themselves!'<sup>85</sup> Residual senses of self-discovery are present in this passage, but the crescendo indicates its purpose. Self-creation here is an elite position, necessarily unavailable to mass man. And, as such, it was never really part of the modern sense of autonomy. It is no accident that only through a dialectic with modern identity does Nietzsche come to the fore as a great critic. His criticism was not only of Enlightenment rationality but also of the great reaction to it that was Romanticism. His criticism is of the egalitarian mind and the resulting egalitarian constitution.

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<sup>83</sup> P. A. Sorokin, *Sociology of Revolution*. Philadelphia (1925).

<sup>84</sup> Sartre suggests an entire 'ethics of authenticity' is possible in *Being and Nothingness*, (1948 [1943]). See also C Taylor, *The Ethics of Authenticity* (1992); L A Bell, *Sartre's Ethics of Authenticity* (1989).

<sup>85</sup> Friedrich Nietzsche, *The Gay Science* (2001 [1882]), 189 or *Die fröhliche Wissenschaft* (1882) §336.

## The body's work

There is one great corrective of romantic excess, a fact that is denied only at the peril of the denier, a 'thing' that won't remove itself from the world of ideas: the body. The unicity of the self is one way to approach autonomy, and it will ultimately provide a lasting sense of what is *truly* unique about each person. But the body cannot be forgotten. Not only is it the natural division between human beings, it has also served as the moral division between human persons. John Locke puts forward a notion that was in circulation before him, but which had not yet gained the clarity that he was to give it. You own what you mix your labour with.<sup>86</sup> Without this external tool of the will, this orderly 'extension' in Descartes's words, there is no sense in speaking of the problems attending *amour-propre*. Others are a problem for us precisely because Cartesian solipsism is only a philosopher's problem, rather than a real problem for human persons. Only a philosopher could begin where Descartes does in his *Meditations*, with 'What one can call into doubt'.

We are faced daily with others, in private life and in society, who ask of us and give to us, to whom we might have to adapt, as we wish to be adapted to by them. We each were *faced* with them before we even knew who we were, or that we were. These others are sometimes individual natural persons, and at others times they are groups or corporate persons. The tradition that focusses on negative freedoms, from Grotius through Hobbes and Locke, has as its distinct advantage a seriousness about the unknown and perhaps unknowable complexity of possible interactions between bodies. When Hobbes indicates that fear is the chief passion that drives us to peace, he is not imagining that fear is an auto-erotic passion. Fear is caused by the knowledge that a violent *bodily* death, at the hands of another, could be just around the corner, unless certain precautions are taken regarding agreements about the future relations of bodies, especially to my own. Fear takes place in my breast and between my two ears. But it is caused by bodies in the world which I can neither control nor reasonably predict, save with the intervention of reliable force.

Rousseau is also attempting to solve a problem of unknowability and complexity, that of the inner life of each self, who is different and original in some way, often unknown even to himself until or only by way of great self-

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<sup>86</sup> '[...] every man has a property in his own person; this no body has any right to but himself. The labor of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided and left it in he hath mixed his labor with, and joined to something that is his own, and thereby makes it his property. Second Treatise of Government, §27.

searching. But as soon as that self wants to live in the world of persons as a unique self, amongst other *similarly unique* selves, a great regime of protection must be put into place in order that he not be coerced into convention, civilization, and the bad faith of *amour-propre*, in which his *persona* would betray his true self. A note on the problem of uncertainty should be made here. Pascal and other have since his time attempted to use statistical calculus to solve this problem, not realizing how indefinitely complex it would be. Smith and Burke later appealed to spontaneous order of one kind or another in order to get around the problem of the impossibility to plan virtue. Rousseau trusted in autonomy to work it out to the good of self and others. He trusted this incorporeal autonomy to order corporeal life on its own terms and for the good.

For Locke, the body is the instrument of autonomy; autonomy itself is seated in the free will (he does not, of course, use the term ‘autonomy’, preferring ‘liberty’ or similar contemporaneous terms for the same concept). He inherits the Grotian faith in the providential use of the free will for socially and morally beneficent ends.<sup>87</sup> He at least sees the practical uses of man’s self-understanding of his needs – self-preservation broadly understood – as a superior source of fundamental political order than any command theory or ‘thick’ vision of the good. For, those would preclude certain forms of obviously beneficial and desirable forms of self-care based on an abstract principle of duty (Cf. Kant in this respect). The Lockean autonomous self has easily played its most fitting role from an early stage, both in politics and society. For, Locke compiled ideas – usually without admitting his sources – that had been floating round the intellectual culture of Latin-reading Europe since at least the late scholastics. Many developments in natural sciences and politics—including the development of Enlightenment rationalism—were mere extensions of, or logical conclusions to, secular or theological premises taught in the generations preceding him.

One example is the Socinianism regarding the free will that Grotius and others rolled into contract doctrine a generation before Locke wrote (and Rousseau later takes up). This was particularly strongly held to in England, the nation that eventually produced Unitarian and other ultra-non-conformist Christian sects, freed even from belief in the traditional Triune God, and thus from any overarching metanarrative to which our wills must be bent. The confessor was now absent (and the modern novel was not yet present as a school of moral instruction. Whereas Locke told educated Europeans what

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<sup>87</sup> Hugo Grotius, *The Truth of the Christian Religion* (2012) 87-88; 266-268.

they could do with their bodies, Rousseau reminded each that he has a divine temple within his breast, an oracle for one's self-directing. He was able to do this in no small part because of the work that had already been done to open up avenues of moral permissiveness and open-ended moral reasoning.

### **The autonomy of enquiry**

Self-discovery has its secular correlate in modern identity. Compare Rousseau's self-searching to Descartes's extension of this search into the world. That is accomplished only after he secures his own self-existence from the overweening doubt, is freed of solipsism, and has founded an epistemology with which the individual person can have 'clear and distinct perceptions' and, thereby, knowledge of the world.<sup>88</sup> What ties the autonomy of Rousseau to the empiricism of modern science is the model of the individual self searching for truth. This supplants the group or community of enquirers, the gatekeepers of knowledge. Formerly, one joined a guild, learned the trade, was heteronomously assessed on a masterwork by the masters themselves, and only then was set at liberty to do one's work. This was the same in the fine arts and the refined craftsmen's guilds that were the organizational force of labour and conduit of knowledge for much of the pre-modern age. This continues uninterrupted even to our own day in the university and the natural sciences, wherein multiple degrees, some even called 'Master's' are required before one can enquire independently. Some have argued that it is the very model of 'normal science' to have this sort of group-think, or tradition of enquiry, that one is initiated into. Only rarely do independent minds come upon such a breadth of unresolvable, anomalous problems, that are then solved by a new vision of the world, a revolution.<sup>89</sup>

The continuation of the older, group-based, model of enquiry is of interest because it stands in such stark contrast to the ideal of autonomous enquiry in the 'genius': Newton or Einstein, Leibniz or Galileo. The genius is what one aspires to be, or that one's kids should become. It combines the unique ability to 'see the world differently' with the belief that those rightly called geniuses can see the world as it truly is (or part of it, anyway). This puts

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<sup>88</sup> Never, it should be said, is that knowledge as clear and distinct as knowledge of the self's existence. But with the self as bedrock, and God's existence as a necessary postulate, one can confidently extend enquiry into the world of extension, with knowledge following on. See Rene Descartes, *Meditations on First Philosophy* (1641), part 1.

<sup>89</sup> This is a sketch of the central description of scientific enquiry in Thomas Kuhn, *The Structure of Scientific Revolutions* (1962). See especially his descriptions of 'normal science', 23ff.

the autonomous enquirer in a position of power to know and thus to rule over others. No longer is his self-discovery merely a provision of a liveable law for himself; for, he has also uncovered nature's laws.

Tensions are obviously created here, some of which Rousseau himself describes in his *First Enquiry*, wherein progress in the natural and human sciences is argued to have deleterious effects on the moral development of man.<sup>90</sup> These tensions are never resolved, but merely carry on in different personages: it will be Mill versus Darwin later, pulling respectively in the directions of personal autonomy and species-based heteronomy. Yet, despite the heteronomous doctrines and practices of the natural sciences on the one hand, on the other hand the natural sciences cannot be underemphasized here an efficient cause in dismantling heteronomous relations of religion, governance, society, and family. Their success in taming nature has also provisioned resources of autonomy for many nations and persons. This has been done in ways that lead both to and away from the fulfilment of a Rousseauian vision of a society, namely one that allows for maximal development of *amour de soi*. But it has nevertheless presented much greater possibility for autonomy.

Another aspect that is present in the earliest debates about the role of the natural sciences in relation to revelation and philosophy. 'Philosophy' then still included much of what we today call natural science. That aspect might be called a bias for the part over the whole. This includes the individual over the group in taxonomies of flora and fauna. In matters of authority and investigation, this was particularly prominent. Descartes, Galileo, and Bacon – each struggled for what he understood as the rightful autonomy of science, and for autonomy of enquiry (in Galileo's place, it was even for the autonomy of the *enquirer*, after he was living under house arrest). The latter is of more immediate interest, for the individual enquirer becomes emblematic of self-sufficiency and even self-flourishing of autonomous persons that is later cherished morally, politically, and personally by moderns. What is Mill's 'Experiments in living' if not a bow to the model of natural science's empirical method? And why else do parents buy products called 'Baby Einstein' if not to train up a mind that is strong enough and full enough to be independent in its enquiry.

The very assumption of empiricism as a method of enquiry and an epistemological starting point, assumes some measure of autonomy. An individual being, endowed with faculties of reason and sight goes out into the

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<sup>90</sup> Rousseau, *First Enquiry*.

world to observe, to test, and to verify what is there. After some time, she returns with an understanding of (some of) it, and with a set of problems to enquire further about. She has a self-guidedness, an open-ended measure of practical and synthetic reasoning that she employs. The empirical method allows her to become an authority, to take the world into her own hands by imagining it really to be whatever the evidence will bear.

There was within all this a short-sighted view, or perhaps an unwarranted optimism that the rightful autonomy of science and of enquiry will bring about unmitigated goods. Rousseau had quite the opposite view about the sciences of his day. But the same optimism is present also in Rousseau's belief that following self-knowledge as autonomy will bring about the best of all *possible* worlds (recall that no return to a state of nature is possible even if desirable). The initial celerity of discovery, including Newton's leap forward in explaining the laws of nature, may have made that trajectory seem likely. Alexander Pope's epitaph to Newton, who died in 1727, reads, 'NATURE and Nature's Laws lay hid in Night:/God said, "Let Newton be!" and all was light'. This light of nature certainly lent credence to similarly-situated, empirical accounts of politics and eventually morals. Traditional accounts had certainly passed their sell-by date.

Some such accounts preceded the success of the empirical sciences by many decades (Hobbes, Locke). But their general acceptance and the taking up of them into constitutions followed this success by around one hundred years. So was it that Hobbes published in the middle of the seventeenth century. Newton published in the late seventeenth and early eighteenth centuries. Paley published his famous teleological metaphorical treatment of the world as a watch that therefore had a watchmaker in 1802 (as a refinement of on an earlier argument by Bernard Le Bovier de Fontenelle<sup>91</sup>). The idea of the independence of the cosmos (natural laws) would be valid even God did not exist, has provenance going back into the late scholastics.<sup>92</sup> But the transition of these into public and private law, and into the

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<sup>91</sup> William Paley. *Natural Theology, or Evidences of the Existence and Attributes of the Deity collected from the Appearances of Nature* (1802).

<sup>92</sup> Grotius has his famous '*etiamsi daremus*' about the moral natural law, but the logic is the same. Suarez before him said the same, without controversy. As Timothy Williamson argues, the later the idea of naturalism will claim that natural world is all there is. This is a fully realized autonomy of cosmos, the self-made watch. Williamson also sees the insistence on naturalism as a method of study (methodological naturalism) is based in a belief in the autonomy of the method of investigation and autonomy of mathematics on which it all is ultimately reliant (Timothy Williamson, private conversation in Oxford).

psychology and moral lives of individuals is most interesting. For the bridge is then built for the public and private persons to match in their visions and expectations of order based in modern values, especially of personal autonomy and its appropriate correlates such as sovereignty in politics or self-sufficiency of the cosmos.

The earliest successful national constitution based in these newly discovered natural rights was the French of 1789.<sup>93</sup> From the beginning of the nineteenth century, then, we see a converging of many areas of human life on a set of ideas related to autonomy. It is not always a coherent concept of autonomy, nor is it always personal autonomy, but the principle of self-rule permeates all of these areas. This will be translated politically into the right of self-determination of peoples on the self-same principle of end-in-itself sovereignty that is personal autonomy. By the beginning of the twentieth century that principle will be announced as the great reason to end colonial, that is heteronomous, rule. Independence for various lands does not merely mean 'freedom', but self-rule, namely political autonomy. They each have the self-same right to enquire into their own vision of happiness and the good.

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<sup>93</sup>*The French Revolution and Human Rights: A brief documentary history* (1996), particularly Hunt's introduction, 1-32. The Americans had had a Declaration based in them, but it bears no direct relation to the founding legal document, the Constitution. The French, however, is the other way round, with the Constitution being based explicitly in those 'natural, [...] rights'.

## **Conclusion: Sounding out the egalitarian constitution**

I conclude this book with a rational reconstruction of the egalitarian constitution, by answering the question: What is it like to be governed by the egalitarian mind? After that cursory synthesis is completed I proceed to ask whether this constitution is fit for purpose. Can it provide convincing and reasonable answers to the ethical problems presented in the two thought experiments above? If yes, and I do argue that the answer is yes, then the further question is about foundations. The egalitarian constitution will seem to have solved difficult ethical and moral problems of modern life, at least on its own terms. Meaning: a satisfactory enough approach to equality has been made that the alter-conscience is quelled for a moment, the mind is at rest in its autonomy.

However, the more pressing question for any philosophy of modern axiology is not whether the system works on its own terms – its validity – but its soundness: Can it demonstrate itself to be true? This need not take the form of a formal demonstration on neutral, rational grounds—say, an Enlightenment proof. It might, rather, show itself to be a superior form of moral reasoning in solving problems that emerge within its own system. This could be called a ‘MacIntyrian proof’, after the tradition-bound forms of proof that MacIntyre suggests are the only sound ones.<sup>1</sup> My question is whether there is anything obviously deficient in the egalitarian constitution that could render any such proof in principle impossible, especially on its own terms.

I believe there is such an Achilles heel in the armour of the egalitarian mind. I call it the ‘Godot problem’ in my analysis of what is missing. Put simply, the autonomous self has been made the metaphysical centre of moral values, needing to be both anchor and foundation of the mind and of the constitution build atop it. But there is no *there* there, no ‘self’ – either in particular cases or in general – in the way it would need to be to serve perpetually in that metaphysical role. Or at least there is no *argument* for such a *there* being there. ‘The wise man builds his house on a rock’, we have been told on good authority. But the self is shifting sand when considered only in itself. The egalitarian mind needs a metaphysical centre – a god. It can neither create one nor can it itself be or become one in anything but pretence.

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<sup>1</sup> The third version of moral enquiry in Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry* (1990).

Ironically, it must even deny such a god's existence in order to be or become what it says that it is: personally autonomous. The self retreats to the canopied agora within, where it finds only a recently minted golden calf.

### **Reconstructing the egalitarian constitution**

In that which has preceded, we have come to understand the moral values of: universal equality as perpetual equal moral consideration, consensualism as self-imposed moral obligations, and personal autonomy as being an end-in-itself-for-itself. Together they form the egalitarian mind, which is the self-sovereign end-in-itself. In relation to others, this mind—being a byword for the truly modern person—can be described as a consensual autonomous egalitarian. The moral knowledge of the egalitarian mind retains both the conscience given by nature and the conscience acquired by convention. However, these consciences are now dominated by a conventional conscience, which I name the alter-conscience. The alter-conscience is the advocate solely for equality, and thus against anything that falls short of it. Being single-minded and certain of its clear and distinct ideal, it is much more insistent than the consciences of nature or convention, which are sophisticated, soft, and easily stilled. The lust for equality that is the alter-conscience, however, is single-minded, and never sleeps at its post.

The alter-conscience continually fuels the life of modern values. But the alter-conscience also gets away with itself. It becomes a danger to *its self*, and a danger to others. And it always necessarily inhabits a self—a person—as its host; for, conscience cannot exist outside of a mind. The twofold danger of the alter-conscience is: first, it has no native content, which, second, means it relies only on the purity of its concept of equality as mathematical sameness. Because 'equality' is an empty set, the alter-conscience, which seeks equality, can be employed in any direction that fills in the empty space in the set. The mind that is constantly agitated by the sleepless alter-conscience realizes that whereas equality can be a means, it cannot determine its own ends or appropriate means. If equality is to serve to bring about the good of equal moral consideration, another way of determining ends and respective means must be found.

To do that, one needs not only to route the levelling impulse away from harming those whom it is meant to serve, but one also must control, moderate, and at times still that impulse by some psychologically and socially realistic means, under conditions broadly acceptable to the alter-conscience. Namely, with the assumption of methodological and metaphysical

individualism, never losing sight of equality as goal and measure of success. Consent is then appealed to as an open-ended way of determining ends individually, which also serves to manage the levelling impulse, and to appease the alter-conscience.

But, the quest for equality is not ended by relying on consent alone. For, humans are bad judges in their own causes, and consensualism requires that they follow their own judgments. Human persons regularly agree to that which disadvantages them, and they fail to agree to that which is to their own advantage. And such poor judgment, from an equalitarian standpoint, is not just limited to those who don't know better. The altruism of many women leaves them in a state of greater inequality than if they chose what was in their true self-interest—or if it was chosen for them. Moreover, humans will often consent to that which they actually don't desire, and even that which is additionally harmful to them in the most acute ways. Voluntary death for the sake of others or voluntary slavery are two extreme cases. Nevertheless, onerous interest rates, wretched labour practices, and even professional blood sports, also make the point stick.

Even as it controls the alter-conscience's exacting excess, total reliance on consent introduces two problems that are insoluble when equality alone is the only other value that one can appeal to. Technically *anything* could be consented to on an individual level. Under the doctrine of consensualism, consent can render even the worst acts morally harmless: violent rape becomes role-playing, murder becomes euthanasia, battery becomes boxing. It all turns on consent; everyone is equally her own arbiter of harms and goods. On the other side, any of the benefits that equality might otherwise bring could just as easily be rejected by each person. Because of the individualistic confines both of universal equality and of consensualism, there is nowhere to appeal to for moral authority outside of each individual person whom these values are meant to serve. And each person is understood socially to be knowable as nothing more than the manifestation of her will in consensual activity.

To solve the problem of moral solipsism, what is needed is a moral centre that can neither be violated nor forfeited *especially* by she whose centre it is. This centre must be made into the chief value, which is also personally and socially respected as a moral authority. Any third person or institution attempting to serve that role, and making the decisions for others, would be arbitrary. That is, unless consented to in advance. We talk about such imagined or historical agreements as 'social contract'. Yet all social

contractarian models still assume that the moral centre is within the contractors themselves rather than within the group that is contracted into existence. The group is the result of the contract, historically or logically, and thus logically subsequent to the antecedent contractors. That moral centre point should be at the centre of the beings that equality is meant to serve. From there, it should also serve to bind consent to its own good, so that consent too serves this being, as consent simultaneously limits the its alter-conscience and that of others. The only place to go for that moral centre is ‘within’ each of the persons who are meant to consent to their own equality.

This self-serving centre is what we call personal autonomy. At first, we look for that moral authority to be perfect both in the senses of complete and of pristine. But we do not discover in each individual a being the nature of which could put perfect limits on the ends that could be chosen. We find no being that could be counted on to curb the freedom, that is assumed in the quest for equality and consent in human relations, so as to allow even for its own good to emerge. We find, rather, a limited and weak consciousness inclined to self-love, but not able reliably to make decisions in its own self-interest. There are clear general limitations, which can be clearly laid out. However, since we are not privy to anything specific that goes on within this other self, aside from what she tells us, we do not know what is the true good for her. In order to play the role of a bulwark against excesses of equality and misdirection of consent, we must assume the inner place is inviolable. Even our desires to beneficent heteronomous rule should not try to minister to the needs uninvited. We also know that the inner space is epistemologically closed to us, unless its ‘owner’ shares what happens within (when she herself knows). These two positions combined will serve to open up a space of indeterminacy in the moral life of modern persons for the value and virtues of personal autonomy to fill, as well as to allow the inner space within the person with the psychology of autonomy. Persons can then be protected by others (both from others and from themselves) without a charge of intrusion or paternalism—all while the privacy of that agora within is protected.

By positing the inviolable place to be fully knowable only by way of each individual consensual being, and also to be the place where the real self lives, two things are accomplished. First, others cannot presume to know what any other person wants or needs (outside of basic bodily and social needs) or by asking about specific desires. And then it is always second-hand knowledge. The possibility of full knowledge is necessarily left to the person who alone is able truly to know herself. Second, the possibility of self-

knowledge is always abutted by the reality of imperfect selves. The autonomous person can be mistaken, or not yet informed, or in principle never fully informed about herself. Thus, some things that she might want to consent to can be curbed by others, forbidden socially, or proscribed legally, without betraying her personal autonomy. In fact, these limits can serve to protect autonomy, especially her internal autonomy of enquiry. If she, say, wishes to be in a relation that she could never in principle extract herself from – such as an eternal marriage – it could be forbidden. Not because it is known to be uniquely bad for her, but because her identity primarily as an autonomous being would be forfeited in practice by an eternal bond. Or, in a lesser case of the taking of extreme debt, some waiting period could be introduced to allow her to make sure that she really wants that sort of relation. Certain debt levels could even be forbidden without charges of paternalism emerging. These are exactly the measures that modern consumer protection law introduces in order to have a free and non-paternalistic market that also ultimately respects the declared autonomy of persons, insofar as neither she nor anyone else are able to curb her autonomy going forward.

The hiddenness of self-knowledge to all but the self, and the need to communicate it before others can know it, along with the belief that it is only the self who gets to determine her own ends and moral obligations, presupposes the need for consensual relations between equals in all but those which could harm or seriously inhibit the person who is doing the choosing. And, thus, the egalitarian mind, the self-sovereign end-in-itself. For, what else could we call a being that gets to determine its own ends as the source of its own moral authority? It is the vessel that makes equality safe and tenable for the good of the being whom it energizes for its consensual moral activity in the world.

The egalitarian constitution *consists in* the governing of persons and institutions by egalitarian minds. The egalitarian constitution *consists of* all that emerges when such minds relate in community according to their own values as consensual autonomous egalitarians. I enumerate some of what it *can potentially* consist of below. But briefly, the history of modern politics has given some examples, especially in places where the external vestiges of our historic and natural consciences have fallen away. In those places the prerogatives of the alter-conscience have been allowed to take over, more or less. I enumerate their general character in a list of items below.

## **Mainlining the egalitarian mind**

The egalitarian mind remained for hundreds of years mostly the possession of an elite, who was educated to oppose traditional culture, society, and institutions. These include everyone from the nineteenth-century utilitarians to twentieth-century Marxist socialists to the latter-day linguistic deconstructionists. But with the generation of 1968, the egalitarian mind was democratized through North Atlantic lands. Today, the last generation raised without the alter-conscience as part of their identity are dying off, with their institutional and cultural influence waning every day.

The celerity of change from traditional morality to the egalitarian morality is thus increasing. This is in part why ancient social institutions that have never had substantial challenges to their identity, such as marriage, have fallen with little more than a whimper, for instance, to ‘marriage equality’. Think also of the catch-all of ‘discrimination’, with the response of ‘anti-discrimination law’. Whereas until yesterday a distinction could still be made between discrimination as a harm, with tangible effects that could be, say, enumerated in a legal brief, now the term is employed to look for ‘disparate effects’ of systemic actions that result in group-delineated differences in outcomes (inequalities). This is an attempt to eradicate inequality in principle as the original sin. If it is not yet the leading legal and cultural framework in North Atlantic lands, it is quickly set to become so.<sup>2</sup> The only way that discrimination formerly was parsed into acceptable forms of judgment and unacceptable forms of, say, racism, was with a cultural knowledge that was clear and broadly shared. Dividing up society into so many parts, and judging justice only based on fairness, ensures that terms such as ‘prejudice’ and ‘judgment’ lose their innocent meanings, and always thereafter indicate the unjust exclusion of someone from some good.

The egalitarian constitution has been with us for a long time. But now that it is nearly everywhere, its reflection is harder to see. Non-western cultures persist, and their compatriots often form permanent classes of resistance to modernization in European cities. But they do not pose serious moral threats to the egalitarian constitution, which has a blind spot to those that it believes are (historically) discriminated against. For now, those groups get a pass on the strictures of equality because of their ‘culture’ or ‘heritage’.

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<sup>2</sup> Bob Hepple, *Equality: The New Legal Framework* (2011) focusses on the English law. See chapter: 'Respect for Equal Worth, Dignity and Identity as a Fundamental Right' for the merging of these considerations of equality, autonomy (dignity), and consensualism (identity). It is in fact a misnomer to call it ‘equality law’, as it is so much more.

Eventually, however, the egalitarian constitution won't be able to tolerate permanent dissent within its realm. They too will be treated as equals and required consensually to submit to personal autonomy—to be compelled into a free community of equals.

As to the markers of the egalitarian constitution, I suggest seven chief features that emerge once the egalitarian mind becomes the *phronema* at least of the elites. These features are based on the actual political-moral life of contemporary North Atlantic nations. Another volume would need to be written that connects the egalitarian mind to the constitution that emerges from its collective activities. I have only suggested what one would look for in order to identify the egalitarian constitution 'in the wild', so to speak. As space is short more focus is on the formal and institutional elements than on the social-psychological elements of the constitution.

*In primis*: constitutions should be non-teleological. The modern state is in some ways a corporate modern person, a self-sovereign end-in-itself. But this item is about the content of actual state constitutions, which should provide for proleptic discovery of one's own ends and moral obligations, and guarantee protections and privileges only to *modern* persons, or to groups insofar as they serve the interests of such persons. Either the rights will be directly appealable to by the individual (in natural, civil, political, or human rights, and equal protection clauses), or the individual person will have the protection of a group-identity from harmful, negative, or even undesired treatment (anti-discrimination and equality laws). The former is more often expressly stated in the constitutions, which are now nearly always written. The latter emerges in the enforcement of the constitution, either by legislation to enforce its principles or by judgments of courts or ministerial administration meant to guarantee the rights enumerated in the constitution (or found in it, as the case might be with judicial review processes). In any case, the ideal is positing of (human) rights to the autonomous person that is considered to be logically prior to the state that guarantees its rights.

*Item*: The group is only the sum of its parts. As the really real substance is the individual natural person, any organization deliberately created by those persons must be presumed to be contingent and thus less real than the persons who so constituted it. Freedoms must be provided for easy exit from undesirable relations, up to and including renunciation of membership in a political community for any reason or for no particular reason at all. For, the reasons that an autonomous person might have relate to her own happiness, which only she is privy to. Laws will be made so that this freedom is

minimally disruptive or harmful to others, but whilst giving the largest berth possible to the movements of self-sovereigns.

*Item.* Happiness and deep meaning are formed from ‘within’ the self-sovereign ends-in-themselves. Public meaning and a shared moral grammar are called into question for all but the necessary things. For instance, consent—and especially the denial of consent—is still thought to be communicable between such sovereigns. But nominalism is presumed about higher orders of speech, especially about hard categories or transcendentals such as, truth, goodness, beauty, unity, happiness, and about the probable conclusions of practical reason, namely, that which is best or worst, that which is to be preferred or avoided. The result in social and political life is the removal of restrictions on all but the most extreme speech. In the more modern lands there is a fundamentalizing of free speech, not only in the institutions of government but also in social relations and also the within one’s own mind. One not only speaks with candour to the magistrate, but also to friends, to lovers, to parents, to oneself, and to God. But as the individual person is the judge of what it all ultimately *means*, this is not meant to be taken as a per se rejection of the (social) meaning of any of those relations.

*Item.* Constitutions are to be written. They can thus be interrogated by even the simplest and most disconnected persons from any historical community, or by third-parties, by international (oversight) organizations. This is meant to level the playing field by the pretence of taking the public law out of the hands of a self-selecting elite of lawyers and judges. Compare the vehemence with which attacks are made on the ‘English constitution’ (which is said to be a fiction merely because it is not written down) to the reverence given to the US Constitution.

*Item.* Private law, and particularly contract, should be the model for governing and moral governance. All lawmaking, public and private, should either directly incorporate characteristics of contractualism or indirectly justify their existence on such grounds, with equality or anti-discrimination—fairness—as arbiters of justice. Insofar as possible decision-making should be consensual in all parts of life, particularly in moral life. Except in the direst of circumstances, a military draft should be impossible in North Atlantic nations under such a constitution. All-voluntary military service is a great marker of the change from traditional to modern values. In case a draft were required, talk would then be of the benefits that one had received from the state which therefore imply an obligation to defend it. There would be little talk of any

natural obligation to *patria*. That is a model of relations to the state, but in family and personal relations, the calculation of benefits and the question of consent become more relevant than ever in the psychological and social enumeration of obligations. If you have benefited from something, such as parental care, then you might have implicitly contracted a moral obligation to care for your parents or more generally for ‘the elderly’, probably through taxation. If you promised something to another, then you might have expressly contracted a moral obligation. Thinking about moral and ethical life becomes far more procedural and legalistic than it was under non-contractarian values.

*Item.* Singular identities are suspect, because either ascribed by others or self-ascribed (presumably in bad faith). Multiple or dual citizenships, identities that bridge or participate in various social or group identities, are all encouraged. One is meant to be ‘trans’ in as many ways as possible. This again emerges from allowing one’s true self to emerge from within oneself. It also pushes toward as direct a relation as possible between the self-sovereign and the political or social sovereign. Smaller spheres of authority that make total claims on persons are obviously the first that must fall to the self-sovereigns, as they are the most limited and limiting. And since the guarantees of the rights and privileges are thought to be most secure the more universal they are, the push is toward government that is transnational or world-wide, and a common culture that is international. Neither of those categories should in any way be construed to necessitate a ‘nation’ or ‘state’. The state is no more than the sum of its parts, and the parts can depart at will. They should go where they are best served in their quest to remain ends-in-themselves.

*Item:* All groups which are not governed *internally* by the egalitarian mind must be subsumed by a group that is; or they should at least be shepherded by persons who are so governed. Usually, the state dominates these groups of family, church, voluntary or charitable organizations, granting them legitimacy, and either maintaining heavy influence by directly funding them (the European model) or by controlling their financial models through tax incentives and special charitable statuses which can be withdrawn at any time, thus rendering them unable or unlikely to persist (the Anglo-American model).

*Item:* The family is to serve as the seedbed of autonomy, and it should do nothing more or less. Of all the ancient institutions, besides maybe the university, the family has been most resilient to the caesaropapism of the

modern state. This is so even as the family is now a shell of what it formerly was. It has diminished greatly as a social and psychological form of identity. What is seen in modern constitutions is that the family is construed more and more on contractarian grounds, for the mutual benefit of the members, who can exit or be made to exit at any time if their needs are not met or if harm is brought on them. Since one is meant to be raising future self-sovereign ends-in-themselves, rather than merely one's own kids, parenting takes on a stewardship role. One is meant to raise the children only for *their* own sake, to 'bring out their best', 'help them to become happy' (meaning to discover what happiness is for themselves); one should not want them to be anything that they really do not want to be. Parenting is only necessary so long as they are particularly unacquainted with their true selves. As those selves are developing, parents remain a necessary evil. Ever since Plato philosophers have imagined that the removal of the partiality of biological parents could bring about greater *societal* happiness. The egalitarian constitution imagines that the removal of biological parents could bring about more *personal* happiness. But, the technology is simply not yet present that would allow child-rearing to be liberated from its chains to the past. It is, however, only a matter of time.

That necessarily incomplete list is merely a tasting of the egalitarian constitution's potential for institutional and social change. I would now like to illustrate how it functions by returning to the two thought experiments that I presented in this book, asking whether the ethical and moral problems within them can be satisfactorily solved merely with the values provided by the egalitarian mind, and synthesized into the egalitarian constitution. These values will be imagined to have manifested themselves in a full egalitarian constitution, the specific imaginary details of which I shall provide as needed.

### **Can it solve the thought experiments?**

A test of the viability of the egalitarian constitution is its ability to solve the ethical problems that equality or consent alone failed to solve.

### **Fairer science**

When we left Suzy the Scientist, there was some suggestion that consensualism could provide a shield for her against the moral claim that it is only fair that she shares cold fusion with all. It is true that the need for her consent could be construed to forbid any such detention, and to preclude

coercion of knowledge useful to the state in normal circumstances. However, this would assume that the state understands knowledge of cold fusion to be more like a piece of private property, which it can take an interest in but not generally appropriate without the permission of the owner; and not something like food commodities, which might be owned by this or that person, but in case of need, can be appropriated nearly at will by the state. The example of farmers threatening to burn all their crop is one such example. No doctrine of consensualism would save such farmers from being deprived of their grain. Likewise, in the case of famine.

The moral question again returns to, and turns on, the goods in question, rather than the person whose consent must be sought. While consensualism might be able to provide a positive model of acquiring moral and legal obligations under normal or common circumstances, it is not the shield that is needed to protect Suzy from being held hostage for her knowledge.

But what if we added to her moral armour a Rousseauian doctrine of inviolable personal autonomy. This, too, would now be assumed to be taken up in the laws and institutions of the state. Suzy is now a self-sovereign end-in-herself in a community in which all other persons are similarly situated. The state is no more than the sum of these parts, meant to negotiate their peaceful coexistence and quests for individual happiness. It will be characterized at least by the items listed above as part of the egalitarian constitution. In such a moral-political world, eventually the will of the state to push against her would be met by the rights and guarantees of equal treatment and non-discrimination (enumerated in so many rights and their judicial outcomes), that would in principle preclude her detention without due process. Unlike under conditions of mere equality, or equality plus consensualism, the state could not assume it was seeking the happiness of each person by extracting from Suzy her rumoured cold fusion formulas. And there again is another aspect: Suzy's and each other citizen's highest or important ends are only known to them in advance of asking them. IT is the same with the cold fusion formulas, which she might not even have or be able to produce. Again, only she could reveal them to society or the state. For they too are protected in the same inner place as her desired ends. She had nether affirmed nor denied their existence when she went on hunger strike; she merely opposed being forced to produce something on equalitarian principles and against her will.

The state would be stuck in a position in which it had to bargain with her in the hopes that she would find it in her heart to attempt at the formulas. This might include incentives regarding her intellectual property or wealth, or other honours or honorifics that it could confer. But it is clear that a state that is constitutionally freed from agreed-upon ends, and thus had no common good greater than the collected goods of the persons who constitute it, cannot engage in coercive means to arbitrary ends. If the law was bent so as to permit this form of personal autonomy, it is unlikely that the public would tolerate being told at once that they are free to determine their own ends and that if such ends don't line up to the state's predetermined means to particular ends, they might be imprisoned.

### **Group autonomy**

*iNo* presents two problems that the egalitarian constitution emerged in order to combat: heteronomous determination of ends by a self-appointed group, and the persistence of non-consensual, ascriptive moral obligations in important areas of life. Both of these non-modern practices preclude universal equality in all of its normal senses. It is true that all of the members of *iNo* receive the same treatment, *mutatis mutandis* for the age or capacity of the person. But no member is provisioned to make a life outside of the community should that be what she wishes. In a way the problem is made more acute for ex-members of *iNo*, as the egalitarian constitution is not designed to establish ends for anyone. Should a person arrive at the proverbial doorstep of the egalitarian constitution without a sense of needing to choose his own ends and with no real means of determining licit means for achieving ends that are chosen, then there is not much help that can be provided. For this practical reason, at least, the egalitarian constitution must stand against any group which leaves its members vulnerable to being unprepared to be ordinary adult human beings, who by definition are self-sovereign ends-in-themselves.

If personal autonomy were not the value ultimately securing the egalitarian impulse at the core of the egalitarian mind, then consent could render cults like *iNo* completely acceptable. Imagine especially if everyone were part of such a cult, say if the state itself became such a cult. Nothing would exclude that end from being chosen as a fitting good that all should be encouraged to participate in, perhaps excluding those who wished to opt out. Again, it is personal autonomy that provides the inviolable centre that is able

to ground the individualism necessary for a sustainable equality, exercised in consensuality.

Thus, the egalitarian constitution seems to have solved the problems that plagued equality alone, and those that plagued equality plus consent. The secret lies in the open ends, which are left to each person to self-determine, plus the character of the ‘inner life’ of the person, which can even remain unknown to herself for a time. These together seem to allow for enough certainty about who should be deciding, whilst permitting protections in law and society. Those protections would limit personal choices to those that allow personal autonomy to persist, unmolested either by other autonomous persons or by the naked power of (one’s own) alter-conscience. By promoting the egalitarian mind as the psychological model of its ‘person of law’ (the ideal person for whom the legal order is made), the egalitarian constitution skirts around the major pitfalls of moral life for individual persons living outside of the protections of traditional communities. It is therefore no wonder that this mind, along with its attendant constitution, has become the compelling form of cosmopolitan cultural identity amongst the elite of the North Atlantic nations, as well as that of members of traditional cultures who aspire to join the ranks of our cosmopolitans.

### **Does the centre hold?**

Shouldn’t we all be egalitarians, then? It is so good at solving ethical problems. It serves as a compelling metaphysical dream of the world for the elite of the most successful lands that the world has ever known. On the first account, we must remember the problems the egalitarian constitution solves are often problems that are equally solvable under various traditional forms of moral reasoning. It is not as if Thomists, Aristotelians, or indeed Confucian thinkers do not have viable answers to these moral quandaries. However, the egalitarian constitution itself is an answer to a deeper problem created when various and sundry traditional moral values and virtues were disposed of, ostensibly with ‘equality’ or ‘freedom’ left standing alone in the ruins, where they claimed to be all that was needed.

Taking the second point on the unprecedented worldly success of modern lands, I respond that success means *something*, but unless it is connected back to the good and the true by some other mean than merely equating it with the good and true—this is the utilitarian fallacy—then it is worse still than correlation posing as causality. The successful happen to have

modern values as their cultural identity. How those values relate to their success is much more difficult to say with any certainty. Claiming that there is no relation would be fatuous, as would be the ascription of all the success to a few moral ideals put into practice.

Another way to think about success is what could be called the ‘evolutionary approach’. Has something survived, or lasted, because it is the most fit? And might it continue, or as one scholar has put it: ‘Is the Autonomous Person of European Modernity a Sustainable Model of Human Personhood?’<sup>3</sup> This again is a way to talk about the matter in ostensibly neutral terms. But the fact of persisting tells us little about whether a thing *should* persist if there were an opportunity for it not to persist. We can choose to terminate that which is very sustainable because we find it harmful. Very successful diseases might well be better off gone, at least from the human or humane perspectives. And, so, a different question is more to the point: Can the egalitarian constitution justify itself? If it can do that, we might have a moral reason to emblazon it on our lives.

So far in this book I have followed the phenomenological lead, tracking equality through consensualism to autonomy. For the constitution to work, the reverse must also be true, namely, that: ‘egalitarian’ means autonomy of a certain kind; those who are autonomous are consensual; and those who are consensual are equal. This seems also to track. Although the work in tracking it has not to my knowledge yet been done. Be that as it may, phenomenological analysis does not dig into the centre of the claim about personal autonomy, on which the egalitarian constitution ultimately rests. The anthropological centre of the egalitarian mind is the ‘end-in-itself’, which is only knowable in any sustained way to itself. There is at heart a faith in autonomy that autonomy itself cannot justify.

Here is the epistemological problem of self-knowledge only ever being knowable by one person, like a private language. And, then, there is what could be called an ‘optimism bias’ involved in building social life on full faith in the beneficent power of so many selves, self-determining their ends. For this, we must imagine that most selves are more like harmless Suzy the Scientist than wicked Stalin the Socialist. We must deny original sin both *a priori* and *a posteriori*, in perpetual trust that wickedness only emerges when

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<sup>3</sup> This is the question of Michael Welker in his essay of the same title in *Human Person in Science and Theology* (2000) 95ff. He, however, identifies that person with Kantian autonomy, and in that only asks a question relevant to ethicists who are blind enough to believe that Kantian autonomy is present much more broadly than in the ideal ethical persons of their thought experiments.

impediments are placed in the way of full self-realization, that ‘man is good, society makes him evil’. The self is a sort of known unknown in Rumsfeldian epistemology. To all others, it is an unknown unknowable, which we must presume is able to be known by itself; we trust the good character of it, nonetheless.

But there is a deeper metaphysical problem: What if the centre does not hold because there is no centre? I am not saying that there is no centre. But I am challenging the defenders of modern values to demonstrate that it is there, and that it exists as they describe it. The metaphysical position of the self as the centre of modern values assumes that our phenomenological experience of ourselves is translatable into a metaphysical certainty. This would make it unlike any other form of experience permissible in modern secular empiricism. We are meant to believe that a deep, never-fully-known, and perhaps never-completely-knowable being lives within each of us, and has always been there since our being began, before we were even self-aware, which because of its nature deserves to be put at the centre of moral, political, social, psychological, and indeed religious life. We are meant to believe this in a world that is otherwise said to be devoid of spirit and spiritual substance, and which is merely material—in which God is dead. Listen to the author of the sacred text on the prerogatives of personal autonomy. Try to reconcile it with the tale that evolutionary science began to tell us in the very same year about the species life and its true needs. Mill tells us in the introduction to *On Liberty* (1859):

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. ... In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.

Mill cleverly posits this without reference to anything existing between the ears of the sovereign, who has no heart, soul, inner desires, secret envies, love, resentment, memories...in short, no reason whatsoever for any action in the world that Mill wants him to be completely at liberty to commit, so long as he harms no other. When it is not ignored as in Mill, the kind of intellectual work that needs to be done to demonstrate the reality of even a thin version of Rousseau's or Augustine's understanding of the reality and dignity of our inner life, very quickly either ascends to theology or descends to personal anecdote.

In short, the egalitarian constitution finds a solution for the problem that its central ideal of universal equality perpetually creates. It does so by positing a sacred place inside each person, the existence of which it does not even attempt to defend. One can believe that the centre is there and that it also holds. But it would be honest to confess that such belief is an article of faith primarily sustained by one's own experience, and untranslatable between the phenomenological to the metaphysical. It is unable to be communicated from person to person in any but the most meagre representations—more like one of Picasso's nudes than a Pre-Raphaelite.

Such candour about the moral source of the egalitarian mind might introduce a modicum of intellectual modesty into the defence of the egalitarian mind, and save us from the tyranny of autonomy in many areas of life.<sup>4</sup> Its centre is shrouded in mystery, in fact, in as many mysteries as there are persons. Modesty would help especially when the imperial sentiments kick in, and ever more of the world must be 'modernized'. The party of equality, consent, and autonomy need not repeat the mistakes that the party of God, country, and family made when they too were immodestly confident and secure in their moral values and virtues. Nor need they repeat the mistakes of the earlier party of modern values, who made heads roll to chants of 'fraternity, liberty, and equality'.

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<sup>4</sup> Charles Foster argues that western medicine and large areas of law are already given over to a consensualist doctrine of autonomy. *Choosing Life, Choosing Death: The Tyranny of Autonomy in Medical Ethics and Law* (2009).

## Summary

### **The Egalitarian Constitution: Modern identity in three moral values**

This book presents a conception of modern personal identity in terms of consent, equality, and autonomy. For modern persons, these concepts function as moral values, evaluations, and virtues. Taken together they form a cultural identity that I refer to simply as ‘modern’. This cultural identity bridges the personal life of individual human persons and the institutional life of corporate persons. The shared sense of ‘modern’, with consent, equality, and autonomy as core moral values and chief virtues, forms and informs the (moral) governance and government of modern selves, modern corporations, and modern societies. One can be a ‘modern woman’ or a ‘modern man’, but one can also be a member of a ‘modern state’. There are ‘modern corporations’; and one can join a ‘modern church’ or a ‘modern party’ (*cf. Nowoczesna* in Poland); one might be subject to ‘modern law’; and one could participate in ‘modern marriage’. Each example shares the same sense of ‘modern’. In this way, modern cultural identity is a ‘constitution’ of a particular kind. I call it ‘the egalitarian constitution’. It is the contemporary instance of the soul-state analogy, an idea originally popularized by Plato.

Within this constitutional order, when we say that a legal system is ‘medieval’, or when we say that a man is ‘quite modern’, we are implicitly appealing to the presence or deficiency of one or more of the three moral values of consent, equality, and autonomy. We are not merely saying something is ‘not up to date’. ‘Modern’ is normative, rather than merely descriptive. We are judging something to be bad or good based largely on these values. And we generally expect modern persons, natural or corporate, to act and believe in certain ways encompassed in this meaning of ‘modern’. We expect them to adhere to the egalitarian constitution. The dispositions for action and statements of belief inherent in this constitution are again meant to be based largely on the chief moral values, but now recognized, respectively, as virtues (with opposing vices of excess and deficiency), and as dogmas (flanked by heresies on all sides, or by taboos, depending on how formally the content is rendered).

Because of the priority of equality amongst the values, the heresies, taboos, and vices that are most readily condemned in the egalitarian constitution are those set against equality. There is a conceptual reason for this specific to the conceptual hollowness of 'equality'. 'Equality' carries with it no native content besides the mathematical relation of sameness. The question is always 'Equality of what?' Because it is indexed to whichever content is employed, it is also adaptable to any circumstance. So, it is easy to appeal to. But the modern ease of appealing first to equality is also owing to the primary need of self-directed beings: negative freedom. Any given inequality might curb or threaten this freedom. Since equality is fundamentally an either/or relation that is adaptable to any use, it becomes the best shield against undesirable treatment, which can easily – and often rightly – be called 'inequality'. Moderns have thus given it pride of place in their moral lives. They have even situated it in competition to the traditional conscience, as their alter-conscience.

The ideal modern person must have a well-developed alter-conscience. The alter-conscience judges the merits of human action. It also judges the conclusions of traditional conscience. The modern alter-conscience is hypersensitive to inequality. If it knows only one thing, it is that the Right is synonymous with equality. Equality in this case chiefly means the proper ordering of human relations so as to avoid inequality in the distribution of purported goods. The common word for this is 'fairness'. In this tradition, as Rawls has famously taught, justice is the highest virtue of social institutions, and the Good of human relations. Justice is understood to be fairness. Thus, it follows that the Good is also synonymous with equality. The moral experience of being modern involves first accepting this as true, and then taking this knowledge out into the world. One must then use the knowledge to remove impediments to equality, to usher in a community of equals.

However, equality itself is too single-minded. If attempted alone, it risks destroying all for the sake of its own purity. For, equality must be total in order to be what it is. And things can never become equal enough. There is no such thing as 'partial equality'. The alter-conscience never rests in partiality. Thus, to preserve the modern person from her own moral exactness, the alter-conscience must be made to operate within a broader consideration of self-directedness rather than being directed by the dictates of the alter-conscience. It must be limited by persons for whom equality is the Right and the Good, but whose ends have not otherwise been chosen for

them. Such persons cannot merely be commanded what to do, not even for the sake of universal equality. Rather, they must be asked, in some way consenting to the rule set over them. Consensual relations must replace the alter-consciousness's temptation to command relations. They must also replace inherited traditions, which either impose obligations or ascribe identities, nearly all of which are inegalitarian.

Yet, all sorts of ill treatment and wickedness can be consented to. This can make a mockery even of the most basic sense of procedural equality. Voluntary slavery is a stark example. Onerous interest rates on credit card debt is a quotidian one. But consensualism creates problems even when coupled with the more robust equality that is necessary for the preservation of the person as a consensual equal living amongst equals. For, humans are routinely bad at choosing what is in their own self-interest. Under conditions of basic equality, they might even choose something deleteriously wicked, a danger which is redoubled because choice is now open to all, at least in principle. Some sort of check or brake is needed so that the Right and the Good of equality are not betrayed after each person is given both a moral vote in, and check on, society.

Once the need of side constraints and limitations on the consensual powers of equals is accepted, the search is on for a standard that, equally, serves the manifold interests of actual persons. There is nothing *in the world* that could serve this role. But neither can it be an otherworldly being or standard: God, if he still exists for moderns has become exiguous to the metaphysics of morals at least since Kant. After a Romantic turn, it is the autonomous centre, which moderns say is 'within' each person, that becomes the standard. It comes to serve as the inviolable (but not infallible) referee, judge, and legislator.

This autonomous self, understood in a register that is part Augustinian and part Rousseauian, will become responsible for *contracting* a world that is as acceptable as possible to the alter-conscience, while preserving the person both from equality's exacting standard and from consent's clumsy (and at times dangerous) attempts at self-regulation. Each unique self will be a source of the Good and thereby the Right in social life. Because each autonomous person is equal, and because the desires of such persons are not known in advance of asking them, imposition of some purported social or personal good, even for the sake of 'greater equality', is precluded. There is now a counterweight to equality in the doctrine of autonomy. Similarly, because the

consenting person can sometimes even be (temporarily) deceived as to who her real self is, equal protection of autonomous persons must also include limitations on what can be consented to, when, and by whom.

I call this broader framework of autonomy controlling the equality impulse through consensualism the ‘egalitarian mind’. The modern person acquires the ‘egalitarian mind’ by working out acceptable approximates of equality in the world in place of the total equality that the alter-conscience demands. The egalitarian mind is, then, the mental habit that seeks to preserve conditions and relations that approach universal equality, limited only by consensual relations of autonomous persons. When it is shared by many persons in an ethical-political-moral order – namely, in society – it can be understood to be a constitution: thus, the ‘egalitarian constitution’.

In the four parts of this book, I describe, explain, and interpret what it is like to be ‘modern’. The answer, the egalitarian constitution, includes within it the egalitarian mind, and within that mind the alter-conscience. This constitution results in the enforcement of a strong moral position by which the world is made safe for consensual autonomous egalitarians.

In the descriptive and explanatory sections, I compare examples from modern literature and scholarship with those which came before or are outside of modernity’s discourse: e.g., the pre-modern (‘ancient’) or non-modern. I appeal particularly to virtues and values that had currency among the ancient or non-modern, which also distinguish the ancient/non-modern from the modern. Thus, I oppose ancient participative heteronomy to modern personal autonomy; proportional equality to universal equality; and inherited (namely: ascriptive) moral obligations to consensual moral obligations.

Ultimately, in the final interpretive section, I suggest that modern personhood – as formed into the egalitarian mind – gives little evidence to its critics that its autonomous centre exists *substantially*, and thus that it should be given metaphysical pride of place in a constitution. An autonomous self existing as the only metaphysically real being in the world – or the only one that we should pay cognizance to – has been assumed to be self-evident without being defended as true.

A stronger philosophical anthropology would be needed to sustain the Good in modern moral values, and thus also to order the Right of the egalitarian

constitution. Constitutions are carried more in the hearts than in the laws and institutions, as Rousseau tells us. Those hearts must be nested within *personae* that subsist in a world of more than mere metaphysical and methodological individualisms. I point to the need for metaphysical anchors, outside of the life of the autonomous person, necessary to make anything like autonomy possible. Said differently: When we answer the question: *Equality of what?*, the answer must be first to reframe the question as: *Equality of whom?*. Then the answer needs to be a robust *doctrine* of the person, one that does not rely merely on the *dogma* that individual persons are very important indeed, in fact, the only important thing in the world.

## Summary (Dutch)

### De egalitaire constitutie: moderne identiteit in drie morele waarden

In dit boek wil ik uiteenzetten wat wij eigenlijk bedoelen wanneer wij iets of iemand ‘modern’ noemen.<sup>1</sup> Wanneer wij het hebben over ‘modern’ maken wij, impliciet of expliciet, in ieder geval gebruik van één van de volgende drie concepten: instemming, gelijkheid en autonomie. Deze concepten functioneren voor de moderne mens als morele waarde, als beoordelingscriterium, en als deugd. Gezamenlijk vormen zij een culturele identiteit waar ik eenvoudigweg naar zal verwijzen als ‘modern’. Deze identiteit is zowel van toepassing op het individuele als op het collectieve niveau: niet alleen de natuurlijke persoon, maar ook de rechtspersoon kan een ‘moderne’ culturele identiteit hebben. Iemand kan een ‘moderne vrouw’ zijn of een ‘moderne man’, maar iemand kan ook onderdeel uitmaken van een ‘modern land’. Er zijn ‘moderne bedrijven’, men kan lid worden van een ‘moderne kerk’ of van een moderne partij (bijvoorbeeld van *Nowoczesna* in Polen); iemand kan onderworpen zijn aan ‘moderne wetgeving’; en iemand kan een ‘modern huwelijk’ hebben. Wat ik wil laten zien, is niet alleen dat in ieder van deze voorbeelden het woord ‘modern’ dezelfde morele betekenis heeft, maar dat daarmee meteen ook de moderne identiteit, die instemming, gelijkheid en autonomie als morele kernwaarden en als kardinale deugden kent, ons denken en handelen diepgaand bepaalt. Dit maakt dat dit begrip ‘modern’ belangrijk is wanneer wij willen begrijpen hoe moderne zelve,

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<sup>1</sup> My gratitude to Yoram Stein for producing this translation; and to Maarten Neuteboom for editing it.

moderne corporaties, en moderne samenlevingen worden geregeerd en bestuurd. Het is om deze reden dat de moderne culturele identiteit te beschouwen is als een bepaald soort ‘constitutie’. Ik noem deze ‘de egalitaire constitutie’. Deze constitutie is de wijze waarop het door Plato populair geworden idee van een ziel-staat analogie zich manifesteert in de hedendaagse wereld.

Binnen deze moderne constitutionele orde is het zo dat, wanneer wij stellen dat een bepaald juridisch systeem ‘middeleeuws’ is, of wanneer wij opmerken dat iemand ‘behoorlijk modern’ is, wij daarmee impliciet duidelijk maken dat de drie morele waarden van instemming, gelijkheid en autonomie (geheel of gedeeltelijk) afwezig of juist aanwezig zijn. Wij zeggen daarmee niet alleen maar dat iets niet de nieuwste versie van iets is. ‘Modern’ wordt op een normatieve, niet slechts descriptieve manier gebruikt. Of iets als goed of als slecht wordt beoordeeld, hangt grotendeels af van deze waarden. Over het algemeen verwachten we ook van moderne personen - en dat geldt dus zowel voor natuurlijke personen als voor rechtspersonen – dat zij handelen en denken op een wijze die in overeenstemming is met deze betekenis van ‘modern’. Wij verwachten dat zij zich conformeren aan de egalitaire constitutie. De gewoontes die deze constitutie voorschrijft, zowel met betrekking tot ons handelen, als met betrekking tot onze geloofsovertuigingen, zijn wederom grotendeels te herleiden tot de belangrijkste morele waarden, die ons dwingend worden voorgeschreven als deugden (of ondeugden) of als dogma’s (of als ketterse opvattingen en taboes).

Vanwege de prioriteit die de waarde van de gelijkheid geniet boven de andere waarden, worden in de egalitaire constitutie die ketterijen, taboes en ondeugden het krachtigst veroordeeld die ingaan tegen het principe van gelijkheid. Dit hangt nauw samen met de conceptuele leegte van het begrip ‘gelijkheid’. Het gelijkheidsidee kan in oneindig verschillende contexten worden ingezet, want het heeft uiteindelijk geen andere specifieke inhoud dan de mathematische relatie van gelijkheid; de vraag is dan ook altijd: gelijkheid van wat? Het is daarom eenvoudig om vrijwel iedere situatie te beoordelen in termen van gelijkheid en ongelijkheid. Behalve dat de gelijkheid als beoordelingscriterium bijna overal voor is te gebruiken, voorziet het ook in de bevrediging van een primaire behoefte van zichzelf sturende wezens: de behoefte aan negatieve vrijheid. Iedere bestaande ongelijkheid zou deze vrijheid kunnen belemmeren of bedreigen. Gelijkheid fungeert als

bescherming tegen ongewenste behandelingen, die alleen mogelijk worden wanneer er sprake is van ongelijkheid. Moderne mensen hebben ook om die reden de gelijkheid een ereplaats toegekend in hun morele levens, zodat de gelijkheid nu zelfs concurreert met, en een alternatief wordt voor, het traditionele geweten. Ik noem dit nieuwe geweten het ‘alter-geweten’ van de moderne mens.

De ideale moderne persoon heeft zijn alter-geweten goed ontwikkeld. Het alter-geweten beoordeelt menselijke handelingen op hun merites. Het kijkt ook kritisch naar de conclusies van het traditionele geweten. Het moderne alternatieve geweten is hypersensitief met betrekking tot ongelijkheid. Het weet slechts een ding, en dat is dat het juiste synoniem is aan gelijkheid. Gelijkheid betekent hier hoofdzakelijk een juiste ordening van de menselijke verhoudingen om ongelijkheid te vermijden in de verdeling van wat als goed wordt beschouwd. Binnen het denken van Rawls wordt deze ordening op de noemer van ‘billijkheid’ (*‘fairness’*) gebracht. Zoals Rawls stelt is gerechtigheid de hoogste deugd binnen menselijke instituties en het Goede voor de mens. Gerechtigheid wordt daarbinnen dus begrepen als billijkheid (*‘fairness’*) en daaruit volgt dat het Goede een synoniem is geworden voor gelijkheid. De morele ervaring van modern zijn, betekent allereerst dit als waar aanvaarden, om dan vervolgens deze kennis de wereld in te brengen door datgene wat de gelijkheid in de weg staat te verwijderen, met als doel om een samenleving van gelijken te scheppen.

Wanneer echter uitsluitend de gelijkheid wordt nagestreefd, riskeert het alles te vernietigen in naam van zijn eigen zuiverheid. Want gelijkheid moet totaal zijn om te kunnen zijn wat het is. En dingen kunnen nooit gelijk genoeg worden. Er is niet zoiets als ‘gedeeltelijke gelijkheid’. Het alter-geweten berust nooit in het bereiken van slechts een deel van het doel. Om dus de moderne persoon te redden van zijn eigen morele perfectionisme, moet het alter-geweten rekening houden met andere overwegingen in het besturen van zichzelf dan uitsluitend het dictaat van de gelijkheid. Het alter-geweten moet worden ingetoomd door mensen die weliswaar geloven dat gelijkheid het juiste en het goede is, maar die dat uitsluitend kunnen beschouwen als iets goeds wanneer deze doeleinden ook door henzelf gekozen zijn. Het goede mag niet gecommandeerd worden, zelfs niet als het goede het nobele doel dient van de universele gelijkheid. Om echt goed te zijn, is instemming noodzakelijk. De eis dat mensen instemming moeten verlenen, komt daarmee in de plaats van de verleiding van het alter-geweten om mensen simpelweg tot

gelijkheid te dwingen. Deze eis komt tevens in de plaats van de overgeërfde tradities, die ons verplichtingen en identiteiten opleggen, zonder dat ons gevraagd is om onze instemming en die vrijwel altijd niet egalitair zijn.

Men kan echter ook instemming verlenen aan vormen van mishandeling en kwaadaardigheid, en het zijn dit soort gevallen die ertoe kunnen leiden dat mensen zelfs de meest basale notie van procedurele gelijkheid niet meer helemaal serieus kunnen nemen. Vrijwillige slavernij is een sterk voorbeeld, maar komt vrijwel nooit voor. Het rekenen van absurde rentetarieven voor het gebruik van creditcards is daarentegen een veel voorkomend voorbeeld. Maar consensualisme – ofwel de gedachte dat het goede gelijkstaat aan datgene waar mensen vrijwillig mee instemmen – brengt problemen met zich, zelfs wanneer zij gekoppeld wordt aan de meer robuuste gelijkheid die nodig is voor het behoud van de persoon als een instemming verlenende gelijke die leeft tussen zijn gelijken. Want mensen zijn notoir slecht in het bepalen wat echt in hun eigenbelang is. Zelfs in een situatie van basale gelijkheid, zouden zij zeer schadelijke keuzes kunnen maken, een gevaar dat nog veel groter is in een wereld, waarin in principe iedereen zelf mag kiezen. Vandaar dat de behoefte ontstaat aan iets van controle of aan een soort rem, zodat het juiste en het goede van de gelijkheid niet verraden worden op het moment dat iedere persoon de macht heeft gekregen om zijn morele instemming te geven of juist te onthouden aan iets.

Wanneer men eenmaal heeft ingezien dat het noodzakelijk is om de instemmende macht van gelijken in te perken en te limiteren, is het zaak een standaard te vinden die alle tegenstrijdige belangen van de verschillende actoren in gelijke mate dient. Er bestaat niets *in de wereld* dat deze rol kan vervullen. Maar evenmin kan het een boven of buiten de wereld staande entiteit of standaard zijn: God, als hij nog bestaat voor de modernen, heeft sinds Kant geen rol meer te vervullen in de metafysica van de moraal. Na de Romantische wending in de achttiende eeuw is het autonome centrum, waarvan de modernen stellen dat het ‘in’ ieder persoon zit, de nieuwe standaard geworden die dient als de onaanvechtbare (maar niet onfeilbare) bestuurder, rechter en wetgever.

Dit autonome zelf – dat deels omschreven kan worden in Augustiniaanse, deels in Rousseauiaanse termen - wordt verantwoordelijk gehouden voor het scheppen van een wereld door middel van het *afsluiten van bindende contracten* met anderen. Deze wereld moet zo acceptabel mogelijk zijn voor het altergeweten, terwijl deze tegelijkertijd de persoon moet redden voor zowel een al

te veeleisende gelijkheid, als voor de onhandige (en soms zelfs gevaarlijke) pogingen van het consensualisme om het zelf te regeren. De bron van het goede en de bron van het juiste in het sociale leven komt voort uit ieder van die unieke zelden. Omdat ieder autonoom persoon gelijk is, en omdat de verlangens van zulke personen enkel bekend worden nadat de persoon in kwestie ernaar gevraagd is, is het uitgesloten dat een sociaal of persoonlijk goed aan een persoon kan worden opgedrongen, zelfs als dit gebeurt in naam van de ‘grotere gelijkheid’. Aan de doctrine van de gelijkheid wordt nu tegenwicht gegeven door de doctrine van de autonomie. Gelijke bescherming van autonome personen vereist op soortgelijke wijze dat er grenzen moeten komen aan waarmee, en door wie, kan worden ingestemd, omdat de instemmende persoon het soms (tijdelijk) bij het verkeerde eind kan hebben met betrekking tot wat zijn echte zelf is.

Ik noem deze constellatie waarin de autonomie de impuls naar gelijkheid moet controleren door middel van het consensualisme de ‘egalitaire geest’. De moderne persoon verkrijgt de ‘egalitaire geest’ doordat deze meer acceptabele benaderingen van gelijkheid gaat uitwerken die in de plaats moeten komen van de totale gelijkheid die het alter-geweten vereist. De egalitaire geest is dan de geesteshouding een stand van zaken na te streven die zo dicht mogelijk de universele gelijkheid nadert, met alleen die beperking dat zij instemming behoeven van autonome personen. Als deze geest gedeeld wordt door veel personen in een ethisch-politiek-morele orde – namelijk in een samenleving – kan deze begrepen worden als een constitutie, vandaar: de ‘egalitaire constitutie’.

In de vier delen van dit boek beschrijf, verklaar en interpreteer ik wat het betekent om modern te zijn. Het antwoord, de egalitaire constitutie, draagt de egalitaire geest in zich, en die geest bevat op zijn beurt het alter-geweten. Deze constitutie resulteert in een zeer krachtige morele stellingname die aan iedereen wordt opgelegd en een wereld moet scheppen van en voor consensualistische, autonome gelijkheidsdenkers.

In de beschrijvende en verklarende delen van dit boek vergelijk ik voorbeelden uit de moderne literatuur met voorbeelden uit wat voorafgaand en buiten het discours van de moderniteit gangbaar was. Zo besteed ik bijzondere aandacht aan de deugden en waarden die domineerden onder de antieken en de niet-modernen, zodat het antieke/niet-moderne van het moderne onderscheiden kan worden. Op deze wijze contrasteer ik de antieke deelnemende heteronomie met de moderne persoonlijke autonomie, de

proportionele gelijkheid met de absolute gelijkheid, en de geërfde (namelijk voorgeschreven) morele verplichtingen met consensualistische morele verplichtingen.

Uiteindelijk, zo stel ik in het laatste interpretatieve deel, kan het een moderne persoon zijn, gevormd door de egalitaire geest, niet goed verdedigd worden tegen critici die stellen dat het autonoom centrum *in substantiële zin* niet bestaat. En als het niet bestaat, waarom zou het dan de metafysische hoofdrol mogen vervullen in de egalitaire constitutie? Het bestaan van een autonoom zelf – als het enige wezen dat *zeker* bestaat, of als het enige wezen waar wij zekere kennis van kunnen hebben – wordt als vanzelfsprekend geponed, zonder dat het echt wordt beargumenteerd.

Een meer overtuigende wijsgerige antropologie is daarom nodig om het goede in moderne waarden te behouden, en daarmee ook het juiste aan te tonen van de egalitaire constitutie. Volgens Rousseau worden constituties beter bewaard in de harten van de mensen dan in de wetten en de instituties. Deze harten moeten huizen in *personae* die bestaan in een wereld die meer kent dan slechts metafysisch en methodologisch individualisme. Ik wijs op de behoefte aan metafysische ankers, buiten het leven van de autonome persoon, die noodzakelijk zijn om zoiets als autonomie überhaupt mogelijk te maken. Anders gezegd, wanneer we de vraag beantwoorden: ‘gelijkheid van wat?’, moet de vraag allereerst worden geherformuleerd als: ‘gelijkheid voor wie?’. Want dan moet het antwoord de vorm aannemen van een solide *leerstuk* van de persoon, één dat niet enkel gebaseerd is op het dogma dat individuele personen inderdaad heel belangrijk zijn, ja zelfs het enige belangrijke zijn in de hele wereld.

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## Curriculum Vitae

Jonathan Price (New York, 1981) is a writer, philosopher, and jurist. Mr Price is visiting researcher in philosophy of law at Leiden Law School at Leiden University, where he was formerly PhD Fellow and Lecturer. Both positions were held at the Institute for the Interdisciplinary Study of the Law. Mr Price has studied at Dickinson College (Pennsylvania, USA), at Leiden University, and at Blackfriars Hall and subsequently at Oriel College, University of Oxford. Mr Price is Editor of the peer-reviewed journal *Politics & Poetics* and Founding Editor of the literary journal the *Clarion Review*. At the Leiden Law School, he organizes the Leiden-Oxford Exchange for master's students and faculty members of Legal Philosophy and Theory. He is also faculty advisor for Justus Lipsius, the student association for legal philosophy. Since 2011 he has been Tutor and sometime Lecturer in philosophy and jurisprudence at Blackfriars, University of Oxford.



