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THE SOCIAL CONTRACT TRADITION:  
PATRIARCHY, ARTIFICE, AND REASON

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THE SOCIAL CONTRACT TRADITION: PATRIARCHY, ARTIFICE, AND REASON

By

Stevens Frederick Wandmacher

A DISSERTATION

Submitted to  
Michigan State University  
in partial fulfillment of the requirements  
for the degree of

DOCTOR OF PHILOSOPHY

Department of Philosophy

2003



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## ABSTRACT

### THE SOCIAL CONTRACT TRADITION: PATRIARCHY, ARTIFICE, AND REASON

By

Stevens Frederick Wandmacher

Some feminists argue that social contract theory is inherently patriarchal, meaning that no version of the social contract can fail to subordinate women. My thesis is this conclusion is mistaken. I begin my argument by developing a concept of the social contract based upon an analysis of the social contract theories of Hobbes, Locke, Rousseau, Kant, and Rawls. After establishing the concept of the social contract, I use the idea of social artifice to counter certain common objections to social contract theory. In the second stage of my argument I develop a feminist argument, the dominance approach, which holds that the reliance upon traditional conceptions of universal reason is the source of the patriarchal element in abstract individualism and the public/ private distinction, and thus in social contract theory. I then examine the idea of social reason, and offer it as a substitute for the patriarchal universal reason. Social reason avoids the patriarchal aspects of traditional universal reason while still permitting the ideas of individualism and the public/ private distinction to function within the concept of the social contract. My final remarks include an examination of how the new ideas of social artifice and social reason work within the concept of the social contract. I conclude that since the concept of the social contract is not necessarily patriarchal, not every conception of the social contract is patriarchal, and thus it is false that social contract theory is inherently patriarchal.

To Vikki

## ACKNOWLEDGMENTS

I benefited from the assistance of many people during the writing of this dissertation, and I will take this opportunity to recognize them. The chair of my committee, Dr. Stephen Esquith, gave me invaluable help in matters concerning how to prepare and write a dissertation, advice on avenues to research, and in developing and sharpening my arguments. The contributions and questions of the rest of my committee, Dr. Bruce Miller, Dr. Bill Lawson, and Dr. Lisa Schwartzman, as well as those from my external reader, Dr. Stephen Arch, were invaluable in developing and refining this dissertation. I am indebted to Dr. Martin Benjamin for the many discussions we had concerning other topics that directly influenced my views as presented here. I also would like to thank Dr. Chuck Dunlop of the University of Michigan-Flint and Dr. Richard Hall of Michigan State University for their generous gifts of time and advice. Mrs. Sue Fabbro gave me timely help with the format. My wife, Vikki, and children, Rachel and Lydia, gave me the time to do my work, as well as their unending support. Finally, my deepest thanks go to Caralyn Tremonti, whose sharp eye and careful reading of all my drafts caught numerous errors and helped me clarify my writing. The mistakes that remain are mine alone.

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## INTRODUCTION

The social contract model uses promises or agreements (actual or hypothetical) as a starting point for our discussions of political obligation, justice, and legitimacy of state coercion. These agreements are the way free and equal people can forge binding political ties. Perhaps the most appealing aspect of social contract theory is the sense of people controlling their obligations and choices. It is much easier to live under restrictions of one's own choosing than under limits imposed upon one by the powerful. Social contract theory describes how the political obligations one has, the limits of state authority, and the requirements of justice can all be understood in terms of contracts that rational individuals would, could, should or did make.

The social contract theories found in the canon of western philosophy vary in a number of respects. These differences include how the pre-political condition is described, assumptions about human nature and psychology, and how reason is to be conceived. The different ends to which social contract theories are put are another way to indicate the variations found among different social contract theories. Some are justifications of specific political arrangements. Some seek to explain the source of obligation to the state. Others are attempts to expose the foundations of justice. Still others seek to establish the limits of state authority. In many cases, a particular theory aims at more than one of these ends. Despite this diversity, an identifiable tradition of social contract theory has developed and consequently attracted its share of critics.

Two of the most influential anti-contractarians are David Hume and G.W.F. Hegel. In brief, Hume argues against the historical contract (the claim that a contract actually was

made at some point in the past) and concludes from the fact that we do have obligations that social contracts aren't their source.<sup>1</sup> Hegel argues that the nature of the state transcends the possibility of being the product of the will of individuals.<sup>2</sup> While these objections have not proved fatal to social contract theory due to the move away from holding that the social contract was an historical occurrence and the rejection of Hegelian metaphysics respectively, opponents have continued to develop criticisms with the aim of not only exposing the shortcomings of a particular version of the social contract, but also of defeating social contract theory generally as a viable aspect of political philosophy.

Feminists have proved to be some of the most ardent critics of social contract theory. In particular, Carole Pateman developed a powerful critique in her book *The Sexual Contract*.<sup>3</sup> In this book Pateman claims that social contract theory is inherently patriarchal, that the social contract requires a preceding sexual contract that subordinates women. The subsequent social contract builds upon and perpetuates this subordination despite its claims of freedom and equality, and thus no social contract can be anything but a tool of domination and sexual repression.

My thesis is that Pateman is mistaken. Social contract theory is not inherently patriarchal. I do not argue that her analysis of the social contract theories she examines in her book is flawed; I grant that those theories are patriarchal. My concern is with the general conclusion that social contract theory itself is patriarchal, and cannot be otherwise. To make my argument, I will develop an understanding of the concept of the social contract through an examination of the primary features of the exemplars of social

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<sup>1</sup> See David Hume "Of the Original Contract" in *Essays: Moral, Political, and Literary*, ed. Eugene F. Miller (Indianapolis: Liberty Fund, 1987), pp. 465-487.

<sup>2</sup> G.W.F. Hegel *Philosophy of Right* in *Hegel's Philosophy of Right*, trans. with notes T.M. Knox (New York: Oxford University Press, 1977), pp. 58-59.

<sup>3</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988).

contract theory. I will then develop the feminist argument against the social contract. In the course of developing this argument, I will also argue that the assumption of the universality of reason should be the key target of the feminist criticism of the social contract. Finally, I will offer an alternative conception of reason that avoids the feminist criticism. I conclude that since the concept of the social contract can be understood in terms (i.e. the new position on reason) that are not inherently patriarchal, certainly a conception of the social contract can be developed that is not also patriarchal. This establishes my thesis that Pateman is mistaken in claiming that social contract theory is inherently patriarchal.

The following is an overview of each chapter of this dissertation. Taken together they provide a more detailed account of my argument. In particular, they bring attention to some of the critical ideas I use in the argument, whether they are ideas that are traditionally found in discussions of the social contract, such as freedom and will, or ideas that I bring to the discussion in my analysis, such as Annette Baier's idea of social reason. By seeing the place of these ideas in the whole argument, one can better understand the arc of the argument.

The first chapter develops interpretations of what I have termed the classic social contract theory. It covers the theories of Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. I have grouped these three together because they share a certain descriptive, rather than purely moral, approach, although, as I discuss below, Rousseau could easily be included in the second group as well. The aim is to identify the primary features of each of the different social contract theories. This is important, both for understanding each theory in its own right, as well as for identifying similarities between the theories.



For example, the idea of ‘contract’ is obviously fundamental to any social contract theory, but it does not serve the same purpose, nor come about in the same way in the different theories. Some contract theorists, such as Locke, treat the contract as an historical event that establishes civil and political societies. Others, notably Kant and Rawls, view the contract as a hypothetical event that demonstrates how political societies ought to be structured. Yet, at the bottom of all these theories there is a notion of some sort of agreement that is thought to bind people in certain significant ways. Thus, while all the theories use the idea of a contract, they use it in different ways. Identifying similarities among the different social contract theories provides the conceptual framework upon which the subsequent analysis of the social contract proceeds.

The first theory I examine is that of Thomas Hobbes. While the idea of a social contract predates Hobbes, his account explains and attempts to justify the idea rather than to simply appeal to it.<sup>4</sup> Thus, it is fitting to begin an analysis of the idea of the social contract with him. The interpretation of Hobbes begins with his description of the natural condition of mankind in chapter XIII of *Leviathan* and proceeds through his account of the natural laws in chapters XIV and XV.<sup>5</sup> These chapters provide the foundation of Hobbes’ social contract; however, the ideas used in these three chapters require fleshing out from other parts of the text.

I pay particular attention to Hobbes’ description of reason and the role of passions in fixing the meaning of moral terms. They provide insight into the social contract project by highlighting the role of the right and laws of nature. I argue that the laws of nature cannot be derived by reason alone as suggested by Hobbes, rather that they require

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<sup>4</sup> For a discussion of the idea of social contract before Hobbes, see Michael Lessnoff *Social Contract*, (Atlantic Highlands, NJ: Humanities Press International, 1986).

<sup>5</sup> Thomas Hobbes *Leviathan*, Edwin Curley ed. (Indianapolis: Hackett, 1994).

certain normative assumptions that are not made explicit in the theory. These normative assumptions (found throughout the contract tradition, as will be shown) roughly correspond to differing conceptions of rationality.

The second theory that I analyze is that of John Locke. Although I mention some differences with Hobbes' account, my interpretation is focused upon Locke's position on its own terms. I focus upon Locke's conception of the state of nature and of natural law, especially the right to punish violators of the natural law. I include a brief discussion of the claim that there are two contracts at work in Locke's theory. I then examine Locke's understanding of reason. Locke, like Hobbes, identifies the law of nature with reason, and these investigations show that, again like Hobbes, he fails to generate the content of those laws of nature. Again, I suggest that reason can only deliver the suggested content if certain other assumptions or conditions hold. These assumptions often take the form of descriptions of human psychology disguised as rationality.

The third philosopher examined is Jean-Jacques Rousseau. Rousseau spends a fair amount of time discussing two assumptions that he shares with his predecessors, Hobbes and Locke. These are the claims that people are by nature both free and equal. These ideas, although noted earlier in the interpretations of Hobbes and Locke, are more fully explored here. Additionally, in Rousseau's view certain passions play a prominent role, both with respect to motivating the making of the social contract, and shaping it as it is made. I examine the connections between freedom, equality, and these passions in depth.

The central idea of Rousseau's theory is that of the general will. This idea is important for a number of reasons. It is the limiting feature on the scope of the social contract, it assures us that the social contract aims only at the common good, rather than

the good of certain elements of the society, and it brings the moral nature of the social contract to the forefront. The general will describes a social contract that people ought to make, not the contract they would make as they merely consider their own desires and advantages. This change from what people in certain circumstances would do to what they should do changes the aim of most social contract theory that follows from a description of rationally required prudence to one of a straightforward moral nature.

It is in this manner that, as I remarked above, Rousseau serves as a bridge to later social contract theorists, namely Kant and Rawls, through the idea of the ideal contract, the contract people ought to make. This normative change alters the nature of the social contract. By focusing on what people ought to agree on, the social contract becomes a forward-looking tool. The primary issue is no longer obligation to the state, but justice. This new social contract account is concerned with what would obligate one, not with explaining how one became obligated. The interpretation of Rousseau will present this bridging function to preserve the continuity between the obligation contracts and the justice contracts. This continuity allows us to proceed with an examination of the contract tradition as a tradition, rather than viewing it as a set of different traditions.<sup>6</sup>

The second chapter examines Kantian Contractualism. This phrase describes theories that are obviously non-descriptive in tone, and rather are overtly moral. They abandon the idea of actual social contracts and replace it with an emphasis on what the social contract, as a hypothetical situation, exposes about our political system. The chapter begins with the interpretation of Immanuel Kant's social contract theory, continuing to

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<sup>6</sup> David Boucher and Paul Kelly provide grounds for not viewing contractarianism as a single tradition in the introductory chapter to their anthology *The Social Contract from Hobbes to Rawls* (New York: Routledge, 1994). These grounds do not require that contractarianism be viewed this way, only that it can be.

identify primary features and similarities among the social contracts. The interpretation builds upon the preceding discussion of Rousseau, paying particular attention to the notion of will and the new normative aspect. Following Lessnoff, I make a distinction between Rousseau's ideal contract and Kant's hypothetical one.<sup>7</sup> The distinction is between what people ought to agree to and what they would agree to given some relevant details. I note that the normative element does not disappear when the ideal contract is abandoned, but rather is moved into other elements of Kant's theory.

These other elements include an extensive examination of rational autonomy and the role of property in Kant's treatment of justice. This latter aspect shows why Kant needs the idea of a social contract rather than merely deriving the structure of society directly from his moral theory, as some people have suggested he could. I argue that this suggestion is incorrect while acknowledging the tremendous influence of his moral theory upon his treatment of the social contract. This particular discussion is important because it brings the moral undercurrent of the social contract out in the open. What had been merely asserted as the laws of nature in Hobbes and Locke are exposed as clearly moral assumptions in Kant's project. Finally, as is the case with the other theories examined, I argue that Kant's theory assumes a certain conception of rationality, a conception that is not necessarily true or even argued for. Rather, the theory simply assumes that this conception is what rationality is.

My interpretation of John Rawls concludes both the second chapter and the survey of contractarians. This interpretation centers upon the original position and the mechanism of the veil of ignorance. The idea of fairness is woven through both of these ideas, and I

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<sup>7</sup> Michael Lessnoff *Social Contract*, (Atlantic Highlands, NJ: Humanities Press International, 1986). pp. 94-95.

carefully expose the connections between the three of them and Rawls' conception of rationality. Again, a conception of rationality is simply assumed to be what rationality consists of, and this assumption shapes the resulting social contract. Note that this interpretation is not concerned with defending Rawls' account of justice. I am only identifying the primary features of Rawls' social contract theory and examining their correspondence to the features of the theories previously examined.

The third chapter gathers the identified features and similarities for the purpose of developing a concept of the social contract. Having a clear understanding of the concept of the social contract permits discussion and criticism of social contract theory generally, rather than being constrained to discussion or criticism of particular social contract theories. Indeed, the concept of the social contract provides both the target of criticism that aims to draw general conclusions about social contract theory as well as the grounds for developing a defense against such criticisms.

The identified similarities come from different aspects of the social contract. Some of them are goals the contract is seeking to achieve. These include the ideas of a limit to state authority and of preserving the initial freedom of the contractors via understanding the contract as an exercise in self-legislation. Other similarities are methodological in nature. Included here are the use of ideas such as descriptions of pre-political or pre-civil life, a belief that reason is the source of the social contract, and that agreement is necessary for justly limiting freedom. Some similarities reflect a common approach to understanding people. These include the claims that people are (at least originally) free, equal, and rational. Some of these ideas cross between these categories. For example, the pre-political conditions and assumptions about human psychology form a description

of the particular conception of rationality that is used in the theory, which in turn impacts each particular theory's understanding of what it is to be a rational individual.

A final area of similarity is that the theories utilize ideas of human nature or natural law to provide universal constraints on and motivations to the contractors. These constraints and motives point to an understated moral grounding for the social contract. The main idea, which I discuss in terms of the background condition of social contract theory, is that if appropriately described people (i.e. free, equal, and rational) would agree to certain limits on their freedom, then certainly these limits are justified for us as well. This background condition is a moral intuition more than a clearly held moral principle. Yet it plays an irreplaceable role in each version of the social contract.

While the similarities above are sorted into rough types, my argument does not rely upon these distinctions. I use them only to facilitate examining how the similarities are interconnected within the social contract. For example, the goal of seeing oneself as a self-legislator echoes the assumption of freedom. In the course of the analysis of similarities a common structure is exposed, that of the underpinning ideas. I maintain that there are three ideas that hold the identified similarities together in a coherent whole. These ideas are the assumption of the universality of reason, of individualism, and of volunteerism.

I examine these underpinning ideas in detail. The idea of individualism, however, requires some clarification here at the outset simply because there are a number of different ideas that come under the heading of individualism, and it is useful for clarity's sake to take a moment and make some brief distinctions. There are at least four broad 'types' of individualism: methodological, atomistic, abstract, and liberal. Methodological

individualism holds that claims about groups can, or indeed must, be reduced to or explained in terms of claims about individuals.<sup>8</sup> Perhaps the best example of methodological individualism is the explanation of changes in the marketplace as a result of individual consumer choices.

Atomistic individualism is a related position best understood in terms of its opposition to understanding society as an organism itself. Atomistic individualism is not a reductionist position. It is not saying, as methodological individualism does, that society can be explained through reference to individuals. Rather, atomistic individualism holds that there is nothing to explain beyond the individual. Social groups do not have properties of their own. Indeed, properly speaking, they do not exist. All there really is are individuals that are grouped for the purposes of making general claims about them.

The third sort of individualism is abstract individualism. Pateman defines abstract individualism as what is left after the characteristics that individuals naturally have are stripped away.<sup>9</sup> Examples of naturally occurring characteristics are race, gender, relationship to specific others (parents, social groups, etc.) and other such features that are sometimes claimed to make up our identity. The fourth sort of individualism identified above is liberal individualism. This sort is very similar to abstract individualism. Liberal individualism envisions a disembodied, transcendent, pre-social self for theoretical purposes. This is slightly different from taking an individual and stripping away characteristics, as in abstract individualism. Liberal individualism attempts to conceive of an individual prior to having any of those sorts of characteristics.

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<sup>8</sup> Gregory Pence *A Dictionary of Common Philosophical Terms* (New York: McGraw-Hill, 2000), pp. 34-35.

<sup>9</sup> Carole Pateman *The Problem of Political Obligation* (New York: John Wiley and Sons, 1979), p. 25.

The different social contract theories can (mostly) be examined in light of any of these versions of individualism. One can explain Hobbes, for example, in terms of methodological individualism and maintain that the only way to explain the political structure is through the choices of the members of that society. One could take the same theory, however, and apply the conception of liberal individualism to it, viewing it as a hypothetical exercise that reveals the agreements people in general would make. In the course of this dissertation I will use the term ‘individualism’ to mean liberal or abstract individualism. I am selecting this approach to individualism because it is the approach adopted by the critics of social contract theory with whom I am concerned. I will note when the distinction makes a difference to the argument being examined, but often one will find that the two senses of individualism are used interchangeably. If the distinction doesn’t make a difference to the argument, there isn’t a reason to make the distinction. Other sorts of criticisms based upon the other sorts of individualism are beyond the scope of this project, and thus I will not address them again.

The underpinning ideas, along with the moral intuition discussed above, form the concept of the social contract. Each of the theories examined in the first two chapters use these ideas, with the differences among those theories deriving from different conceptions of rationality and other concepts, such as freedom. While such differences are important, it is the common foundation of the ideas of individualism, universality of reason, and volunteerism that provides the continuity of the social contract tradition.

In the second half of this chapter I address a common general criticism of social contract theory, namely that the description of the people making the social contract is inaccurate. This description is rooted in the ideas that I have called the underpinning



ideas of individualism, volunteerism, and the universality of reason. To defuse this criticism I apply the concept of social artifice to the underpinning ideas. This concept, described by Hume and developed by Annette Baier, says that certain practices are not natural, that they are instead developed for specific purposes. The main example she develops is that of promising. Promising is not a natural activity, but rather a socially created ritual to enable agreements between people who do not share a trust.<sup>10</sup> I argue that by understanding the underpinning ideas, in particular volunteerism and individualism, as social artifices designed for a specific purpose rather than attempts to accurately describe actual people, the criticism is put to rest.<sup>11</sup>

The fourth chapter begins with an examination of feminisms. This examination is required to develop and place in context the sharpest feminist criticisms of the social contract. These feminisms include liberal, Marxist, socialist, and radical approaches, as well as humanist and gynocentric positions. The question of women's (alleged) differences from men is broached and set aside as a quagmire best left alone. I develop what I call the dominance approach as the best feminism for purposes of criticizing the social contract. The dominance approach holds that elements of the social contract conceptually exclude women as women from full (or any) participation in the social contract. This exclusion is based upon women's alleged nature, but the dominance approach is not concerned with whether or not women actually have that nature. Rather, it is concerned only with the fact that women are subordinated based upon the fact that they are women, and this domination is conceptually based. Any system that

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<sup>10</sup> See Annette Baier *Moral Prejudices* (Cambridge, MA: Harvard University Press, 1995), especially chapters 1,4, and 6-9.

<sup>11</sup> The third underpinning idea, the universality of reason, presents a special case and is therefore provisionally understood not as a social artifice, but as an actual description. This issue is taken up again in chapter five.

conceptually excludes women as women, regardless of whether the grounds for exclusion are accurate, is sexist, and thus ought to be abandoned.

I then consider the question of why the social contract theorists examined in the first two chapters should be considered patriarchal. I note that many of them explicitly held that women were irrational and naturally subordinate. I offer a story, developed out of a common set of Cartesian-like dualisms, which reconciles such positions with the express assumptions of freedom and equality found in their social contract theories. Rawls presents a special case since he does not make any remarks concerning women's natural inferiority. I argue, however, that his basic project of exposing the intuitions behind our current institutions must include the institution of women's subordination. The story I suggest to reconcile Rawls' position with his stated intentions involves his reliance upon the patriarchal ideas of his predecessors.

The second half of the chapter develops Pateman's articulation of the feminist arguments against the social contract. This examination includes her analysis of modern patriarchy and the reason she holds that the social contract is inherently patriarchal. She asks how the subordination of women can be the result of a model that stresses the agreement of the parties. Certainly the women did not agree to it. Pateman offers suggestions, mostly focused upon pre-theoretical conceptions of the proper place of women, as to how the patriarchal structure could result. These suggestions center upon the assumption of the universality of reason, and that assumption's role in both abstract individualism and the public/ private distinction. Pateman argues that these elements of the social contract are irrevocably patriarchal due to the nature of reason, and since they

are both indispensable to social contract theory, make those theories inherently patriarchal.

The final chapter begins with an examination of Baier's concept of social reason.<sup>12</sup> In brief, Baier challenges the Cartesian notion of an independent reasoner. She points out that reasoning is often conversational, and that even Descartes presents his meditations as a conversation with himself. She points out that it is not in isolated thought that we learn how to make inferences, probe for faults in arguments, and generally develop our reasoning ability.<sup>13</sup> I then examine the ideas of individualism and the public/ private distinction to see if the idea of social reason can replace the idea of universal reason within them. This examination returns to the subject of social artifice, and uses that idea to explain how social reason can generate a specialized conception of reason for purposes of completing the artifice of the free, equal, and rational abstract individual. I conclude that the idea of social reason can certainly fulfill the role traditionally occupied by the idea of universal reason, and since social reason isn't exclusionary of women on the conceptual level, the ideas of individualism and the public/ private distinction are not necessarily patriarchal.

In my concluding remarks I first briefly indicate how the use of social reason does not violate the concept of the social contract developed in chapter three. This overview explains how the concept of social reason works within the context of a social contract, thus enabling the generation of non-patriarchal social contracts (given the appropriate conception of rationality). Again, since social reason isn't patriarchal and it is replacing

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<sup>12</sup> Baier's positions on these topics are developed in *The Commons of the Mind* (Chicago: Open Court, 1997) and *Postures of the Mind: Essays on Mind and Morals* (Minneapolis, MN: University of Minnesota Press, 1985).

<sup>13</sup> Annette Baier *The Commons of the Mind* (Chicago: Open Court, 1997), pp. 3, 4.

the assumption of universal reason, which is patriarchal, social contracts using the concept of social reason fail to be inherently patriarchal. In this manner, I establish my thesis.

After the preceding discussion, I turn to two second order questions: does my proposed understanding of social contract theory make the social contract trivial, and can my understanding use social contract theory to address, and perhaps eliminate injustices, such as sexism, in society? These questions are important because one may view the social contract as only a reflection of a particular society's conception of rationality, and to an extent this is correct. However, I argue that the social contract is a justificatory tool reaching beyond the mere conception of rationality that informs that justification. People can disagree within the context of a particular conception of rationality. Indeed, this is one way the conception of rationality changes over time; people challenge its traditional limits and judgments. My answer to the second question shows how the justificatory element of social contracts can reinforce radical notions, pushing them into the mainstream, and in that manner help effect change in society. I note differences between my theory and that of Rawls, which includes a 'reverse engineering' aspect that can help activists determine the ways to achieve their visions for reforming society.

My final remarks concern future inquiry that could come from this project. The two main areas involve investigating the practical possibility of developing a global commons of the mind and of actually writing a non-patriarchal social contract. Before turning to the text of the dissertation, however, I will address two preliminary issues here in the introduction. These issues involve the value of the social contract itself and why women

can't simply be added to the traditional understanding of the social contract, viewing their exclusion as a misfortune of history.

Baier argues that women cannot simply be tacked onto the social contract as newly recognized full citizens. There are at least two reasons for this. The first is that, as Pateman argues, social contracts are based upon the subordination of women. The nature of the society those women would be joining would remain patriarchal. This is hardly treating them as equals. Thus, if social contract theory is patriarchal, giving women the appearance of full membership will do nothing to alleviate their subordination under that theory. Before women can be included in the process, it must be demonstrated that the process is not inherently patriarchal.

The second reason is that such a society would have been constructed without the input of women. It would not reflect their experiences, their cares and concerns. The only way to determine how a social contract would accommodate women is to discover what the nature of these experiences, cares and concerns is likely to be. Such a discovery may permit some general conclusions to what women would agree to in the pre-political condition. This issue, however, is beyond the scope of the prior question of whether, *contra* Pateman, a social contract that does not necessarily subordinate women could be generated. It is this question that is the focus of this project, and if the answer is yes, then the first concern set out by Baier above could be dissolved and thereby open the way to beginning to answer the second question of what such a contract would look like.

The final issue asks what the value of social contract theory is. Why should I try to defend it from the charge of patriarchalism? The answer to this question is rooted in the ideas that originally made the social contract interesting: that something more than

tradition should justify our political organization, that this something should be reason, and that the consent of the governed is the appropriate way to signal that justification. These are ideas that resonate with people because they draw upon the idea that people ought to be in charge of their own lives as much as possible. The notion of a self-legislator allows people to be the subject of their own lives, rather than merely being furniture in the lives of the powerful. People can direct their lives as they see fit. The social contract is a device that shows people how the political limits on freedom derive from choices that the people would make, and thus are just as if they actually had been freely chosen limits. As of yet I am not familiar with any other justificatory political idea that has this property. The lack of morally empowering alternatives is the reason why the social contract should be defended where possible. It can be defended against the charge of inherent patriarchalism.

## CHAPTER I

### CLASSIC SOCIAL CONTRACT THEORY

One way of dividing up the social contract tradition is between the ‘classic’ contract theories and the ‘Kantian’ contract theories. The former group consists of Thomas Hobbes, John Locke, and Jean-Jacques Rousseau while the latter includes Immanuel Kant and John Rawls. There are other ways of categorizing the different social contract theories, including whether the contract theory is interest-based or rights-based. Furthermore, even with my proposed distinction Rousseau poses a problem; it seems he could properly be included in the Kantian group. I group the theories according to the ‘classic’ and ‘Kantian’ labels because I wish to easily indicate a change in the emphasis of the social contract from political obligation to justice. This grouping marks that distinction rather well.<sup>14</sup>

#### *Hobbes*

Thomas Hobbes was not the first social contract theorist, but his version, as developed in *Leviathan*, “out-classes all its predecessors as a structure of systematic and rigorous argument.”<sup>15</sup> As such, it is fitting to begin an examination of the rudiments of the social contract with his work. Furthermore, Hobbes serves as a reference point against which later social contract theorists contrast themselves, even while adapting his terminology and problematic.

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<sup>14</sup> Again, Rousseau is problematic. I discuss my choice below in the section on Rousseau. It should also be noted that both these topics play roles in most social contract theories. I am dividing them by where I see the primary emphasis is put.

<sup>15</sup> Michael Lessnoff *Social Contract* (Atlantic Highlands, NJ: Humanities Press International, 1986), p. 49.

A basic idea behind any social contract theory is that agreement is the only way to justly limit people's liberty. This idea entails that agreement is the only way for people originally to justly come under the authority of the state as citizens. If one agrees to certain limitations, then one is in no position to complain when those limitations are enforced. Typically, the reason people would agree to a restriction of their freedom is in order to gain some other benefit, be it security, greater freedom, or rights to property. The social contract is supposed to be the description of that agreement. For instance, in Hobbes' account, people transfer some of the powers they have in the state of nature in order to gain security. Like many social contract theorists, Hobbes posits a pre-contract condition in order to contrast it with the advantages of making the contract. The description of this 'state of nature' is the start of the path to the social contract, and thus provides one of the best sources for understanding what is behind the social contract.

Hobbes famously describes the state of nature in *Leviathan* as a condition wherein the life of man is "solitary, poor, nasty, brutish, and short."<sup>16</sup> This description results from the state of nature being a condition where there is no industry, farming, science, or any other forward-looking venture, "because the fruit thereof is uncertain."<sup>17</sup> The reason the rewards of such ventures are uncertain is that all men are by nature roughly equal in mind and body<sup>18</sup> and in the state of nature "the notions of right and wrong, justice and injustice, have no place."<sup>19</sup> These claims are central to understanding the necessity of the social contract or, in Hobbes' terms, the compact.

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<sup>16</sup> Thomas Hobbes *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett, 1994), Part I, ch. xiii. par. 9.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid., par. 1.

<sup>19</sup> Ibid., par. 13.



In claiming that all men are equal, Hobbes is claiming that there is no natural superiority among people. Each person, regardless of the abilities or talents he possesses or lacks, poses a danger to every other person. The stronger person may be either outwitted by the smarter or overpowered by a horde. The smarter individual may lose to the stronger. Anything you may acquire can be taken from you, thus no one would try to acquire anything beyond the needs of the moment. Everyone fears everyone else. Beyond the competition with others for goods, there are additional factors that Hobbes says are causes of strife. These include distrust (since one cannot trust others one ought to force as many of them to his will as possible), and glory (since all men seek to have others hold them in the same esteem they hold themselves).<sup>20</sup>

This state of everyone against everyone else is what Hobbes defines as a state of war.<sup>21</sup> Further, in the state of war there is no place for right and wrong. This shows that justice and right are matters of civil origin.<sup>22</sup> Prior to the compact, one is permitted to do whatever one must in order to achieve one's desires, which Hobbes understands as primarily survival. Until there is "a common power to keep them all in awe," it is not possible to do something wrong to another person.<sup>23</sup> In considering a state with no morality, no justice, and a constant fear of death from all quarters, it is easy to feel the pull to make the compact, which is the only solution to these problems.<sup>24</sup>

Hobbes has certainly described a situation in which one would experience fear. He has also suggested that there must be a power over all men in order for there to be an end to such a war of all against all. The difficulty is determining how the peace is to be

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<sup>20</sup> Ibid., par. 6,7.

<sup>21</sup> Ibid., par. 8.

<sup>22</sup> Ibid., par. 13. See also ch. xi, par. 9.

<sup>23</sup> Ibid., par. 10, 13.

<sup>24</sup> Ibid., ch. xi, par. 9.

structured. Hobbes would not agree that just any peace terms are sufficient. If any compact would suffice, then it would appear that the rules of civil order are not matters of reason, not a science, but rather are based on whim and fancy. Hobbes must show a connection between the state of nature on one hand and a specific civil arrangement based on reason on the other to justify his conception of political order. Consequently, Hobbes introduces the two most important ideas in his book to link the state of nature to a specific social-political order: the right of nature and the law of nature.

The “Right of Nature” is the liberty to preserve oneself.<sup>25</sup> This liberty ties directly back to the idea that there is no right or wrong in the state of nature. One may do what one must to stay alive. This liberty is the liberty to do anything to reach that end. In essence, the Right of Nature is not a right at all, but rather a restatement of the state of war that exists prior to the compact. There are no limits on what one may do in order to survive. While the Right of Nature is couched in normative terms, I take it to be a description of the state of war and of the lack of moral limits. It is not that one is permitted to do whatever is required to survive; rather there are no rules against any activity that preserves one’s life.

A “Law of Nature”, on the other hand “is a precept or general rule, found out by reason, by which man is forbidden to do that which is destructive of his life or taketh away the means of preserving the same, and to omit that by which he thinketh it may be best preserved.”<sup>26</sup> The importance of the Law of Nature is that it allows Hobbes to connect people in a state of nature who are afraid for their lives with a particular civil arrangement. As will be discussed in detail below, the laws of nature establish the

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<sup>25</sup> Ibid., ch. xiv, par. 1.

<sup>26</sup> Ibid. par. 3.

parameters of the compact. Until then we can accept Hobbes' suggestion that in the fearful state of nature, one presumably wants to be able to do what is required to survive, and thus an emphasis on survival seems appropriate.

The Right of Nature and the definition of the Law of Nature offered by Hobbes both focus on survival. The first move to link the state of nature with a specific society is made here. Since both the law and the right are found out by reason, it becomes a matter of reason to seek survival. Indeed, the actual first Law of Nature states that everyone should seek peace insofar as each has a chance of obtaining it, but otherwise the right of nature applies.<sup>27</sup> Thus, fear, the reason we are allegedly seeking peace, no longer plays much of a role. The first law of nature holds that reason requires that we seek the peace, irrespective of whether we actually fear others. Options such as thriving on the excitement of the challenge to survive are ruled out as contrary to reason by this move. Thus, one connection between the state of nature and the compact has been made: reason dictates that people ought to seek the peace.

The second law of nature states that surrendering liberty as far as others are willing to do so is the way to peace.<sup>28</sup> This second step of the argument claims that reason indicates the one way that people can achieve the peace that reason requires they seek. The thought is that one would give up liberty to gain security. This is an interesting empirical claim, but Hobbes states it as a matter of reason. The motivation to give up liberty as presented in the text is rooted in the fear found in the state of nature. Yet as noted above, fear has been replaced with reason, and thus it is a matter of reason that liberty is contracted away, not one of fear. Through the laws of nature Hobbes has altered the

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<sup>27</sup> Ibid., par. 4.

<sup>28</sup> Ibid., par. 5.

scenario from one of seeking safety out of fear to an exercise of reason that requires the contract be made. We now have a solid connection based on reason between the state of nature and the contracting away of one's liberty, which is the hallmark of Hobbes' theory. We have moved from the state of nature to the state of the Leviathan.

The final aspects of the social contract that are needed for this investigation involve the mechanism of how, and to whom these liberties are surrendered. Hobbes makes a distinction between renouncing a right and transferring a right.<sup>29</sup> When one is divested of a right in either way of these two ways, one loses the right to hinder others in the pursuit of that to which it was a right. As Hobbes notes one cannot give a person who has a right to everything a further right, you can only cease in being an obstacle to his exercise of that right.<sup>30</sup> The distinction between renouncing a right and transferring that right is that to renounce a right is to divest oneself without care to whom the benefit of that divestiture falls, whereas to transfer a right is to stipulate to whom it is that you will not be an impediment.<sup>31</sup> Hobbes defines a contract as a "mutual transferring of right", and a covenant as a contract where one of the parties is left "to perform his part at some determinate time after."<sup>32</sup> Hobbes then infers, after a discussion of the features of covenants, from the second law of nature (covenant for peace) the third law of nature: "that men perform their covenants made."<sup>33</sup>

With the third law of nature in place, once one has made a covenant, one must keep it. The question then becomes with whom is the covenant made and to whom are the rights transferred? Hobbes says that the covenant is made "every man with every man" to

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<sup>29</sup> Ibid., par. 7.

<sup>30</sup> Ibid., par. 6.

<sup>31</sup> Ibid., par. 7.

<sup>32</sup> Ibid., par. 9, 11.

<sup>33</sup> Ibid., ch. xv, par. 1.

transfer the right of “governing myself”, so long as each likewise gives up his right (second law of nature), to some appointed man or group of men.<sup>34</sup> This man or group of men are the only people to retain their natural rights, for they are not party to the covenant. This retention of natural rights, along with the benefit of not being hindered by others in the exercise of those rights, which is the result of being the recipient of the transfer found in the covenant, means that such a man or body of men have the power to bring about the peace that is the purpose of the covenant (first law of nature). Everyone’s will is thus combined into one, which is the commonwealth or Leviathan, and the person who wields this power is the sovereign.<sup>35</sup> Since the will of the sovereign is the will of the people, the people are the authors of all the acts of the sovereign. Finally, since the third law of nature says that one must keep one’s covenants, there is no backing out of the commonwealth. The covenanter is now obligated to obey the law of the commonwealth.

There is a dispute in the literature concerning the mutual divestiture of rights. One camp holds that the laying of rights aside means that the sovereign only has the rights he had in the state of nature.<sup>36</sup> The other side holds that the transfer of rights entails that the sovereign has power that he lacked prior to the transfer. These positions are respectively known as the weak sovereign and strong sovereign. I want to make clear that the position I am discussing is that of weak sovereignty. It is true that Hobbes thinks the sovereign needs to be strong in the sense of not having limits able to be put on him. This, however, is not the sense of strong meant in the literature. The strong sovereign position ignores Hobbes’ definition of the word ‘transfer’, and in so doing envisions the sovereign as a

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<sup>34</sup> Ibid., ch. xvii, par. 13.

<sup>35</sup> Ibid., par. 13, 14.

<sup>36</sup> I am using the singular in reference to the sovereign for simplicity only. Nothing changes in my argument should the sovereign turn out to be an assembly.

stockpile of the rights of the citizens. As cited above, Hobbes defines ‘transfer’ as a way to renounce one’s right that limits who benefits from the renunciation: To transfer a right is to say that you will not impede *that* person in the use of his rights. Transferring a right is a way to lay aside a right; it is not something different from laying aside a right. When one transfers a right, the other person does not gain a right, he just is no longer impeded. Finally, as cited above, the sovereign is not party to the contract, so there is no way for him to receive the rights of those who are transferring theirs. Thus, the weak sovereignty position is the only position consistent with Hobbes’ use of terminology.<sup>37</sup>

A final point needs to be made. While Hobbes uses the word ‘reason’, he does not always mean the faculty of reason, as we understand it.<sup>38</sup> Hobbes describes the faculty of reason as a reckoning of the consequences of general names.<sup>39</sup> A consequence, or train of thought, is a succession from one thought to another.<sup>40</sup> Thus, reason is the following of trains of thought. There are two kinds of trains of thought: regulated and unregulated. The unregulated consequence is like a random sequence of thoughts, while the regulated train of thought is regulated by some desire.<sup>41</sup> Following a stream of consciousness might be an example of an unregulated train of thought, while an example of a regulated consequence might be exploring the possible results of throwing a ball at a window. Indeed, there are two types of regulated trains of thought: seeking causes based on some effect, and seeking further possible effects from some cause.<sup>42</sup> From a desire arises a

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<sup>37</sup> There is, however, something to be said with respect to the strong sovereignty position. The sovereign does gain something when the rights are transferred to him. He gains the ease of not having to overcome some of the obstacles in the exercise of his right. While this is a benefit that accrues to him that is a direct result of the compact, I do not think it is enough to establish the strong sovereignty thesis.

<sup>38</sup> I am indebted to Dr. Jami Anderson for pointing this out to me in conversation.

<sup>39</sup> Ibid., Part I, ch. v, par. 2.

<sup>40</sup> Ibid., ch. iii, par. 1.

<sup>41</sup> Ibid., par. 3.

<sup>42</sup> Ibid., par. 5.

thought to try to find a cause of the object of desire.<sup>43</sup> Thus the regulation of trains of thought is the exploring of those trains with an aim to fulfilling that desire. A reckoning can now be understood as exploring all the trains of thoughts or consequences that lead from the general name or subject being reasoned about to its possible causes and effects. Thus, to reason about something is to pursue how it might come about and how it will affect the situation in the future.

This view of reason is familiar as a means-ends faculty. However, Hobbes also says that the laws of nature, the lynchpin of the compact project, are “found out by reason.”<sup>44</sup> For example, Hobbes states, “The passions which incline men to peace are fear of death, desire of such things as are necessary to commodious living and a hope by their industry to obtain them. And reason suggesteth convenient articles of peace....”<sup>45</sup> Yet providing the solution to the problems of the state of nature does not seem to be something the faculty of reason as described by Hobbes can do. For reason to arrive at them, they must be the conclusion of a train of thought. The difficulty is that neither pattern of regulated trains of thought fits this case. The laws of nature are neither causes based on an effect nor further effects of some cause. If they were, then the laws of nature could be found out by reason based upon their effects, either current or future. There are no effects, however, that lead to these laws. The law of nature is supposed to come from just reason, not from reasoning back from certain effects. Thus, reason alone is not able to generate the laws of nature as Hobbes states.

The thing I want to point out is that Hobbes uses the term ‘reason’ in places where we would use ‘rationality’. Reason is a faculty, while rationality is an understanding of what

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid., ch. xiv, par. 3.

<sup>45</sup> Ibid., ch. xiii, par. 14.

counts as an appropriate outcome of an act of reason. For example, reason could propose as a means to achieve the desired effect of peace that one should kill everyone she comes across. This is rejected as being irrational, however, because such action would provoke others to greater hostility toward you. The flaw in the plan is not the chain of reasoning. If you could accomplish it you would have your desired peace. Rather, such a plan is rejected because it violates a conception of rationality, a conception that holds that if the cost is greater than the benefit the action is irrational. Attempting to kill everyone you meet would surely incur a great cost, especially considering you are all relatively equal in natural abilities.

The above example relies on a specific conception of rationality, one of cost benefit analysis to oneself. There are other conceptions of rationality, including claims that what is rational is what any impartial, rational person would agree to, and that whatever achieves some true human good is the rational thing to do.<sup>46</sup> The point is that Hobbes relies on a conception of rationality to move from the condition of fear in the state of nature to the laws of nature as a solution to that problem. If people seek to avoid death, then reason can seek out the means to that end and perhaps arrive at the laws of nature as described by Hobbes. He tries to convince us that everyone would want peace through his description of the state of nature, and in other places he flatly asserts it.<sup>47</sup> This should not be seen as a universal claim about human beings because otherwise it is plainly false. Not everyone seeks to avoid death. Rather, the assertion that everyone would seek to preserve his or her own life is a claim of rationality. People who don't pursue self-preservation are, on Hobbes' view, irrational.

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<sup>46</sup> Alasdair MacIntyre *Whose Justice? Whose Rationality?* (Notre Dame, Indiana: University of Notre Dame Press, 1988), p. 2.

<sup>47</sup> Thomas Hobbes *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett, 1994), Part I, ch. xv, par. 40.



If one uses a different standard of rationality with Hobbes' description of the state of nature, one gets a different set of laws. For example, if the standard of rationality was achieving a true human good, say independence, then the laws of nature as discovered by reason may not point to making a compact, but rather toward doing your best with the hand you are dealt and taking the consequences, perhaps even including early death, as they come. If the standard of rationality is whatever allows you to practice your religion, you certainly won't make a compact that would allow the sovereign to abolish your form of worship. Hobbes' standard is, for the most part, whatever keeps you alive. It's not a bad standard, but it's not the only standard.

Finally, Hobbes recognizes that the laws of nature as derived by reason are not truly laws. He says, "These dictates of reason men use to call by the name of laws, but improperly; for they are but conclusions or theorems concerning what conduceth to the conservation and defence of themselves, whereas law, properly, is the word of him that by right hath command over others."<sup>48</sup> The laws of nature are theorems concerning how one achieves the desire of peace. As such, they embody a standard of rationality that takes survival as the highest value. With a different conception of rationality, say one that holds the highest value to be the life with the greatest excitement and thrills, the laws of nature would, as discussed above, be correspondingly different.

One may be tempted to reply that of course if one changes the assumptions of the theory one will derive different conclusions. That is not the point I am making. The point is that the assumption of what rationality entails is buried in the description of the state of nature, it is an assumption with tremendous impact on the conclusions of Hobbes' argument, and since there is no justification for it there is no reason to accept that this is

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<sup>48</sup> Ibid., par. 41.

what rationality in fact is. I do think it is likely that Hobbes never even considered that there could be another account of rationality. For many people, rationality just is. What one counts as rationality has a huge impact on social contract theory, and it is not at all obvious that there is a fact of the matter concerning rationality.

Thus, the presumed desires of humans are structured in Hobbes' theory to create a standard of rationality.<sup>49</sup> It is a standard that finds codification in the laws of nature. The use of a standard of rationality, often conceived of as *the* standard of rationality or even reason itself, is a central feature of social contract analysis since it is a point of contention among contractarians as to what rationality requires and is also a focus of criticism from outside the contract tradition.

### *Locke*

John Locke offers a social contract theory that also depends upon a state of nature argument. While there are some similarities with Hobbes, there are significant differences as well. Some of the most striking differences are masked by use of identical terminology. Most prominent of these are the ideas of the state of nature and of natural law. Therefore, while this chapter is not meant to be a comparison between Hobbes and Locke, in the interest of clarity, I will set out Locke's conception of these ideas in contrast to Hobbes' view. I will then develop Locke's version of the social contract without reference to Hobbes' position and proceed with identifying the primary features of that contract.

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<sup>49</sup> In chapter five I suggest some reasons why Hobbes may have made the assumptions he did about human desires. See p. 174.

Locke says the natural state that men are in is “a state of perfect Freedom to order their Actions, and dispose of their Possessions, and Persons as they think fit....”<sup>50</sup> The actual state of nature as conceived by Locke is not the Hobbesian war of all against all, but rather the lack of common authority among men living together.<sup>51</sup> As in Hobbes, however, actions in the state of nature are constrained by the law of nature.<sup>52</sup> For Locke, the law of nature is reason.<sup>53</sup> The content of the law is “that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions.”<sup>54</sup> Thus, prior to the social contract, men, being rational, are bound by the natural law to refrain from harming the lives and property of others.

There is a further, critical element to Locke’s view of natural law. He writes that in order to prevent people from violating each other’s rights each man “has a right to punish the transgressors of that Law to such a Degree, as may hinder its violation. For the *Law of Nature* would ... be in vain, if there were no body that ... had a *Power to Execute* that Law....”<sup>55</sup> The importance of this element is twofold. First, whereas in Hobbes the Leviathan receives all the liberty of the members of the compact, in Locke’s theory it is the authority to judge and punish those who break the law, and only this right, that is given up to the political body.<sup>56</sup> This right of judgment and punishment narrowly sets the scope of legitimate government, and as such provides the core of the contract.

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<sup>50</sup> John Locke “The Second Treatise” in *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), § 4.

<sup>51</sup> *Ibid.*, § 19.

<sup>52</sup> *Ibid.*, § 4, 6, and 22.

<sup>53</sup> *Ibid.*, § 6.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*, § 7.

<sup>56</sup> *Ibid.*, § 87 and 99.

Indeed, Locke states that the contract is made with the “chief end” of enforcing the natural law; i.e. the protection of property.<sup>57</sup>

Secondly, it is held by some political philosophers that there are actually two contracts operating in *The Second Treatise*. The first concerns the establishment of the political society, while the second establishes a liberal government for that society.<sup>58</sup> The authority to judge and punish in the natural law links these two contracts. The right to punish is the only right of the political society, all others being reserved for the citizens of that society. Thus, in the first contract this aspect of the law of nature embodies the content of the contract. Additionally, the problem of always needing to exercise this executive power also adds to the motivation to make the contract. It is therefore easy to see how intimately tied up the first contract is with this natural law.

In the second contract, where the government as opposed to the society is established, the right to judge and punish sets narrow limits on the role and authority of the government. Some commentators see this second contract as the more important aspect of Locke’s theory, but for my purposes it can be seen as an extension of the first. I am interested in the structure of how the contract is supposed to work, rather than the particular content of that contract. If there is some content that is required of the social contract just in virtue of it being a contract it should be evident in the bare structure of the social.

Locke’s social contract begins with a state of nature and a conception of natural law that is equated with reason. One reason why people would make the social contract involves people in the state of nature who will not abide by the law of nature. Locke says

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<sup>57</sup> Ibid., § 89.

<sup>58</sup> Carole Pateman *The Problem of Political Obligation* (Berkeley, CA: University of California Press, 1985), p. 69.

that the state of nature is an ill condition.<sup>59</sup> He adds that the enjoyment of one's possessions is insecure in the state of nature.<sup>60</sup> Property, both the labor-added sort as well as its later representative money, needs protection in the state of nature. There is no authority to turn to for help when your property is violated. Property represents an important reason for making the contract.<sup>61</sup> People make the contract "for their comfortable, safe, and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not of it."<sup>62</sup> Men living together with such a common authority embody Locke's definition of civil society.<sup>63</sup> It is clear to see that the content of the contract is an embodiment of the natural law. It has the goal of securing those things, especially property, to which one has a right according to the natural law.

A state of war exists when one man threatens the destruction of another man's life or liberty.<sup>64</sup> It is in response to such a threat that Locke says that people have the right to judge and punish. As pointed out above, if people did not have such a right, the law of nature itself would be in vain. There is no point in having a law that one is not able to enforce. Yet there are difficulties associated with self-enforcement of the natural law. An obvious problem involves the risk one shoulders when trying to punish someone who has no care for the law. One may not have the power necessary to rectify matters, and indeed may come out of an encounter with a lawbreaker much the worse off than before. Finally, there is also the problem of being a judge in your own case. Many disputes

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<sup>59</sup> John Locke "The Second Treatise" in *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press 1988), § 127.

<sup>60</sup> *Ibid.*, § 123.

<sup>61</sup> Cf. *Ibid.*, especially § 27, 28, 31, 32, 35, 36, 46, 119-122.

<sup>62</sup> *Ibid.*, § 95.

<sup>63</sup> *Ibid.*, § 87.

<sup>64</sup> *Ibid.*, § 16-19.

between people are cases in which the disputants agree as to what the law states but differ about which side of the dispute that law supports.

The way to prevent such a state from occurring is by the establishment of a common authority. Locke says “to avoid this State of War...is one great *reason of Mens putting themselves into Society*.”<sup>65</sup> Such a common authority would collect power into a single set of hands (the body politic) to enforce the law, thereby relieving citizens of the risks and problems inherent in self-enforcement, including gathering enough power to assure the desired greater security. The creation of this common authority is the creation of civil society.

Locke defines civil society as one in which a number of men have given up their natural right to punish to “the publick.”<sup>66</sup> Locke explicitly states that the only way for free and equal men to become subject to such a common authority is to individually consent.<sup>67</sup> This consent must be made by each individual, for each individual must give up his natural right to the body that will then protect him through the use of that right.<sup>68</sup> Thus, the agreement is with other people to give the authority to judge transgressors to the public body.<sup>69</sup>

To sum up Locke’s social contract theory, the reason free and equal people will unite in civil society is to set up a common authority to enforce the natural law. This common authority is required because there are people who will try to gain absolute power over others in violation of the natural law, causing a state of war to ensue. The only remedy

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<sup>65</sup> Ibid., § 21.

<sup>66</sup> Ibid., § 89.

<sup>67</sup> Ibid., § 95.

<sup>68</sup> It should be noted that the second contract, the one that establishes the government, only requires a majority of the members of the civil society. See § 99.

<sup>69</sup> Ibid., § 95.

for this state of war is by men agreeing to give up their right to punish violators of the natural law to a common authority. The creation of this common authority creates civil society, and provides a court of appeals for settling disputes between people so that the state of war never occurs.

Locke's account of property, despite my lack of discussion concerning it, is as important as the fear of death is in Hobbes' theory, and not just because of its roles mentioned above. While the people in Locke's version of the state of nature certainly wish to preserve their lives, the state of nature itself is not the dangerous state of war described by Hobbes. The state of nature is a place of plenty. Property and its preservation replace, or at least supplement, the fear of death, and the laws of nature, found out by reason, reflect this change of emphasis.

As noted above, Locke equates the natural law with reason. As was the case with Hobbes, an examination of Locke's conception of reason will show that it is incapable of generating the natural law on its own. For Locke, reason is a faculty that "perceives the necessary and indubitable connexion of all the ideas or proofs one to another."<sup>70</sup> To understand what this "connexion" is, one must first understand Locke's view of knowledge.

Locke says that knowledge is a matter of "the Perception of the Agreement or Disagreement of two Ideas."<sup>71</sup> This agreement consists of four kinds: identity or diversity, relation, necessary connection, and real existence.<sup>72</sup> In short, these ways of agreement are ways that ideas may be connected. They may be identical or different (a

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<sup>70</sup> John Locke *An Essay Concerning Human Understanding*, ed. A.D. Woozley (New York: Meridian, 1974), Bk 4, ch xvii, sec. 2. See also section 4, and ch. xviii, sec. 3.

<sup>71</sup> *Ibid.*, bk. 4, ch. i, sec. 2.

<sup>72</sup> *Ibid.*, sec. 3.

triangle and a three sided closed plane figure), may be related in some aspect that does not contain the whole idea (two different things both being red), be found to both exist in the same object (a red triangle has the ideas of 'red' and 'triangle' co-existing in it), or that the object of the idea actually exists (Locke's example of this sort of agreement is "God exists").

Thus, knowledge proceeds from comparisons of ideas to see if they agree or not in these ways. However it is not always the case that two ideas can be directly compared because they cannot be put together by the mind.<sup>73</sup> This is where the faculty of reason comes in. Locke says that when immediate comparison cannot bring two ideas together then intermediate ideas are used to establish the agreement or disagreement between those ideas, "and this is that which we call *reasoning*."<sup>74</sup> Reason is thus the faculty that creates a chain of ideas to connect when the ideas under investigation cannot be connected directly. Locke's example involves comparing the three angles of a triangle with two right angles.<sup>75</sup> He says that since the three angles can't brought to mind at the same time, let alone then compared to one or two others, the intermediate ideas of some other angles which the three angles are equal to are used and "finding those equal to two right ones, [one] comes to know their equality to two right ones."<sup>76</sup> In other words, Locke holds that since we cannot think of multiple ideas at the same time (the three angles of the triangle are separate ideas), we think of some intermediate angle, which is equal to the sum of the three, and discover that it is equal to the idea of two right angles. Such a comparison is itself a single idea. In this manner, agreement and disagreement

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<sup>73</sup> Ibid. ch. ii, sec. 2.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.



can be determined for ideas that cannot be directly compared. An example drawn from logic might make this even clearer. It is not immediately obvious, at least to those who are not familiar with logic, that one can infer 'P&Q' from ' $\sim(P \supset \sim Q)$ '. One must construct a proof of some sort to see that this is so. The steps of a proof are like the

- intermediate ideas of reasoning, providing a link from one idea to another.

This view of reason, as a faculty that serves as an intermediary between distinct ideas, cannot generate the natural law. If reason is a connective faculty, it must be connecting two ideas. It is not a faculty that can generate a principle or an idea; it can only demonstrate the agreement or disagreement of two ideas. If bare reason is the natural law, what ideas are being connected in stating that no one ought to harm the life or property of another? Locke's view of reason doesn't allow for the discovery of an end of a chain of reasoning; it allows the connection and thereby the discovery of agreement between two ideas already available to the mind. The endpoints must be known prior to engaging in the act of reasoning.

It may be objected that Locke derives the natural law from God. Certainly there is evidence that Locke thought that this law was at least consistent with, if not given by, God.<sup>77</sup> I think this objection can be easily met when one remembers that Locke says the natural law *is* reason. By identifying the law with reason, Locke takes the matter out of the religious realm. If he were trying to establish what sort of society would be required under God's law, then he would not be talking about reason, and his account of civil (or perhaps ecclesiastic) society would not be of as great an interest in political philosophy.

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<sup>77</sup> John Locke "The Second Treatise" in *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), § 6.

If reason cannot be the natural law, or even derive it as a rational principle, what role does it and natural law actually play in Locke's account of the contract? Once again, I think when Locke is talking about reason in this way he is actually using a conception of rationality. Given the assumption that the desire to have and hold private property simply is rational, and the difficulties that would ensue in the state of nature, every rational person would make the agreements Locke suggests. The natural law is again a way to codify the conception of rationality that is in use. This is to say the natural laws which guide the solution found in the social contract have the content they do in virtue of what Locke considers to be rational constraints on action.

Consider the statement of the natural law: "that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions."<sup>78</sup> This proscription on harming is rooted in the idea that harm is something every person wants to avoid. There is nothing sinister or obviously false with this idea; it seems reasonable. One can understand this reasonableness in terms of a something that achieves a true human good. Not being harmed is such a good. However, if we alter the standard of rationality to be along the lines of some cost-benefit analysis, then the law against harming others might not be reasonable, especially if you are in a position to greatly benefit from the infliction of some harm. An example may be using your property to the greatest economic advantage to yourself, say building a toxic waste dump, without regard to the harm it may cause your neighbors. A cost-benefit analysis might favor the dump despite the cost of losing friendly relations with your neighbors simply because the benefit is greater.

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<sup>78</sup> Ibid.

One will recall that I am not arguing for a specific conception of rationality. I am pointing out that the description of the state of nature embodies a conception of rationality that is then formalized in the laws of nature. If he had a different conception of rationality, both his description of the state of nature and the natural law would be correspondingly different. The central role of property in Locke's description of the state of nature signals what sorts of actions are rational. Actions that preserve one's property are rational; those that do not do so are not. This becomes particularly vivid when one considers that Locke views each person as being the owner of his person and labor.<sup>79</sup> The fact that one's very life and being are understood in terms of possession indicates that the central value, the thing that must be preserved, is property. Thus the preservation of property becomes the standard of rationality when weighing how to form civil society.

### *Rousseau*

Jean-Jacques Rousseau's social contract theory can be viewed as a turning point in the social contract tradition. He shares some features with his predecessors, yet has some sharp criticisms of them as well. More importantly, Rousseau introduces a new use for the ideas bound up in social contract. He does not try to justify an existing state of affairs, but rather argues how the state of affairs ought to be. This change of focus, which influences all later social contract theories, marks a place where some may wish to say one social contract tradition ends and another begins. I think, however, we can maintain that there is a continuity of tradition. Indeed, as should be evident from the discussion to follow, Rousseau's theory has some primary features common to Hobbes and Locke's versions.

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<sup>79</sup> Ibid. § 27.

Despite these similarities, Rousseau wrote a distinctly different sort of social contract. Locke's work contains what may be termed an 'actual' contract, holding that people consented to an actual, historical contract. A second type of social contract may be termed a 'hypothetical' contract. This sort holds that the contract specifies what people could agree to, even though they haven't done so in fact. It may be argued that Hobbes held this hypothetical sort of view since he didn't demand that the state of nature be an actual state, and given the requirement to preserve themselves, people could agree to the Leviathan. Rousseau, however, wrote a social contract of a third type, one that may be called an 'ideal' contract. This sort of contract is what people ought to have agreed to in order to generate the best society.<sup>80</sup> The difference between these types is important for a number of reasons, including what sorts of criticisms can be leveled against them (the common criticism of "It never happened" doesn't carry any weight against hypothetical and ideal contracts) and what the aim of the contract is. Rousseau's ideal contract aimed to "devise a form of political association that reconciles the need for cooperation between people with their essential natures as free beings."<sup>81</sup>

Rousseau describes the problem that he thinks the social contract solves as follows: "How to find a form of association which will defend the person and goods of each member with the collective force of all, and under which each individual, while uniting himself with the others, obeys no one but himself, and remains as free as before."<sup>82</sup> The idea of people uniting with others for defense of life and property is a theme that follows

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<sup>80</sup> This taxonomy is from Michael Lessnoff *Social Contract* (Atlantic Highlands, NJ: Humanities Press International, 1986). It is perhaps possible to read Hobbes as writing an ideal contract, but this has no impact on the current analysis.

<sup>81</sup> Frederick Neuhausser "Freedom, Dependence, and the General Will" in *The Philosophical Review*, vol. 102, No. 3 (July 1993) p. 367.

<sup>82</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 60.

straight out of Hobbes and Locke. The particularly interesting part of Rousseau's formulation of the problem is that in so associating each individual will obey only himself and remain as free as before. Comprehension of Rousseau's social contract requires an understanding of this aim of the contract, and to achieve this one must also understand the condition of the individual prior to any association.

In Rousseau's conception of the state of nature, one finds a very different world from that posited by Hobbes or Locke. Rousseau's "noble savage" does not live in the fearful state of the war of all against all, nor does he spend his time accumulating property by his labor. Rather, man in his natural condition is very much like a solitary animal, spending his days satisfying desires for food and shelter and little else.<sup>83</sup> He maintains little or no contact with other people, and thus has none of the concerns that arise when one is associated with others.<sup>84</sup> These concerns are items such as ownership of property, standing in the eyes of others, and the like. Thus, without such obstacles, man in his natural condition spends his time negotiating only the obstacles of the natural world on his path to fulfilling his simple needs.

This simple life gives rise to a number of important topics in Rousseau's thought. One such idea is that of equality. Rousseau holds, as did Hobbes and Locke, that all men are equal in the state of nature. This means both that they have roughly equal abilities and that there is no natural subordination among men. Inequality has a non-natural or societal source, and therefore could be prevented. Thus, unlike Locke, who then tried to merely explain the subsequent obvious inequalities among men as the result of their

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<sup>83</sup> Rousseau discusses the state of nature most fully in his "Discourse on Inequality", found in *The Social Contract and Discourses*, trans. G.D.H. Cole, revised by J.H. Brumfitt and John C. Hall (London: J.M. Dent & Sons Ltd., 1973), pp. 47-72.

<sup>84</sup> N.J.H. Dent *A Rousseau Dictionary: The Blackwell Philosopher Dictionaries* (Cambridge, MA: Basil Blackwell, 1995), p. 233.

dealings with each other, Rousseau's theory attempts to preserve equality in the civil society that is generated by the social contract.<sup>85</sup> Preventing the servitude that stems from inequality is one way to preserve the freedom that Rousseau says is a goal of the social contract.

The second important idea that has its roots in the simple life of man in his natural condition is that of freedom. The concept of freedom is very complex in Rousseau's work, and thus a complete analysis of it cannot be given here. However, a few remarks about Rousseau's conceptions of freedom will help make clear both his starting and ending points with respect to the social contract. The first idea is the common notion of negative freedom. Negative freedom is a lack of impediments to one's actions. Thus, in Rousseau's natural condition, the lack of impediments that arise from association with other people is a kind of freedom.<sup>86</sup> This sort of freedom is perhaps the sort Rousseau has in mind when he says that men should remain as free as before.

There is a further sense of freedom that is mentioned by Rousseau. In Chapter 8 of *The Social Contract* Rousseau considers "a balance sheet" of what one loses and gains by making the social contract.<sup>87</sup> The losses are "natural liberty and the absolute right to anything that tempts him and that he can take" and the gains are "civil liberty and the legal right to property."<sup>88</sup> Civil liberty is defined in contrast to natural liberty; whereas natural liberty is limited by individual's physical power, civil liberty is limited only by the general will.<sup>89</sup> This limit, as we will see below, is such that the force of the

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<sup>85</sup> Michael Lessnoff *Social Contract* (Atlantic Highlands, NJ: Humanities Press International, 1986), p. 81.

<sup>86</sup> N.J.H. Dent *A Rousseau Dictionary: The Blackwell Philosopher Dictionaries* (Cambridge, MA: Basil Blackwell, 1995), p. 118. All my remarks on freedom profited from reading this entry.

<sup>87</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 65.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

community can only be applied for the common good. Thus, if the limit to natural freedom (to overcome obstacles) is the limit of one's physical abilities, the added power of everyone aiding each other to overcome obstacles (as long as the object of these endeavors falls within the province of the common good) provides a greater freedom.

There is a deeper sense of freedom than this increase in negative freedom. Rousseau describes a "moral freedom" that is a further benefit to making the social contract. He says "to be governed by appetite alone is slavery, while obedience to a law one prescribes to oneself is freedom."<sup>90</sup> Thus, even though one is free in the negative sense in the state of nature, one can only gain this greater freedom upon leaving that state. It can be argued that this deeper sense of freedom is not a preservation of freedom at all, but rather an expansion, and therefore it is misleading to say that Rousseau is trying to preserve freedom in the civil society. I agree that Rousseau is not trying to preserve freedom as it was in the state of nature, but I don't think it is misleading to say that he was concerned with preserving freedom. The social condition he opposed to freedom was slavery, not a different kind of freedom. Therefore, it is appropriate to view his theory as preserving freedom, even if the nature of that freedom changes. The reason why moral freedom can only be achieved outside the state of nature is based on Rousseau's account of the source of human virtue. Virtue arises from the development of our passions, and it is to these ideas we now turn.

The lack of concerns in the state of nature discussed above does not mean a lack of any passion or desires at all. Rousseau's account of human nature holds that there are some natural characteristics or passions found in men in the state of nature that lead to some natural desires, and thus natural concerns. The first of these natural passions is

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<sup>90</sup> Ibid.

*amour de soi*, or love of self. *Amour de soi* “ is a natural feeling which leads every animal to look to its own preservation, and which, guided in man by reason and modified by compassion, creates humanity and virtue.”<sup>91</sup> This claim has two important elements. The first is the empirical claim that, in the state of nature, man has a passion toward self-preservation, and thus a motivation to do certain activities rather than others. The second is that this love of self is the foundation for all other virtue man is capable of achieving. Thus, the moral freedom discussed above arises from *amour de soi* once that love of self has been appropriately tempered.

There are two further aspects of *amour de soi* that need to be mentioned before examining the second natural passion. The first is that love of self is a passion, not a natural law in the sense discussed in the previous two sections. Clearly, from the passage cited above, it is a passion that can be guided by reason, but it is not equated with reason as the natural law was in Hobbes and Locke. Even so, this passion serves a similar role to the natural laws by establishing a standard for rationality.

The second aspect of love of self that needs to be discussed is its contrast with what Rousseau terms *amour-propre*, or self-love. *Amour-propre* is the desire, once man is associated with other people, to try and elevate himself above all others. This can be seen as analogous with Hobbes’ desire for glory and power, although Rousseau explicitly denies that *amour-propre* existed in the state of nature, as Hobbes maintained the desire for glory did.<sup>92</sup> The reason self-love did not exist in the state of nature is because it arises between people. Rousseau says that it is “a relative and factitious feeling”, meaning that

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<sup>91</sup> Jean-Jacques Rousseau “A Discourse on the Origin of Inequality” in *The Social Contract and Discourses*, trans. G.D.H. Cole, revised by J.H. Brumfitt and John C. Hall (London: J.M. Dent & Sons Ltd., 1973), p. 66, note 2.

<sup>92</sup> Ibid.



it applies only relative to other people, and thereby is not natural.<sup>93</sup> *Amour-propre* is what replaces *amour de soi* once man is in society, much to his detriment.

The second naturally occurring passion found in man in his natural condition is that of compassion. Compassion is what tempers one's actions even while seeking self-preservation, and thus Rousseau holds that Hobbes' view of the state of nature, where everyone does anything they can to anybody in order to survive, is false.<sup>94</sup> Rousseau describes compassion as "an innate repugnance at seeing a fellow creature suffer."<sup>95</sup> It is compassion, along with reason, that serves as the guide to love of self and thus provides the foundation for virtue.

These descriptions of the state of nature and the condition of man in that state emphasize what it is that the social contract ought to maintain. It ought to preserve as much as possible our natural passions of love of self and compassion. By remaining true to our love of self, the society that is created will only be better for us, for no one would, from ideas of self-preservation, create a community that jeopardizes the self. Freedom would be maintained or expanded to encompass moral freedom. Equality should be preserved. Finally, the corruption resulting from *amour-propre* needs to be rectified.

The social contract is often viewed just as a mechanism to move people from the state of nature to the civil state. The fact that Rousseau requires that it correct as much as possible the corrupting passion of *amour-propre* shows that for him it is much more. The self-love that comes with society must be countered, or else man will remain everywhere in chains. Maurizio Viroli quotes Rousseau's most simple statement of this problem:

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<sup>93</sup> Ibid.

<sup>94</sup> Ibid., pg 66.

<sup>95</sup> Ibid.

“While it may be true that needs bring men together, their passions divide them.”<sup>96</sup> At the risk of getting ahead of myself, the correction to this problem is to develop good social institutions, which cultivates in each citizen the understanding of themselves as part of the social whole, and thus causes them to recognize the general will as their will.<sup>97</sup> Thus, the social contract is not just the way people formed themselves into society, but the way they do so such that the resulting society maintains the equality and freedom it was originally intended to preserve.

Now that the aim of Rousseau’s social contract is clear, understanding his social contract becomes a matter of how he accomplishes it. Rousseau writes that at some point “the obstacles to their preservation in a state of nature” become too great, and thus men must unite together or cease to exist.<sup>98</sup> The goal of such unification is to make it so that a power greater than that of an individual power can be focused upon these obstacles. The only way to achieve this collection of power needed for survival is to combine the forces of the many together, and how this combining of “each man’s own strength and liberty” is to be accomplished is the question the social contract is designed to solve.<sup>99</sup> The answer is, as hinted above, “the total alienation by each associate of himself and all his rights to the whole community.”<sup>100</sup>

By alienation, Rousseau means the giving up of all natural rights (i.e. the freedom to take whatever one is able to get) to the community. Each associate gives all that he has

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<sup>96</sup> Maurizio Viroli *Jean-Jacques Rousseau and the ‘Well-Ordered Society’*, trans. Derek Hanson (Cambridge: Cambridge University Press, 1988), p. 110. Viroli argues, in part, that Rousseau’s project is to prescribe the way to create order from the disorder brought upon man by *amour-propre*.

<sup>97</sup> Ibid., pp. 219-220. See also Pauline Chazan “Rousseau as Psycho-Social Moralism: The Distinction Between Amour De Soi and Amour-Propre” in *History of Philosophy Quarterly* 10 (04) (1993), p. 349. This article presents a concise analysis of *amour-propre* and Rousseau’s proposed cure.

<sup>98</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 59.

<sup>99</sup> Ibid., 60.

<sup>100</sup> Ibid.

to all the others, and they to him. Rousseau writes: “Each one of us puts into the community his person and all his powers under the supreme direction of the general will; and as a body, we incorporate every member as an indivisible part of the whole.”<sup>101</sup> By having one’s powers under the direction of the general will, one is supposed to gain those features of civil liberty, moral freedom, and relief from the evil effects of self-love as discussed above. To understand how these gains are supposed to occur requires an examination of the general will.

Many have thought the general will is the most important contribution by Rousseau to political philosophy.<sup>102</sup> It is certainly the central feature of Rousseau’s social contract. Frederick Neuhouser says of it, “The general will must regulate social cooperation in accord with the common good and at the same time be the will of the individuals whose behavior it governs.”<sup>103</sup> Rousseau adds, “The general will studies only the common interest.”<sup>104</sup> Further, “the general will alone can direct the forces of the state in accordance with that end which the state has been established to achieve- the common good.”<sup>105</sup> N.J.H. Dent comments, “A will, to be truly general, must give voice to the interests which each person has in common with every other.”<sup>106</sup> These passages set out the essential features of the general will. The general will is supposed to be what the citizens will with respect to the common good. Thus, the general will directs the power of all in those cases where it is to everyone’s benefit.

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<sup>101</sup> Ibid., 61.

<sup>102</sup> C.f. T.H. Green *Lectures on the Principles of Political Obligation* (Ann Arbor: University of Michigan Press, 1967), p. 90, sec. 77.

<sup>103</sup> Frederick Neuhouser “Freedom, Dependence, and the General Will” in *The Philosophical Review*, vol. 102, No. 3 (July 1993), p. 367.

<sup>104</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 72.

<sup>105</sup> Ibid.

<sup>106</sup> N.J.H. Dent *A Rousseau Dictionary: The Blackwell Philosopher Dictionaries* (Cambridge, MA: Basil Blackwell, 1995), p. 125.

There are a number of questions that spring immediately to mind when considering this idea. Perhaps the foremost in light of the current discussion may be how the social contract is related to the general will so that it preserves freedom and equality. With respect to equality, the answer is rather straightforward. The general will is concerned with only the common interest, and thus is concerned with all citizens equally. No one's interests are more important to the general will than anyone else's. A second sense of equality follows from the general will in the sense that since all agreed to the social contract, all are equally obligated to obey the general will established therein.<sup>107</sup> Thus, the equality of the state of nature is preserved in civil society.

The preservation of freedom is of critical importance to Rousseau's conception of the ideal contract.<sup>108</sup> How does being bound to the general will preserve, or indeed enlarge, the freedom one had in the state of nature? There are two answers to this question, the first dealing with preservation of negative freedom, the second dealing with the enlargement of freedom via the addition of moral freedom. In regard to negative freedom, there are two important aspects in which this freedom is retained upon entering the social contract.

First, the will that is the general will belongs to each citizen. This is very similar to Hobbes' claim that the will of the Leviathan is the will of the people by definition.<sup>109</sup> When making the contract, people will that their power be used for the common good. Thus, every action of the general will is willed by each citizen in this respect. Since the general will is created in the act of the social contract, obeying the general will is merely

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<sup>107</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968). p. 76.

<sup>108</sup> *Ibid.*, 96.

<sup>109</sup> Thomas Hobbes *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett, 1994). Part II, ch. xviii, par. 6.

obeying oneself in the sense that you made the social contract; it is your will. Rousseau puts it quite succinctly when he writes, “So long as the subjects submit to such covenants alone, they obey nobody but their own will.”<sup>110</sup> Furthermore, with the general will removing impediments for everyone (if such removal is for the common good), one’s freedom is in a sense increased by the lack of those obstacles in pursuing one’s desires. Second, the general will is limited in scope to the common interest, and thus issues falling outside that scope are left to individual, or particular, wills.<sup>111</sup> Thus, in all matters that are not issues of common good, one has exactly as much freedom as before.

There are two items to note regarding the general will. The first is that to someone outside a particular society, that society’s general will is a particular will.<sup>112</sup> If different societies have different general wills, then, as Rousseau notes, different people may require different laws.<sup>113</sup> It is important to note that Rousseau’s account of the general will is a generic account, and the actual general will of a particular society (or people, as we will see below) can differ from other societies. The only thing about the general will that is common to them all is the focus on the common good, whatever form that may take.

The second item of note is that it appears that there can be cases of conflict between the general will and a person’s particular will. This would seemingly undermine the claim that everyone wills the general will. Rousseau points out, however, that particular wills are concerned with particular people who have particular interests, and rarely with

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<sup>110</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 77.

<sup>111</sup> Ibid.

<sup>112</sup> G.D.H. Cole “Introduction” to *Jean-Jacques Rousseau: The Social Contract and Discourses*, trans. G.D.H. Cole, revised by J.H. Brumfitt and John C. Hall (London: J.M. Dent & Sons Ltd.) 1973, p xxxiv.

<sup>113</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 91.

the common good, as the general will is.<sup>114</sup> He thinks that even in the face of these differences there will be some common features, and these features are what make the “social bond.”<sup>115</sup> Thus, since the general will is based upon this commonality, there is a sense in which the citizen does will the general will.

Even when a person explicitly wills something that is in conflict with the general will, they do it in a state of denial with respect to what they do will *vis-à-vis* the common good. For example, the general will could will that there be equality between the citizens, but particular citizens may seek power, and thus to will that there be inequality. It needs to be remembered that people are concerned not with the common good *per se*, but with their own good as they go about their daily lives. But Rousseau’s claim is that the general will is what we desire.<sup>116</sup> The general will is concerned about things we generally, and truly, want, but tend not to think about. When a particular will is opposed to the general will, it is because the particular will has the narrow focus of that person’s day to day desires, and ignores the bigger issues that are the province of the general will. If you ask the person hungry for power whether fundamental equality ought to be eliminated from the society, with the probability that he will not be one who achieves power in the new system, I think he would say that fundamental equality should be preserved. His focus was on particular power, and thus not counter to the general will at all. The general will is what the people desire, both intrinsically, for who wants to toss away their freedom, and instrumentally, for without the common good secured by the general will, the obstacles that would cause our extinction in the state of nature would not be removed.

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<sup>114</sup> Ibid., 69.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid., 82.

The final, and perhaps greatest benefit gained by the social contract is what Rousseau calls moral freedom. He says that moral freedom “alone makes man the master of himself; for to be governed by appetite alone is slavery, while obedience to a law one prescribes to oneself is freedom.”<sup>117</sup> He adds “The passing from the state of nature to the civil society produces a remarkable change in man; it puts justice as a rule of conduct in the place of instinct, and gives his actions the moral quality they previously lacked.”<sup>118</sup> There are two ideas at work in these statements.

The first idea concerns freedom. If one is obeying rules one sets for oneself, then one is free, for as Maurice Cranston points out in his introduction to *The Social Contract*, all there is to being free is ruling oneself.<sup>119</sup> The second idea is the moral component of the claim: following a rule allows for morality or justice whereas reacting to mere appetite is slavery. The basic idea is that when following appetite, one may not satisfy that appetite, but there is no possibility of wronging the appetite. In order for one to be moral, however, one must be able to violate morality. The way Rousseau sees to establish such a possibility while maintaining freedom (for otherwise any imposed set of rules would suffice to create the possibility) is to base it on self-imposed rules. Note that these rules are not just any rules that one wishes, for that would be following one’s appetite again. The rules must be the ones that correspond to the common good. Morality, then, is freely keeping oneself from violating the rules that secure the common good.

To summarize, the social contract is a way to overcome some of the common obstacles found in the state of nature while preserving equality and enlarging freedom.

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<sup>117</sup> Ibid., 65. See also T.H. Green *Lectures on the Principles of Political Obligation* (Ann Arbor: University of Michigan Press, 1967), p. 124, sec. 116.

<sup>118</sup> Ibid., 64.

<sup>119</sup> Maurice Cranston *Jean-Jacques Rousseau : The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 29.

This is accomplished by surrendering those liberties that are the concern of the community to the community.<sup>120</sup> The community, via the general will thus established, secures the common good while letting everyone be free in the sense that they obey only their own will, either as found in the general will or, in cases that are not issues of the common good, in their particular wills. Joshua Cohen summarizes the relationship between the general will and the social contract as follows:

The fact that the social contract ought to advance common interests corresponds to the fact that the contract is a unanimous agreement among rational individuals who are moved by self-love. And the fact that the members of the order share the conception of the common good that the social order ought to advance corresponds to the interest in remaining “as free as before.” By sharing the conception, they achieve the autonomy that comes from acting on principles they recognize as their own....<sup>121</sup>

In making the agreement to alienate those freedoms associated with the common good, freedom and equality are preserved, and even expanded through the possibility of moral freedom.

The final aspect of Rousseau’s social contract theory to be discussed concerns his account of the passions and their relationship to rationality. As discussed above, Rousseau thinks that man in his natural state guides his activities according to the two natural passions: compassion and amour de soi. The concept of amour de soi contains as its first “law” that man watch after his preservation.<sup>122</sup> It is the requirements of this task that induce men to the social contract. It should be recalled that the obstacles to men

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<sup>120</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 74.

<sup>121</sup> Joshua Cohen “Reflections on Rousseau: Autonomy and Democracy” in *The Social Contract Theorists: Critical Essays on Hobbes, Locke, and Rousseau*, ed. Christopher Morris (New York: Rowman & Littlefield, 1999), p.193.

<sup>122</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 50. See also Jean-Jacques Rousseau “A Discourse on the Origin of Inequality”, in *The Social Contract and Discourses*, trans. G.D.H. Cole, revised by J.H. Brumfitt and John C. Hall (London: J.M. Dent & Sons Ltd., 1973), p. 76.



fulfilling their desires would get so bad that if they failed to unite they would perish.<sup>123</sup>

Thus, natural man is driven by passion and circumstance to make the social contract.

Love of self and compassion in the state of nature provide the standard for what can be considered rational when faced with the obstacles Rousseau says require people to come together in society. This standard says that actions must benefit the actor (a requirement of the love of self) and not inflict unnecessary harm upon others (due to compassion). From these requirements spring the nature of Rousseau's social contract. Equality must be preserved, for to allow yourself to be counted as less than others fails to satisfy the requirements of love of self, while trying to be counted as more violates compassion in that it forces others to be less. All action, including the making of the social contract, must be in accordance with these natural passions. All other actions would fail to be rational in that they fail to achieve the true human goods of freedom and equality.

Consider how Rousseau's version of the social contract would differ if he held that amour-propre was the passion found in men in the state of nature rather than something that develops upon entry into society. With self-love as the guiding passion, the standard of what a rational person would do is significantly changed. The social contract would not be about human good, but rather be about how one can achieve the best standing among others. Thus, a change of passions would change the contract to one more along the lines of a cost-benefit analysis. This demonstrates how the passions in the state of nature play an analogous role to the fear of death and the preservation of property in

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<sup>123</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 59.

Hobbes and Locke, respectively, in establishing a standard of rationality from which the social contract can be derived.

## CHAPTER II

### KANTIAN CONTRACTUALISM

The problem the social contract is designed to solve changes in the hands of Rousseau. His concern is less with how man came to be under the authority of the state than with how to reconcile that condition with freedom. This change of emphasis is prominent in the work of Immanuel Kant, who was greatly influenced by Rousseau. Furthermore, Kant, like Rousseau, did not hold that the social contract was useful in explaining the present condition of man. In Kant's theory, the contract, what all agree to, is merely an idea. It serves as a regulatory ideal, the idea against which all actual public laws can be checked to see if they are just.<sup>124</sup> This use of social contract theory has been very influential, particularly in the work of John Rawls. As noted in the introduction, my concern is not with the content of a theory of justice, but with how the social contract is used to develop those theories. Kant and Rawls are exemplars of what is called Kantian contractualism.

Jean Hampton describes Kantian contractualism as a position that doesn't hold that any literal contract is made, but rather that the process of making such an agreement "is morally revealing."<sup>125</sup> Kant's chief concern in his social contract is to explain how the autonomous rational agent can be reconciled with the coercive state. The autonomous rational agent is the centerpiece of Kant's moral theory, but as Jeffrie G. Murphy points out, if the coercive nature of the state can't be found to be consistent with the

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<sup>124</sup> Michael Lessnoff *Social Contract* (Atlantic Highlands, NJ: Humanities Press International, 1986), pp. 90-91.

<sup>125</sup> Jean Hampton "Contract and Consent" in *A Companion to Contemporary Political Philosophy*, *Blackwell Companions to Philosophy*, eds. Robert E. Goodin and Philip Pettit (Cambridge, MA: Blackwell Publishers, 1993), p. 386.

autonomous rational agent, then the only justified political system would be anarchism.<sup>126</sup>

This is a conclusion Kant would find unacceptable; therefore he used a social contract theory to show that the coercive state can indeed be reconciled with the autonomy of rational beings, and furthermore that such beings require the creation of the state. Later contractualists, such as Rawls, employ the social contract device in the same way; they attempt to reveal the nature of justice based upon the agreements that fully rational people would make. I continue my analysis of social contract theories below with the theories of Kant and Rawls. Although similar in their contractualist root, they also contain differences.

### *Kant*

Many, if not most, social contract theories begin by describing a state of nature that contains some feature that men would need to overcome. The state of nature as described by Kant is one where two conditions hold: everyone follows his own judgments, and there is no justice.<sup>127</sup> The first condition reflects the freedom of man. This freedom is the feature that needs to be maintained into the state. It is the second condition that is rectified by the creation of the civil state, which is for Kant “a union of a multitude of men under laws of justice.”<sup>128</sup>

Kant says that the way such a state is created is the “original contract”, by which “the people give up their external freedom in order to take it back again immediately as

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<sup>126</sup> Jeffrie G. Murphy “Hume and Kant on the Social Contract” in *Philosophical Studies* 33, (1978), p. 76.

<sup>127</sup> Immanuel Kant *The Metaphysical Elements of Justice*, ed. and trans. J. Ladd (New York: Macmillan, 1965), p. 76.

<sup>128</sup> Ibid.

members of a commonwealth.”<sup>129</sup> This idea is similar to Rousseau’s in that by placing oneself under the coercive authority of the state, one loses the natural freedom of the state of nature, but gains the moral freedom of living under self-imposed rules.<sup>130</sup> Kant denies, however, that such ends as overcoming the conditions in the state of nature, or indeed any ends, justify lawful coercion.<sup>131</sup> Rather, “[t]he necessity of public lawful coercion does not rest on a fact, but on an a priori Idea of reason....”<sup>132</sup> This idea of reason is, as will be discussed below, a juridical state that allows us to exercise our whole rights.

There are two interconnected issues in this otherwise straightforward social contract account. The first is the rational requirement of the contract. How does an idea of reason necessitate the creation of the civil state, and furthermore why does it require a social contract? The second is how one can be free while under state coercion. It would seem that, as mentioned above, if you can be coerced you are not as free as you could be otherwise. The solution to these issues, and thus a complete understanding of Kant’s social contract, hangs on Kant’s view of freedom.

Freedom, according to one formulation Kant offers, is “the property of not being constrained to action by any sensible determining grounds.”<sup>133</sup> Sensible grounds are things like desires, appetites, pleasures, and pains. A being that is driven by the senses in this way is not free; he is guided in his actions by forces outside his control. One might compare such a being with Rousseau’s description of man in the state of nature, animal-like in his quest to fulfill his base desires. The alternative to acting on sensible grounds is

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<sup>129</sup> Ibid., 80.

<sup>130</sup> See Kenneth Baynes “Kant on Property Rights and the Social Contract” in *Monist* 72, n. 3, (July 1989), pp. 447-448 on the similarities and differences of this change. In particular, Kant does not hold that there is a great transformation in man, as does Rousseau, when this change occurs.

<sup>131</sup> Immanuel Kant *The Metaphysical Elements of Justice*, ed. and trans. J. Ladd (New York: Macmillan, 1965), p. 76.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid., 27.

acting from reason. Acting from reason is connected with acting from one's will, which is entirely within one's control. Thus, to be free is to act not from sensational or physical causes, but to act from reason.

One may ask what sort of creature can obtain this freedom. Since to be free one must act from reason, only a rational being can be free. The faculty possessed by rational beings that allows for this freedom is the will. Kant says "[t]he will is thought of as a faculty of determining itself to action in accordance with the conception of certain laws."<sup>134</sup> This is, in part, the ability to impose rules for action upon itself. Combined with the idea of freedom described above, in order to have a free will, it must be determined by reason rather than desires or other sensible ends.<sup>135</sup> The idea is that one cannot be free if one is a slave to one's own appetites. Thus, to be free, a being must be rational, and use that reason to determine what rules and principles will guide its action. Kant equates such freedom of the will with autonomy, which he describes as "the property of the will to be law to itself."<sup>136</sup> The autonomous rational being, one whose will is both subject to and prescribes the law for that being, is a being that is free.<sup>137</sup> A perfectly free being, one that has a perfectly free will, determines the course of its actions using pure reason.<sup>138</sup> Thus, a non-perfectly autonomous rational being should determine its will as much as it is able in accordance with pure reason. In Kant's ethics, the

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<sup>134</sup> Immanuel Kant *Foundations of the Metaphysics of Morals and What is Enlightenment*, trans. Lewis White Beck (New York: Macmillan, 1990), p. 44.

<sup>135</sup> Ibid., 63. See also *The Metaphysical Elements of Justice*, ed. and trans. J. Ladd (New York: Macmillan, 1965), p. 13. and Immanuel Kant "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice'" in *Kant's Political Writings*, ed. Hans Reiss and trans. H.B. Nisbet (Cambridge: The University Press, 1970), p. 73.

<sup>136</sup> Immanuel Kant *Foundations of the Metaphysics of Morals and What is Enlightenment*, trans. Lewis White Beck (New York: Macmillan, 1990), p. 64.

<sup>137</sup> Ibid., 48. See also Lewis White Beck "Kant's Two Conceptions of the Will in Their Political Context" in *Kant and Political Philosophy: The Contemporary Legacy*, eds. Ronald Beiner and William James Booth (New Haven: Yale University Press, 1993), p. 39.

<sup>138</sup> It should be noted that such a being is not a possibility in the phenomenal world, but as an idea serves as a guide and measure for the freedom of actual, imperfect beings.

categorical imperative serves to help check whether a maxim is in accordance with pure reason, thus helping a non-perfect being become as free as possible.

It is clear that this conception of freedom, being bound by rules of one's own choosing, is very similar to the deep conception of freedom discussed in the section on Rousseau. Kant refines the concept of freedom, adding, "[f]reedom...insofar as it is compatible with the freedom of everyone else in accordance with a universal law, is the one sole and original right that belongs to every human by virtue of his humanity."<sup>139</sup> The crucial element of this original right is that freedom must be used in a manner compatible with everyone else's freedom. Universal law requires we use our freedom in ways consistent with everybody else's freedom. To will otherwise would be to will that you get to use your freedom in ways that others don't. This would be willing with respect to a particular end, and thus not be determined by reason. Therefore, such willing is not the willing of a free will. Furthermore, as rational beings we deserve freedom based on the fact of our rationality, which is the ground of human dignity.<sup>140</sup> Thus, to will that others can use their freedom in ways we can't is to not recognize our own dignity. To reason without such recognition is contradictory. The fact that you are using reason to determine your will establishes the fact of your human dignity, so you shouldn't be able to use reason to undermine it. Doing so would not be an act of reason. Finally, the limitation prevents our humanity from being violated by the mere exercise by another person of his right. Such a violation, if permissible, would undercut the nature of the

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<sup>139</sup> Immanuel Kant *The Metaphysical Elements of Justice*, ed. and trans. J. Ladd (New York: Macmillan, 1965), pp. 43-44.

<sup>140</sup> Jeffrie G. Murphy *Kant: The Philosophy of Right* (Macon, GA: Mercer University Press, 1994), p. 24.

autonomous rational human as a moral lawgiver, and thus Kant's entire project.<sup>141</sup>

Anything that violates our freedom violates our humanity.

The limitation in the original right forms the content of Kant's universal principle of justice: "Every action is just...such that the freedom of the will of each can coexist together with the freedom of everyone in accordance with a universal law."<sup>142</sup> In short, justice simply is action in accordance with the original right, freedom. The state of nature, however, is not a state of injustice, but rather a lack of justice.<sup>143</sup> A lack of justice implies a lack of freedom. Yet the lack of freedom found in the state of nature is not a lack that is due to the will being determined by sensible grounds. That is a different issue. The lack of freedom in the state of nature involves conflict in the exercise of freedom. It is the lack of freedom in that state of nature, a lack that cannot be resolved by appeal to the concept of freedom that the social contract solves.

Consider the freedom to own property. Kant says "[a]n object is mine *de jure* (*meum juris*) if I am so bound to it that anyone else who uses it without my consent thereby injures me."<sup>144</sup> This is the state of possession. He follows this claim with a distinction between sensible possession and intelligible possession. The former refers to the physical possession of some object (the ball is in my hands), while the latter refers to the idea that one can still injure me by using the object even though it is not in my physical possession (it is still my ball even though I don't have it with me).<sup>145</sup> The idea of sensible possession leads to the idea of intelligible possession. If it is mine when in my

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<sup>141</sup> John Ladd "Introduction" to *The Metaphysical Elements of Justice*, ed. and trans. J. Ladd (New York: Macmillan, 1965), p. xx.

<sup>142</sup> Immanuel Kant *The Metaphysical Elements of Justice*, ed. and trans. Ladd (New York: Macmillan, 1965), p. 35.

<sup>143</sup> *Ibid.*, 76. On the state of nature being a lack of centralized government, see Michael Lessnoff *Social Contract* (Atlantic Highlands, NJ: Humanities Press International, 1986), pg. 94.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*



hands, why isn't it still mine when I set it down for a moment? But if you pick up the ball I left outside, it is now your (sensible) possession. You have acquired it; it is yours. A dispute over the ball shows a limitation to our freedom. My claim that the ball is mine (intelligibly) undercuts your freedom to acquire possessions; your claim on the ball (sensibly) limits my freedom to possess intelligibly. Because the exercise of our freedom limits the freedom of others, no one is free.

Thus, the idea of property, which arises from the possibility of sensible possession, constitutes a freedom that we cannot have in the state of nature. Even though the original right of freedom has the limitation on the use of freedom being consistent with everybody else's use of their freedom, there is no *a priori* way to settle such disputes. The limitation merely shows that a solution must be found. The solution requires a limitation of the freedom to acquire possessions, but the content of such a limitation is not derivable from the concept of freedom. There is nothing in the concept of freedom that forces one to conclude that property must exist. Thus, another justification must be found.

Kant says "[a] juridical state of affairs is a relationship among human beings that involves the conditions under which alone every man is able to enjoy his right. The formal principle of the possibility of this state of affairs, regarded as the Idea of a general legislative Will, is called public legal justice."<sup>146</sup> The establishment of the juridical state of affairs thereby assures that everyone, in virtue of being able to enjoy his or her rights, which includes the ability to own property, can be free. In short, it resolves the lack of justice problem in the state of nature. The juridical state of affairs is required by Kant's definition of justice. But again, as was the case with the concept of freedom, there is no

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<sup>146</sup> Ibid. 69.

way to derive the specific conditions necessary to bring about this state of affairs from the definition of justice.

One of the aspects of reason that Kant discusses is practical reason. Practical reason, according to John Rawls, concerns “bring[ing] about objects in accordance with an idea....”<sup>147</sup> The basic notion is that practical reason is a faculty that determines the conditions that will make the object of an idea an actuality. For example, property is the object of an idea. Practical reason tells us that in order for there to be property, people must have certain limitations upon their freedom. In particular, the freedom to acquire property must be curtailed so as to preclude acquiring objects that are already the property of other people. Yet this is a hypothetical imperative. There are no *a priori* grounds for such laws that permit property, although there are such grounds for bringing about the juridical state and lawful coercion. The requirement that the juridical state be brought about based upon the universal principle of justice indicates a need for permissive law, law that allows for overriding the general prohibition on interference with others.<sup>148</sup>

Briefly, permissive laws give people permission to violate the stricture against infringing upon other people’s freedom. In the state of nature, you are not supposed to interfere with other people’s freedom. One of the aspects of freedom is the freedom to acquire possessions. Since there is no such thing as property, only sensible possession, when someone acquires something that you had previously possessed, you are in no position to stop him. He has only exercised his freedom, yet the idea of freedom does not

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<sup>147</sup> John Rawls *Lectures on the History of Moral Philosophy* (Cambridge, Mass: Harvard University Press, 2000), p. 150.

<sup>148</sup> Kenneth Baynes “Kant on Property Rights and the Social Contract” in *Monist* 72, n. 3, (July 1989), pp. 436-437. The interpretation of permissive law presented here closely follows Baynes’ paper.

provide grounds for preventing him from this exercise. You cannot interfere with him. The permissive law establishes the grounds for just such interference. However, since these permissive laws are not derivable from the idea of freedom itself, their content needs to be justified in some other way.<sup>149</sup>

The content of the permissive laws gains its justification from the social contract; those laws are agreed to. The social contract serves as a way of binding autonomous rational beings into a society without violating them as autonomous, rational beings. The permissive laws of society are self-imposed and thereby do not violate freedom. Kant does not hold that an actual agreement took place; rather the idea of the social contract is brought about by practical reason.<sup>150</sup> The right to (sensible) property in the state of nature leads to the idea of the right to property, which ultimately requires the social contract to justify it.<sup>151</sup> Thus, autonomous rational beings could agree to the social contract because it is a way to bring about the freedom and right to property in a manner consistent with their dignity as autonomous rational being, i.e., through self-imposed rules. The question remains, however, as to the nature of the agreed upon rules that can structure this freedom such that it doesn't violate anyone else's freedom. Since they are not categorically required, in order for the citizens to be truly free these laws must be the will of each member of the society. But certainly different people will differently. The way this difficulty is met is through the idea of the general will.

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<sup>149</sup> Ibid., 436.

<sup>150</sup> Ibid., 434.

<sup>151</sup> Ibid., 444.

According to Kant, “only...a general united Will of the people by which each decides the same for all and all decide the same for each- can legislate.”<sup>152</sup> This means the content of the juridical state of affairs, i.e. the permissive laws, are determined by the general will. The basic idea is that the general will is a will that works out so that each person imposes the same rules as everyone else does with respect to certain issues that are the province of the general will. Kant says, “The basic law, which can only come from the general, united will of the people, is called the original contract.”<sup>153</sup> Yet Kant admits that the general will is not an actual will, but is an idea, and thus hypothetical.<sup>154</sup> In order to understand his conception of the general will one must understand what he means by saying that it is hypothetical.

Kant acknowledges that actual people do not reason without regard for their particular ends and thus each person wills unjustly in his own case, which is precisely the reason the civil society needs to be set up.<sup>155</sup> The reason is that sensible determining grounds always intrude in the phenomenal world. People cannot but be influenced, perhaps only to small degrees, by their desires, appetites, and other phenomenal attributes. But, as discussed above, such grounds do not allow the will to be free. Therefore Kant bases his account of the general will on what people could will if they could use pure reason. He notes that pure reason “legislates a priori, regardless of all empirical ends.”<sup>156</sup> Murphy sums this up succinctly: “[a]ccording to Kant, the only coercive social rules that are

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<sup>152</sup> Immanuel Kant *The Metaphysical Elements of Justice*, ed. and trans. Ladd (New York: Macmillan, 1965), p. 78.

<sup>153</sup> Immanuel Kant “On the Common Saying: ‘This May be True in Theory, but it does not Apply in Practice’” in *Kant’s Political Writings*, ed. Hans Reiss and trans. H.B. Nisbet (Cambridge: The University Press, 1970), p. 77.

<sup>154</sup> *Ibid.*, 79.

<sup>155</sup> Jeffrie G. Murphy *Kant: The Philosophy of Right* (Macon, GA: Mercer University Press, 1994), p. 104.

<sup>156</sup> Immanuel Kant “On the Common Saying: ‘This May be True in Theory, but it does not Apply in Practice’” in *Kant’s Political Writings*, ed. Hans Reiss and trans. H.B. Nisbet (Cambridge: The University Press, 1970), p. 73.

morally (because rationally) justified are those a group of ideal rational beings could agree to adopt in a hypothetical position of having to pick rules and practices to govern their relations with each other.”<sup>157</sup> It is the use of pure reason that makes the general will hypothetical. Thus, the social contract, the idea that creates the juridical state of affairs, is the result of what we could will were we perfectly rational.

Since such a will is only what could be willed and not what is actually willed, it is hypothetical. There are two related senses in which such a will can be seen as being general. The first way that it is general is because it can be attributed to every rational being. Each could will it because it would not be based upon any specific ends, and therefore could be adopted by all. The general will legislates what rules, based on our nature as autonomous rational beings, could structure our civil relations.<sup>158</sup> Since we all can have the requisite freedom due to our humanity, we could all draw the same conclusions in structuring our relations based on that freedom, if only we were users of pure reason.

The second sense in which the general will is general is that it aims at no particular end. This is related to the first sense of general in that it is the result of using pure reason. Pure reason by definition does not take ends into account; that is the province of practical reason. The reason this second sense is important is that it shows the relationship between the general will and freedom. Kant says that freedom in society is not being

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<sup>157</sup> Jeffrie G. Murphy “Hume and Kant on the Social Contract” in *Philosophical Studies* 33, (1978), p. 73. See also Murphy *Kant: The Philosophy of Right* (Macon, GA: Mercer University Press, 1994), p. 92.

<sup>158</sup> There is a stronger vein in Kant that suggests that there are certain rules and ends that are obligatory for rational beings to pursue. Any criticism of the weaker version presented here, however, will also apply to the stronger version. C.f. Jeffrie G. Murphy *Kant: The Philosophy of Right* (Macon, GA: Mercer University Press, 1994), p. 55.

made to live according to somebody else's conception of the good life.<sup>159</sup> By being general in respect to particular ends, the general will maintains the dignity of human beings by respecting each individual's autonomy. Indeed, it is our autonomy that makes us deserving of justice.<sup>160</sup> Thus, the ideas of autonomy, justice, and general will are interlinked, and are all based upon our nature as rational, free beings.

These ideas are also prominent in Kant's ethical theory. Briefly, Kant's ethics involves the only unqualifiedly good thing, the good will.<sup>161</sup> The way to achieve the good will is to determine it in accordance with reason, once again avoiding slavery to one's own desires. The categorical imperative provides the means to check whether the reasons for a proposed action actually are in accordance with pure reason. The categorical imperative shares the property of legislating without consideration of particular ends with the general will, as discussed above. By doing one's duty according to the categorical imperative one lives as an autonomous, and thus free, being.

Kant's social contract theory is similar enough to his ethics that it has been suggested in the literature that he doesn't even require the social contract to derive his civil society because he can achieve the same end via his ethics.<sup>162</sup> I think this view is mistaken for a number of reasons. First, as John Ladd points out, Kant viewed ethics as a matter of being bound from within, and the realm of the juridical as those cases where one can be

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<sup>159</sup> Immanuel Kant "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice'" in *Kant's Political Writings*, ed. Hans Reiss and trans. H.B. Nisbet (Cambridge: The University Press, 1970), p. 74.

<sup>160</sup> Jeffrie G. Murphy "Hume and Kant on the Social Contract" in *Philosophical Studies* 33, (1978), p. 76.

<sup>161</sup> Immanuel Kant *Foundations of the Metaphysics of Morals and What is Enlightenment*, trans. Lewis White Beck (New York: Macmillan, 1990), p. 9.

<sup>162</sup> C.f. Michael Lessnoff *Social Contract* (Atlantic Highlands, NJ: Humanities Press International, 1986), p. 97.

bound from without oneself.<sup>163</sup> Certainly some of my duties may work at cross-purposes to you fulfilling your duties or exercising your rights. This would infringe upon your freedom, yet as long as I am following the categorical imperative I am on firm moral ground. As discussed above, the resolution of such difficulties cannot be derived from the concept of freedom itself. Thus, there must be some other way of resolving such issues and that way is via agreement. If we all agree to limit our freedom in certain ways, that limitation, and the coercion required to enforce it, are justified and the cases can be resolved.

A second, related reason the social contract is not superfluous given Kant's ethics is that the issues the social contract resolves cannot be resolved without agreement. The issues of morality can be, i.e. through the use of the categorical imperative. No one needs to agree with the categorical imperative. If they did, it wouldn't be categorical. The solution to the problem of property, however, does require agreement. As discussed above, there is no way to derive the solution to property issues from the bare notion of freedom. An agreement is required to justify the permissive laws recommended by the faculty of practical reason.<sup>164</sup>

A final reason why Kant's social contract cannot be subsumed under his ethical theory is that the ethical theory is analytically justified based on the conception of autonomy. This justification cannot be extended to the permissive laws that are justified by the social contract. If one used only the ethical theory, she could not justify property rights. The lack that would result would create a lack of freedom as described above. The complete

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<sup>163</sup> John Ladd "Introduction" to *The Metaphysical Elements of Justice*, ed. and trans. J. Ladd (New York: Macmillan, 1965), p. xiii.

<sup>164</sup> This agreement is hypothetical, just as the social contract agreement is. It is what fully rational people would agree to in order to assure their ability to own property where they in a non-judicial state.

freedom of autonomous rational agents requires the idea of uniting people in such a way as to not violate their autonomy when they are coerced into limiting their freedom to gain property rights. Thus the social contract, as an idea of reason, is an indispensable part of Kant's philosophy.

I will close this analysis with a brief discussion of Kant's conception of rationality. It is clear that reason, as the proper determining ground for the will, is a crucial part of both Kant's moral and political philosophy. Yet, unlike Hobbes, Locke, and Rousseau, Kant's conception of rationality is not embodied in his description of the state of nature. The idea of property forces us to create juridical society because according to Kant's conception of freedom, the lack of property is a lack of freedom, and as autonomous rational beings we seek to be free. The lack of justice that is the state of nature does not in itself indicate how a rational being must go about rectifying that lack. Furthermore, aside from the feature of being rational, there are no descriptive features of people, such as *amour de soi*, that indicate the way to the civil state. To understand what rationality is for Kant, one must examine how the rational activity is supposed to occur.

Kant says, "[o]nly a rational being has the capacity of acting according to the *conception* of laws (i.e. according to principles). This capacity is the will. Since reason is required for the derivation of actions from laws, will is nothing less than practical reason."<sup>165</sup> Rationality is thus practical reason. As mentioned above, Rawls distinguishes practical reason as concerning the bringing about the objects of ideas.<sup>166</sup> Again, practical reason determines the way in which one must will in order for the object

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<sup>165</sup> Immanuel Kant *Foundations of the Metaphysics of Morals and What is Enlightenment*, trans. Lewis White Beck (New York: Macmillian, 1990), p. 29.

<sup>166</sup> John Rawls *Lectures on the History of Moral Philosophy* (Cambridge, Mass: Harvard University Press, 2000), p. 150.



of an idea to become actualized. Property, as discussed above, is a good example of practical reason at work. We have an idea of property, and practical reason provides the way to bring it about so that there is such a thing, in this case suggesting the permissive laws, which are justified by the social contract. By willing that there be property, practical reason instructs that we will the social contract. The concept of the general will shows how bringing the social contract about does not fail to recognize others as autonomous rational agents. In so doing, the possibility of property becomes an actuality.

The above account describes the function of rationality as providing regulative principles to determine the will.<sup>167</sup> The rules that are to be self-imposed, for example the rule not to lie, are examples of regulative principles. These principles are required to be universal laws in order to withstand public scrutiny.<sup>168</sup> The key to something being a universal law is that it can be willed by anybody, regardless of that person's particular ends. This is achieved by willing impartially, that is in accordance with pure reason. The passage from Kant cited above continues, "[t]hat is, the will is a faculty of choosing only that which reason, *independently of inclination*, recognizes as practically necessary (my italics)."<sup>169</sup> Fully rational agents are not affected in the determination of their wills by their inclinations.<sup>170</sup> By willing only universal laws, imperfectly rational people will determine their wills as close as possible to the will of the perfectly rational person. As discussed above, the categorical imperative is the tool that aids this process in ethics; the

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<sup>167</sup> This account follows Susan Neiman's discussion of reason in her book *The Unity of Reason: Rereading Kant* (New York:Oxford University Press, 1994).

<sup>168</sup> *Ibid.*, 116.

<sup>169</sup> Immanuel Kant *Foundations of the Metaphysics of Morals and What is Enlightenment*, trans. Lewis White Beck, (New York: Macmillan, 1990), p. 29.

<sup>170</sup> John Rawls *Lectures on the History of Moral Philosophy* (Cambridge, Mass: Harvard University Press, 2000), p. 165.

general will does the same in Kant's political theory. Thus, Kant's conception of rationality is what an impartial person could will.

In the preceding chapter I argued that if one changed the conception of rationality that the author used, you would get a very different social contract theory. You can take a conception of rationality, such as Kant's, and apply it to people in Hobbes' state of nature. Granted, you can only do this by ignoring that his (Hobbes) state of nature embodies a conception of rationality and understanding it in a purely descriptive way. Kant's state of nature description is merely the lack of justice. If you alter the conception of rationality being used from one of what an impartial person would will to one where each calculates what is her best interest, for example, you get a very different picture of how the lack of justice is remedied and the social contract instantiated. Using such a conception of rationality, the solution to the lack of justice in Kant's state of nature, a condition where people perform actions that fail to co-exist with the freedom of everyone else, may very well be to live in isolation, far away from where people could violate your freedom. This is a solution that achieves the goal of not being infringed upon by others, yet fails utterly to bring about that deep freedom that is found only under self-imposed rules. It should be no surprise that Kant's conception of rationality is the central idea of his political and moral philosophy, and thus of his social contract theory.

### *Rawls*

Kant intended his social contract theory to be a regulatory mechanism in the examination of existing laws and social institutions. John Rawls continues work in this vein with his *A Theory of Justice*. As the title suggests, this is an account of justice. It is

based on the distinctly contractarian idea that justice consists of what people would agree to in some fair initial situation.<sup>171</sup> This idea of agreement is the focus of my interest because it is the idea of agreement that makes Rawls' theory a social contract theory. Like Kant, Rawls offers a hypothetical social contract theory. He bases his account of justice upon a premise of equality; what people in a position of equality would agree to is just simply because such an agreement would be fair. In order to understand the nature of this social contract theory, it is therefore necessary to examine the initial fair situation.

Rawls offers a social contract theory designed to establish the "principles of justice." He uses contract language because "it conveys the idea that principles of justice may be conceived as principles that would be chosen by rational persons...."<sup>172</sup> This idea is very simple. Society is "a cooperative venture for mutual advantage."<sup>173</sup> The need for justice arises as a way to sort out the "competing claims to the advantages of social life."<sup>174</sup> The basic structure of society, the set of primary social institutions, is the mechanism that resolves these competing claims. This basic structure is what Rawls takes to be the subject of (social) justice. If the principles that describe the basic structure are such that rational people could select them in some appropriate setting, then those principles are just. It is in this way, as a thought experiment as to what rational people would agree to, that the social contract model provides a way to establish and justify conceptions of justice.

Rawls writes of the principles of justice, "They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of

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<sup>171</sup> Michael Lessnoff *Social Contract* (Atlantic Highlands, NJ: Humanities Press International, 1986), p. 143.

<sup>172</sup> John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 16.

<sup>173</sup> *Ibid.*, 4, 84.

<sup>174</sup> *Ibid.*, 5.

equality as defining the fundamental terms of their association.”<sup>175</sup> He refers to such principles of justice as “justice as fairness.”<sup>176</sup> Justice as fairness simply means that justice is the result of a fair bargaining position.<sup>177</sup> Rawls’ social contract is derived from terms of the initial agreement that he considers fair. One must understand these terms in order to understand the theory.

In previous social contract theories, the state of nature served as a starting point from which people presumably needed to or would want to escape. It was a description of the condition of man outside of society, both in the sense of what conditions he found himself in, such as a state of war, and what the natural conditions or state of man *qua* man was, such as equal and free. As has been discussed above, the state of nature need not have been an actual state, but this does not mean that the justifications offered based on the state of nature therefore must fail. Considered as a thought experiment, the state of nature serves to draw out our moral convictions. Certainly people in Hobbes’ state of nature would fear for their lives, just as those in Kant’s would require the permissive laws that create justice, and thus property. The original position, as Rawls calls it, isn’t a state of nature, but it does serve a similar role in his theory.<sup>178</sup> Although he does make some claims about human nature, he does not include freedom and equality as part of the description. Rather, they are conditions that make the whole process fair. Rawls describes the original position as “the appropriate initial status quo, which insures that the fundamental agreements reached in it are fair.”<sup>179</sup> The first important item, then, for

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<sup>175</sup> Ibid., 11.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid., 17.

<sup>178</sup> Michael Lessnoff *Social Contract* (Atlantic Highlands, NJ: Humanities Press International, 1986), p. 134. This is to say that it is a description of a pre-political state from which the social contract agreement is to be made.

<sup>179</sup> John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 17.

understanding Rawls' social contract theory is Rawls' account of what fairness in the original position entails.

To establish fair conditions for the making of the agreement, Rawls uses "commonly shared presumptions."<sup>180</sup> He offers three: that there should be no advantage or disadvantage due to social circumstances or natural fortune, that no one ought to be able to prejudice the principles in his favor, and that the parties ought to be equal.<sup>181</sup> These presumptions are meant to level the playing field of the agreement, to prevent distortion of what principles people would endorse "by the particular features and circumstances of the all-encompassing background framework...."<sup>182</sup> The first two presumptions are ways of insuring the third. If no one is discounted from participating and no one is able to arrange the social structure so as to favor his particular lifestyle or social group, then everyone is equal.<sup>183</sup>

In short, fairness is accomplished by a lack of knowledge by the contracting parties. This lack of knowledge is accomplished by Rawls' famous veil of ignorance mechanism. Behind the veil of ignorance, people only know general facts about human beings.<sup>184</sup> They know, for instance, that people worship differently and some not at all, that people

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<sup>180</sup> Ibid., 18. See also John Rawls *Political Liberalism* (New York: Columbia University Press, 1993), p. 24.

<sup>181</sup> Ibid., 18-19.

<sup>182</sup> John Rawls *Political Liberalism* (New York: Columbia University Press, 1993), p. 23.

<sup>183</sup> Rawls also describes equality such that "all have the same rights in the procedure for choosing principles;" See John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 19. This aspect of equality (and, indeed, fairness) is secured by the fact that the 'people' in the original position are representative people. This is to say that since no one knows her place and no one can tilt the procedure to his advantage, the choices that would be made in the original position would be the same for everybody. If everybody would choose the same principles, then one 'body' can represent everybody and, if there is only one body in the original position, then there is no way for anyone to have different rights in the choosing of the principles. One can't have differing rights relative to oneself. Thus, since the presumptions that Rawls offers to insure equality also insure that there only needs to be a representative person in the original position, they serve to establish equality in this sense as well that discussed in detail in the next paragraph..

<sup>184</sup> Ibid., 137.

prefer to pay less rather than more for the same thing, and that some people do better with a given set of assets than others. As mentioned above, particular facts, such as one's place in society, natural assets, or even one's conception of the good are all unknown because such knowledge would nullify the equality of the parties in the original position, and thus any agreement reached would not be fair.<sup>185</sup> The veil of ignorance serves to make sure everyone is in the exact same position as everyone else, thus insuring equality. An agreement made in such a situation would be fair because the parties that agree to it are equally situated. No one has an advantage over any other. Thus, equality in the original position yields justice as fairness.

Equality is a central feature of the original position. Rawls makes some further assumptions about the people at the bargaining table. The principles sought are ones that "free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association."<sup>186</sup> Thus the people making the contract must be free and rational. Both these conditions are in keeping with the social contract tradition. Freedom *qua* freedom doesn't play a major role in the description of the original position. Indeed, 'freedom' doesn't even rate an entry in the index of *A Theory of Justice*.

Rawls describes rationality in a narrow way as a faculty that selects the most effective way to an end.<sup>187</sup> The end that people in the original position have is to further their interests, although they do not know what those interests are while they are behind the veil of ignorance. Thus, rationality is a faculty concerned with furthering interests. In

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<sup>185</sup> Ibid., 12.

<sup>186</sup> Ibid., 11.

<sup>187</sup> Ibid., 14. I discuss the difference between 'rational' and 'reasonableness' in Rawls' theory below on pp. 73-74.

the case of the original position, rationality is employed to determine what principles further my interests generally, since by hypothesis I do not know what my particular interests are. Thus, Rawls conceives of rationality much in the way Hobbes and Locke conceived reason, as a faculty to achieve some aim.

The idea of people wanting to further their own interests is an assumption about people that some critics have found controversial. As Lessnoff notes, however, without the assumption of self-interestedness the problem that justice is meant to solve never arises.<sup>188</sup> Rawls refers to the “circumstances of justice” as the normal conditions under which cooperation is both necessary and possible.<sup>189</sup> Such circumstances occur whenever mutually disinterested people advance conflicting claims about the division of social advantages in conditions of moderate scarcity.<sup>190</sup> There is no need for justice if these conditions fail to obtain.<sup>191</sup> If people weren’t concerned for their own interests, competing claims for the advantages of mutual cooperation would not arise. Those claims arise because receiving those advantages is in people’s interest. Furthermore, it is difficult to maintain that people aren’t concerned about their own interests. Even when people are willing to sacrifice what most others would consider important parts of one’s interest, life and fortune perhaps, those people are attempting to further some other interest; their desire to further that interest shows that it is *their* interest irrespective of what others may think their interest ought to be.

Indeed, Rawls says that any principles proposed in the original position must be related to furthering human interests since the entire exercise is about developing a basic

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<sup>188</sup> Michael Lessnoff *Social Contract* (Atlantic Highlands, NJ: Humanities Press International, 1986), p. 143.

<sup>189</sup> John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 126.

<sup>190</sup> *Ibid.*, 128.

<sup>191</sup> *Ibid.*

structure to distribute social advantages.<sup>192</sup> Any principle proposed that a person thinks will accomplish this objective is rational. Yet there is a limitation upon what principles one may rationally choose. Rawls assumes that the people in the original position have a sense of justice.<sup>193</sup> The sense of justice is meant to “guarantee strict compliance” with the proposed principles to insure the integrity of whatever agreement regarding the principles of justice is made.<sup>194</sup> One does not want people who intend to break any rules that don’t go their way to have a role in proposing the rules. People who do not see themselves as bound by rules even of their own choosing are not people with whom one can make an agreement. Furthermore, people would not propose arbitrary principles that they were not certain they could abide by, and since they are behind the veil of ignorance they do not know if those principles will harm them or not. For example, principles that are, say racist, would be ruled out under this understanding because they would be irrational for someone with a sense of justice and in a condition of ignorance to propose and be prepared to abide by them.<sup>195</sup>

Thus, the sense of justice limits what counts as rational. In *Political Liberalism*, Rawls draws a distinction between rational and reasonable. Rawls notes that people in a strong bargaining position might make rational suggestions as to what the bargain should be, but that these suggestions might be unreasonable.<sup>196</sup> What counts as reasonable is tied to what would be just or fair, while rational is only concerned with securing some end. For example, it might be rational for me to steal the things I want as a way of getting them, but it wouldn’t be reasonable because I would not be consoled by the fact

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<sup>192</sup> Ibid., 149.

<sup>193</sup> Ibid., 145.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid., 149.

<sup>196</sup> John Rawls *Political Liberalism* (New York: Columbia University Press, 1993), p. 48.



that such stealing is rational were someone to steal from me. Reasonableness, Rawls suggests, involves “propos[ing] principles and standards as fair terms of cooperation and to abide by them willingly....”<sup>197</sup> Purely rational agents lack a moral sensibility, a sense of justice that underlies a desire to engage in fair cooperation.<sup>198</sup> This moral sensibility limits what people will agree to in the original position.

Rawls says that rationality and reasonableness are distinct ideas; they are not derivable from each other.<sup>199</sup> They are, however, related. Reasonableness clearly serves as a limit to what a rational plan may encompass. Not all reasonable proposals in the original position are rational and not all rational proposals are reasonable. Yet when you add the condition of being behind the veil of ignorance, suddenly any unreasonable plan is irrational.<sup>200</sup> It is where these two notions intersect in ignorance that suitable principles can be found. As an idea, reasonableness dovetails with the sense of justice discussed above. They are both about acting from fair terms of cooperation. Indeed, a sense of justice simply is reasonableness.<sup>201</sup> A reasonable person has a sense of justice (regardless what her conception of justice actually is) and a person with a sense of justice will propose reasonable first principles. As I discuss below, this constraint serves to guarantee that Rawls’ favored principles are selected in the original position.

We now have a complete picture of the original position and who is in it. It is a condition where cooperation among people is desired, and the benefits from that

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<sup>197</sup> Ibid., 49.

<sup>198</sup> Ibid., 51, 52.

<sup>199</sup> Ibid., 51-53.

<sup>200</sup> John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 149.

<sup>201</sup> Compare the citation above concerning reasonableness with Rawls’ account of the capacity for a sense of justice: “a capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation.” from *Political Liberalism* (New York: Columbia University Press, 1993), p. 19. Both reasonableness and the sense of justice are concerned with people having integrity with respect to the principles of justice selected in the original position.

cooperation need distribution. The person to pick the structure of that distribution is both a rational person, meaning she is seeking to further her interests although they are unknown at the time of decision, and she is reasonable person, meaning that she has a sense of justice that dictates she will comply by the principles that are the result of a fair agreement as well as propose only those principles by which she could abide. There are some other assumptions as well, but it is these two that concern me the most. This person in the original position will choose principles that advance as wide an area of human interest as possible. To do otherwise would turn out to be unreasonable or irrational. It is irrational to propose principles that one has no reason to believe will advance your interest (and remember that this proposing is done in the absence of knowing what that interest is), and it is unreasonable to do so with the intention of violating those principles if they do happen to fail to advance your interests. Any reasonable and rational principles agreed to in the original position, a position of equality, would be fair principles and thereby just. This is the mechanism of Rawls' social contract.

I wish to briefly discuss how Rawls' theory qualifies as Kantian, as well as indicate some areas where there is significant divergence from Kant. I noted at the beginning of this section that Rawls' theory was similar to Kant's in that they are both hypothetical social contracts and that they differed in that Rawls is concerned with equality, Kant is more concerned with freedom. There are some further important similarities and differences that we are now in a position to examine.

The most significant similarity between Kant and Rawls concerns the sense of justice. The sense of justice is a very Kantian idea in that it parallels the categorical imperative in the way that it functions. The sense of justice states that you can't propose principles

that you are prepared to break later. If it were permissible to offer principles that are not binding, then the idea of proposing principles to structure society would be meaningless. If the principles of justice don't bind people, then there is no point trying to distribute the advantages of mutual cooperation according to principles. Proposing principles that aren't binding is self-contradictory in the same manner that the categorical imperative says maxims about the permissibility of lying are self-contradictory.

A second way that the sense of justice is similar to the categorical imperative is that it is perfectly general. It does not matter what particular conception of justice or good you happen to hold. All the sense of justice says is that whatever that conception of justice is, you are bound by it. The categorical imperative is similarly general with respect to a person's maxims. It does not care what those maxims happen to be; they simply are restricted to not being self-contradictory. Both the sense of justice and the categorical imperative are perfectly general with respect to the content of one's normative beliefs. Those beliefs must simply measure up in certain formal ways. These formal ways consist of not being irrational in a condition of ignorance and of not being self-contradictory.

Note that the clearly Kantian nature of the sense of justice does not require that the principles of justice be deontological themselves. The sense of justice binds a utilitarian and an Aristotelian as much as a deontologist. The sense of justice is a formal constraint in the original position to help make that position fair. Clearly an agreement made with a person who does not feel bound to keep that agreement is not a fair agreement. This flexibility of normative commitments corresponds with Rawls' commitment to allowing a wide variety of conceptions of the good life. He doesn't want to restrict the principles of justice to a narrow conception of the good life because he recognizes, as did Kant, that

people have a wide array of ends or conceptions of the good. Any theory that doesn't accommodate such pluralism without an unassailable argument as to why the conception of the good must be limited simply fails to account for the diversity of ways of human living.

A further difference between Rawls and Kant, apart from the fact that Rawls does not require deontological principles, is that Rawls does not need a theory of justice to close some holes in his moral theory, as is the case with Kant. Recall that Kant needs the social contract to justify permissive laws that are needed to bring about certain ideas of reason. These laws are not capable of being derived from the concept of freedom, so they must be justified in another way. The idea of reason that the social contract is used to justify is that of property, a moral notion that cannot be accounted for by Kant's first principles. Thus he needs a patch, the social contract. For Rawls the social contract and the principles of justice are freestanding, neither completing nor relying upon any particular moral theory.

I will close my discussion of Rawls by returning to the idea of the original position. People in the original position are to be equal, rational, and reasonable. As discussed above, equality within the theory is achieved by positing the lack of particular knowledge behind the veil of ignorance. These three conditions taken together direct the person in the original position to agree to Rawls' principles of justice. Rawls knows this is the case; it is why he describes the original position in the way that he does. There are different descriptions or interpretations one could make of the original position, each of which may lead to a different conception of justice. Rawls offers two conditions for the

original position, and then argues that his interpretation of the original position is the best.<sup>202</sup>

He says that the interpretation of the original position should be the one that “best expresses the conditions that are widely thought reasonable to impose on the choice of principles yet which, at the same time, leads to a conception that characterizes our considered judgments in reflective equilibrium.”<sup>203</sup> There are two different claims here. The first is that the conditions of the original position should be widely thought reasonable in order to make the choice of principles fair. This basically is Rawls’ contention that justice is fairness; the original position, if fair, provides justice. The second is that the description of the original position leads to a conception of justice that achieves reflective equilibrium with our pre-theoretical notions of justice.

I do not have much to say about this second claim. On one hand, it seems to say that we must design the original position in such a way as to get a predetermined result. In this light Rawls’ theory appears to be more of a rationalization than an argument about the nature of justice. On the other hand, Rawls states that he is not arguing from self-evident premises.<sup>204</sup> Earlier contractarians argued from sets of premises that they understood to be bald facts about the world. Thus, their respective social contracts had to ‘fit’ those facts. For example, Hobbes and Rousseau both required people to preserve their own lives above and beyond anything else in the state of nature. Their respective social contracts therefore had to be constructed so that the contract could be understood

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<sup>202</sup> John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pp. 19 and 121.

<sup>203</sup> Ibid., 121. Rawls also uses the phrase “commonly shared presumptions” and “considered convictions” in the description of the original position. See *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 18 and *Political Liberalism* (New York: Columbia University Press, 1993), p. 24 respectively.

<sup>204</sup> John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 21.

as achieving this imperative. Rawls does not have any such 'facts' his theory is required to fit. Instead, he offers that it should match our intuitions about justice to some degree. This requirement offers us a useful gauge with which to measure a conception of justice. Without such a gauge or any self-evident facts that it must conform to, there is no way to choose between rival accounts of justice. Rawls is merely suggesting that the best conception of justice, all other things considered, is the one that is closest to our intuitions.

The first element of the conditions of choice requires careful scrutiny. The conditions of choice that Rawls thinks are widely thought reasonable are those of equality, reasonableness, and rationality. Rationality is a common enough requirement in the social contract tradition, and Rawls' description of it as a means-ends faculty is not controversial. The idea that a fair agreement demands equality so that none may favor their own position appears on the surface to be widely thought reasonable, for who would argue that fairness requires inequality and partiality? It is the veil of ignorance, standing in for equality, which does all the work. This account of equality stands in need of closer inspection, as does the assumption of reasonableness or the sense of justice.

It needs to be remembered that rationality, reasonableness, and ignorance of the particular facts of your own position lead to Rawls' two principles. Other principles are eliminated from consideration in the following way. It is irrational to propose a principle from behind the veil of ignorance if you don't know whether it will actually advance your interests, and it is unreasonable to propose a principle that one is willing to break once out from behind the veil of ignorance. Thus, the only principles that can be proposed are ones that 1) you can be sure advance your interest, whatever it happens to be and 2) you

won't be inclined to break once you come out from behind the veil and realize what your position in society is.<sup>205</sup> Any principle that you can't be sure will advance your interests, regardless of what they turn out to be, is irrational. Anything that you propose that you may regret because it turns out to fail to advance some segment's interests is unreasonable.<sup>206</sup> Although I can't conclusively prove it here (owing to space limitations and the fact that I do not know every possible principle of justice) it is my conviction that principles, other than the two Rawls favors, can be found in violation of one or more of these conditions. Thus, the way these conditions are defined effectively rules out other possible principles. Take, for example, any form of human perfectionism. Since the person in the original position cannot know how far along whatever scale of human perfection is proposed she will fall, it is unreasonable, and thus irrational to agree to it as a principle of justice. Similar cases can be constructed for other types of principles of justice as well as, I maintain, other specific principles. Rawls' two principles are the only principles that can run this gauntlet.

Thus, Rawls' description of the original position leads to his two favored principles:

*First Principle*

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

*Second Principle*

Social and economic inequalities are to be arranged so that they are both:

- (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity.<sup>207</sup>

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<sup>205</sup> There will always be unjust people. The reasonableness restriction does not address this problem. Rather, it keeps people from proposing principles that they recognize are unfair to other people.

<sup>206</sup> I think some of Rawls' other motivational assumptions may serve to preclude a person proposing principles that turn out such that they regret agreeing to them but are willing to live by them, thus meeting the sense of justice requirement.

<sup>207</sup> John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 302.

They are both reasonable and rational in the condition of ignorance. The first principle advances every person's interest regardless of what that interest is. The second principle is such that people are worse off without it, and thus there is no reason to break it even if you end up in the worst position in society. As indicated above, Rawls acknowledges that the description of the original position is designed to reach this conclusion. The assumptions that form the original position are, according to Rawls, widely thought reasonable.

Rawls does not argue for these assumptions. He merely offers them as widely thought reasonable. Yet his mechanisms for embodying these assumptions are not themselves widely thought reasonable. For instance, one could very easily have a conception of equality that did not involve the veil of ignorance. It is not the case that the only way to represent equality in the original position is by not knowing one's particular interests. A different conception of equality would, or at least could lead, to very different principles being able to be proposed. One such conception is formal equality. Each person gets one vote and the principle with the most votes is the one adopted. All sorts of principles would be eligible to be voted on under such a conception of equality, even retaining the requirements that they be rational and reasonable. The ignorance restriction would not be in place, and thus people would be free to propose all kinds of principles that previously violated rationality and reasonableness. People would be able to try to favor their own position. A formal notion of equality does not necessarily lead to Rawls' two principles, and that is the point. With a different conception of equality, and thus of what the rational thing to agree to is, one can get very different conceptions of justice.



Notice that this change in the conception of equality does not violate the assumption that fair choice requires equality among the deliberating parties. At the very least, Rawls owes us an argument as to why his representation of equality *via* ignorance is a way of representing equality that is widely thought reasonable. Perhaps Rawls would reply that it is not bare equality that requires the veil of ignorance, but equality combined with the further assumptions that no one can prejudice the principles in his favor and that social circumstance not play a role. I don't think letting people vote on principles they think favor them is obviously unfair.<sup>208</sup> What would be unfair is allowing a person to unilaterally determine what justice is. It is this sort of stacking the deck that is widely thought unfair. With respect to prohibiting the influence of social circumstance, again the main idea is to prevent people from proposing principles that favor their station in life. But if voting is a fair way to settle questions, then knowledge of your station doesn't make the vote unfair. It merely means some people will propose certain principles with certain aims and others won't. If the problem is the idea that people will favor themselves in a way that they would think unfair were they in another position, Rawls' sense of justice requirement eliminates such proposed principles. Thus, fairness does not require the veil of ignorance.

The same conception replacement can be done for reasonableness. The sense of justice that Rawls uses is not, I argue, itself widely thought reasonable. Indeed, as a condition of reasonability it is rather narrow. A different conception of what counts as reasonable, one that does not restrict the proposed principles as much, can easily be offered. Indeed, some sense of fairness might serve as a standard of reasonableness. It

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<sup>208</sup> Note that if the ignorance feature of the original position is removed, it is not entirely clear that a 'representative person' could represent everyone. Thus, instead of the one representative person, the original position could require either actual people or, perhaps, many representative types or people.

seems that the reasonable way to divide a cake is the fair way. If voting were a fair way to settle disputes, then any principle that survives a vote would be reasonable in this sense. Again, the point I am making is not that Rawls uses a bad conception of reasonableness, or that my alternative is better, but that he has a particular conception of reasonableness, one that does not seem to me to be widely thought reasonable. A larger point is that even if Rawls' basic assumptions about the original position are unobjectionable, the way he chooses to characterize them is rather particular. Furthermore, this characterization leads directly to his principles in the same way that the embodied conceptions of rationality did in the theories examined earlier.

In short, Rawls has embodied a conception of rational choice within his description of the original position. The particular way he understands 'reasonable' and 'equality' lead directly to his two principles of justice, as discussed above. This conception of what principles can be proposed, and thus agreed to, in the original position accomplishes the same job as the conceptions of rationality did in the theories examined earlier. If you change what counts as reasonable, or how equality is achieved, then you get different principles in the same way as changing the conception of rationality in Hobbes and Locke. This conception of rationality, achieved through the requirements of equality behind the veil of ignorance, of rationality, and of reasonableness compels agreement with Rawls' two principles.

## CHAPTER III

### SIMILARITIES AND BACKGROUND CONDITIONS

The preceding two chapters offer an analysis of each of five major theories in the social contract tradition. This chapter will gather the results of those investigations and provide an analysis of the idea of the social contract itself. There are two reasons why I need to explore the idea of the social contract rather than actual social contract theories. The primary reason is that the criticisms I intend to disarm and deflect are general criticisms in that they are directed at all social contract theories. By having the ability to discuss the social contract in general terms I will avoid having to set out how these criticisms impact each individual theory. While doing so may be an interesting exercise, it does not lend itself to drawing general conclusions about social contracts. The secondary reason for discussing the social contract in general terms is that I will draw some general conclusions about the social contract myself. Indeed, my very thesis is a general conclusion about social contract theory. In order to make claims about 'social contract' rather than a particular social contract theory, 'social contract' must mean something apart from the set of existing social contract theories.

#### *Primary Features*

The core elements of the respective social contracts are in place. I will simply list them by theory in this section with only a modicum of explanation before proceeding with my analysis. Note that since many of the particular theories developed in response and in contrast to Hobbes' theory, the primary features of his account might seem rather mundane. The later theorists build upon his terminology and problematic, and thus seem

more sublime. This baseness doesn't, however, subtract from the importance of his ideas; it highlights their prominence.

### *Hobbes*

The first feature of Hobbes' social contract is the idea of social contract itself. This is the idea that agreement is the only just way to (originally) come under auspices of the state. Interestingly, this remains the case when sovereignty is obtained through conquest rather than institution. Vanquished foes compact to save their lives, and it is the compact that gives the victor sovereignty over his former foes.<sup>209</sup> A main difference in the sovereignty by conquest case, however, is that the vanquished make their compact directly with the victor, rather than among themselves.<sup>210</sup> The fact remains that sovereignty, which is the ability to justly coerce the citizens, is founded upon agreement in the form of a compact.

This idea of agreement becomes even more interesting considering that many social contract theorists argue that reason compels one to make such an agreement. This is the second feature of note of Hobbes' account: that the social contract is the result of an exercise of reason, and moreover that reason requires it. It assumes that people are rational, and that reason provides the laws of nature, which are the source of the social contract.

Another primary feature is the state of nature, the description of the condition of people prior to the contract. As is evident in the different social contract theories

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<sup>209</sup> Cf Thomas Hobbes *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett, 1994), Part II, ch. xx, par. 1, 2, 4, and 11. As discussed above, there is some disagreement about whether covenants extorted by threat of death are valid, as Hobbes claims. If not, then sovereignty by conquest or acquisition becomes problematic for Hobbes' position that obligations depend upon consent.

<sup>210</sup> Alan Ryan "Hobbes's Political Philosophy" in *The Cambridge Companion to Hobbes*, ed. Tom Sorell, (Cambridge, Cambridge University Press, 1996), pp. 231-232. It may come as some surprise that Hobbes pays more attention to the sovereign by conquest than he does to that by institution. See Ryan p. 227.

examined, the pre-political condition is subject to many interpretations and criticisms. Hobbes, however, establishes the state of nature as the starting point for his inquiry into the origin of the civil world. This idea includes the notions that people are, in the state of nature, free and equal, and that the individual is the focus of inquiry. An additional feature is the notion of reason-determined natural laws, particularly the content of Hobbes' third law of nature, the stricture to keep covenants. These laws provide the structure, which Hobbes builds into his solution to the problem of the state of nature. A further feature I wish to point out is the idea that the state embodies the will of all, such that the dictates of the state are understood as the will of each citizen. This idea ties back to the notions of freedom mentioned above and is used, not only as a justification for accepting the dictates of the state (they are your will, after all), but also, in some versions of social contract theory, as the very motivation to make the social contract.

### *Locke*

As noted above, there are some crucial differences in the social contracts of Hobbes and Locke. Perhaps the most striking are that Hobbes' version is used to justify an absolutist government, while Locke's explicitly rejects such an outcome. Exploring such differences, and indeed making an explicit comparison, is not required for my analysis of the social contract. Thus, I will only be setting out Locke here, and not making a further comparison. The same will be true for the discussions of Rousseau, Kant, and Rawls as well. It will be the case nonetheless that many of Locke's primary features are primary features both of Hobbes' account and those of the later contractarians. The important item to note in these cases is the different characterizations given to the basic idea, e.g. the different conceptions of the state of nature.

The state of nature, the pre-political condition that people will find they need to exit, is the first primary feature of Locke's theory. For the story of entering civil society via the social contract to make sense there must be a prior condition to leave. The state of nature is that sort of condition. A second primary feature is the concept of natural law. The natural law describes limits on actions, both in the state of nature, and in the society created to leave the state of nature. This has two important elements. The first is that there is a law that applies to rational beings irrespective of their social condition. Thus, it not only provides the guidelines for establishing civil society, but it also provides the limits upon how that society may be structured. For example, a Lockean society could not be one in which there is no private property. Such a society would violate the natural right to the fruits of one's labors.<sup>211</sup> The second is that the natural law is equated with reason.

Further main features of Locke's social contract involve the attributes of people and how they can interact. People are naturally free and equal, where equality means that all have the same rights under the law of nature. People are rational, and thus can all know the law of nature. The natural law as found out by reason places natural constraints on behavior, and sanctions the punishment, even to death, of violators of the natural law. These properties of people and their relationship to the natural law constitute the core of Locke's idea of the social contract.

Naturally, the idea of agreement is a fundamental feature of Locke's theory, along with the assumption that the focus of such agreements is individual people. Individuals

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<sup>211</sup> I am aware of the discussions, particularly in C.B. Macpherson's *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962), concerning the separation of the laborer from the fruits of his labor in the latter stages of Locke's account. I am not defending Locke against such claims here, but am merely trying to illustrate the fact that natural law constrains the state. Locke would not permit a society where there was no private property.

are the entities that can give consent, surrender a right, and whose freedom needs preserving. Finally, it is individuals who benefit from the creation of civil society and the state, not only by having their freedom preserved from a state of war, but by being able to live according to their own judgments, which happen to be the judgments of the state to which those individuals consented. This last feature is very important both in terms of Locke's account, and in the influence it has on the theories of Rousseau, Kant and Rawls.

One may wish to object that this list of primary features is not complete, that there are at least two further key elements to Locke's theory that have barely been mentioned. There are the crucial ideas of property and of consent. Locke spends a great deal of time on both ideas, and they are justifiably the center of a great deal of scholarship. As discussed above, property serves as both a reason to make the social contract and as an element in what is considered rational. Locke's account of property is as important as the fear of death is in Hobbes' theory, as discussed above. While the people in Locke's version of the state of nature certainly wish to preserve their lives, the state of nature itself is not the dangerous state of war described by Hobbes. The state of nature is a place of plenty. Property and its preservation replace, or at least supplement, the fear of death, and the laws of nature, found out by reason, reflect this change of emphasis.

On the other hand, the mechanism of consent in Locke's theory does not have much bearing on my project. I take it for granted that an agreement, in order to be an agreement, must be agreed to in some fashion. Locke's account of tacit consent cleverly undercuts most objections of the "I never consented" sort, and thus resolves one line of criticism, but this doesn't help develop what his social contract is *qua* social contract. While these topics are important, and indeed social contract theory would be critically

flawed if it couldn't answer the consent question, either along the tacit consent lines proposed by Locke, or the hypothetical justifications offered by Kant and Rawls, they simply don't impact the questions being considered here.

### *Rousseau*

As a contractarian, Rousseau shares a number of features with other contract accounts. These include the idea of a binding agreement, made by free and equal individuals in some pre-civil state, to achieve some goal. There are further features, however, not found in Rousseau's predecessors. The main such feature of Rousseau's account is clearly the general will. The social contract empowers the general will, which is used to secure the freedoms and equality that are the reason the contract is made. The general will serves as a limit on the authority of the state. The scope of civil authority is limited to issues of the common good, the domain of the general will. Finally, the general will serves as the foundation for morality.<sup>212</sup> This idea is most forcefully seen when Rousseau points out that self-legislation is the route to moral freedom, which is an expansion of the freedom of the state of nature. By creating a duty to obey the general will (which is in one respect the content of the social contract), one not only imposes duties upon oneself, but also creates rights for oneself at the same time, and thus creates morality.

Note that this sort of morality is not the only conception of morality operating in Rousseau's theory. Certainly Rousseau thinks that the social contract creates duties and rights (for example rights concerning property) and in so doing draws upon one conception of morality. However, there is also his comment in *A Discourse on the Origins of Inequality* that humanity and virtue arise from reason and compassion guiding

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<sup>212</sup> T.H. Green *Lectures on the Principles of Political Obligation* (Ann Arbor: University of Michigan Press, 1967), p. 122, sec. 114, 116.



*amour de soi*. This reference to virtue, and in particular its relationship with the passions, points to a second conception of morality, one more akin to Hume than Kant. Both these conceptions, however, regard society as a necessary condition for morality.<sup>213</sup> Thus, since the creation of the general will is accomplished in the act that creates society, morality is tied to the general will.

Two further primary ideas in Rousseau's version of the social contract are equality and freedom. As mentioned above, Rousseau is the first contractarian to try to preserve the equality found in the state of nature. Freedom in particular is a complex and important item in Rousseau's social contract. It forms both the reason for and the goal of that contract. The understanding of what constitutes freedom and equality is tied to Rousseau's account of the state of nature. This state, apart from providing the conditions from which man presumably would want to escape, also provides the conditions that are, ideally, to be preserved when the social contract effects that escape. By "preserving" I am referring to Rousseau's goal of retaining, as much as possible, freedom and equality.<sup>214</sup> Thus, Rousseau's description of the state of nature, and in particular his description of the natural condition of man, is a fundamental part of his social contract. The passions of *amour de soi* and compassion, as well as *amour-propre* once man is in the civil condition, provide the motivation of the contracting people as well as the direction their contract must take.

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<sup>213</sup> In *A Discourse on the Origin of Inequality*, Rousseau says that compassion is what replaces morals and laws in the state of nature, implying that morality is absent from that state. See Jean-Jacques Rousseau "A Discourse on the Origin of Inequality", in *The Social Contract and Discourses*, trans. G.D.H. Cole, revised by J.H. Brumfitt and John C. Hall (London: J.M. Dent & Sons Ltd., 1973), p. 68.

<sup>214</sup> It is true that Rousseau thought that only in society could man achieve his best, i.e. by being moral, but this is not to be at the expense of his freedom or equality. Yet especially in the case of freedom, natural freedom is not the same as civil freedom. The ideal society is such that although each gives up his natural liberty, he receives a greater, although different, liberty back, and does not, therefore, end up everywhere in chains.

A final feature of Rousseau's social contract flows from his statement that the people who make the social contract must be *a* people prior to that contract.<sup>215</sup> This idea is important for a number of reasons. One reason is that it limits the size of the state in such a way that the periodic assemblies Rousseau thinks are necessary would be possible to hold. You couldn't hold an assembly of 100 million people. A second, and perhaps more important reason, is that it helps establish the idea of a common good. As mentioned above, different people may require different laws and the general will is a particular will to someone outside the society. There must be some way to pick out those people who could have a general will and thus require the same sorts of laws. Those people are picked out in virtue of their being *a* people.

Precisely what being "*a* people" consists of is not directly addressed, but some clues are offered in the second book of *The Social Contract*. There Rousseau writes about the people who are fit to receive laws, saying they are "a people ... finding itself already bound together by some union of origin, interest, or convention...."<sup>216</sup> If one takes this rough description of what a people is, then one can see how there could be a common good. The common good is reflected in those conditions necessary for a particular people to be *that* people. If a people are bound together by certain customs, the institutions embodied in those customs will constitute (part of) the common good. Perhaps what binds the people together is their geographical location and the natural requirements of living there, for example the particular conditions needed for living at high altitudes or in a desert. These conditions are in the interest of everyone to preserve and further. Rousseau says that if there were no place where the interests of the

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<sup>215</sup> Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 59.

<sup>216</sup> *Ibid.*, 95.

individual people coincided, society would not be possible.<sup>217</sup> Such commonality of way of life forms the core of what the general will acts upon when the difficulties of preserving oneself in the state of nature become too great. This, along with any new particulars that benefit everybody, is the common good.<sup>218</sup>

### *Kant*

The primary features of Kant's social contract theory are obvious. There are, of course, the surface similarities found in most social contract theories: state of nature, agreement binding on all parties to limit their actions in some significant way, and the superiority of the civil condition. The most fundamental aspects in Kant's particular social contract theory are his conception of our nature as being free and the role of reason in securing that freedom. This freedom is the foundation for Kant's account of our autonomy, which in turn grounds our deserving justice. Furthermore, it is for the sake of freedom that we must make the social contract. Another element that contributes to making humans autonomous is the will, which is the second primary feature.

The will is the ability to self-legislate, to impose rules upon oneself. This ability is necessary to achieve freedom, and thereby autonomy, rather than being driven by sensible impulse. Ideally, the will comports itself according to pure reason, which is to say without regard to sensible ends. Freedom and autonomy of the will correspond to freedom and autonomy of the person.

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<sup>217</sup> Ibid., 69.

<sup>218</sup> It should be noted that the general will is not the will of all. The aggregate of wills will just be a collection of private wills, and only what is common to them all will be the general will. See Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 72.

A further feature is the limitation described in Kant's universal principle of justice.<sup>219</sup> This limitation allows one to exercise her rights and freedom only so far as doing so does not interfere with other people exercising their rights and freedom. Furthermore, this limitation points out the need for justice in the state of nature as well as the solution to the problem of the lack of justice. The solution is found in the central idea of his social contract theory, the general will.

The general will is the hypothetical will which all people could agree with regarding the rules to impose governing civil relations were they (the people) ideally rational. It embodies the idea of justice, and thereby allows people maximum freedom *via* preventing them from using their freedom to interfere with others exercising their freedom. It provides the rules in a manner that takes no account of specific ends and, in this way, maintains the equality, independence, and freedom of all the citizens to which it applies.

The final primary feature in Kant's social contract theory is the notion of permissive laws and the need for them to be justified apart from the conception of freedom. The only sort of justification available is agreement, and that agreement makes Kant's theory a social contract while connecting the ideas of freedom and property.

### *Rawls*

While certain common ideas of the social contract tradition continue in Rawls' theory, such as agreement, rationality, and equality, its main force as a social contract theory comes from Rawls' description of the original position and the people that hypothetically occupy it. With respect to the social contract itself, Rawls simply states that he is

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<sup>219</sup> The limitation on action is a central theme in Kant's moral philosophy, not just his social contract theory.

developing the idea found in Locke, Rousseau, and Kant.<sup>220</sup> The justification he offers is the (important) notion that the results of a fair agreement are just. It is the description of the conditions for making such an agreement, the original position, which contains most of the primary features of his theory.

These features are clear from the preceding discussion of Rawls. The conception of equality used within the original position and the veil of ignorance are the most important ideas in Rawls' social contract theory. This conception of equality serves two functions. The first is that it establishes the terms that make the contract fair. It would seem that you couldn't get a fairer situation than everyone being absolutely equal. The second function is that the ignorance brought on by the veil of ignorance supports Rawls' two principles. It seems reasonable (in the ordinary sense of the word) to believe that people would distribute the benefits of cooperation according to the maximin rule, for who would make a pact where he could receive nothing and have no possibility of overcoming that position?<sup>221</sup> A fear of not being able to advance your interests is heightened behind the veil of ignorance, and thus people proceed with caution, which drives the agreement toward the principles at which Rawls arrives.

The remaining primary ideas in Rawls' social contract account are the notions of what counts as reasonable and rational, as discussed in the previous chapter. These ideas play a major role in both describing the original position and in determining the suitability of proposed principles from behind the veil of ignorance. Taken together, they describe a

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<sup>220</sup> John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p.11.

<sup>221</sup> Note that the maximin rule is intended by Rawls to be used as teaching device, and is not itself part of the original position. The same is true of the assumption of risk adverseness.

hypothetical situation designed to be “an intuitive test of fairness” that in turn generates principles that are both fair and arrived at in a rational manner.<sup>222</sup>

### *The Concept of the Social Contract*

The preceding discussion of the features of both classic and Kantian social contract theories serves to identify the primary ideas in each of the five social contract theories examined. There are many similarities between these sets of primary features that are clear from even a cursory examination, including the use of the notion of a pre-political state and contract language, and the ideas that the social contract is rationally required, that the appropriate unit of inquiry is the individual, that those individuals are free, equal, and rational, and that they are better off in society than in the pre-political state. There are other similarities, such as the assumption of some particular conception of rationality, that are not so evident, yet play an important role. All these similarities have a further common element. They are all interconnected in similar ways in each theory. I refer to the ideas that describe the way in which the similarities are interconnected as foundational or underpinning ideas. These underpinning ideas constitute the core of the concept of the social contract.

Rawls makes a distinction between the concept of justice and conceptions of justice, where the concept is the framework or basis of the idea, and a conception is a filled out or fully articulated version.<sup>223</sup> I wish to use this distinction with respect to social contract theory. The social contract theories that I have been examining can be understood as different conceptions of the social contract. I will develop a concept of the social

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<sup>222</sup> Will Kymlicka *Contemporary Political Philosophy: An Introduction* 2<sup>nd</sup> ed. (New York: Oxford University Press, 2002), p. 64.

<sup>223</sup> John Rawls *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 5.

contract based upon similarities found in those conceptions. There are a number of reasons supporting the development of this concept. The first is that it will let me draw general conclusions about social contract theory. A second reason is it will serve as the object of feminist criticism in the next chapter. Finally, it will serve as a template to check that the analysis of social contract theory I offer at the conclusion to this project is indeed a social contract theory, and not merely a theory that appears to be a social contract but differs too much to fit under that rubric.

The social contract theory appears to change its focus when one considers the representatives examined in the preceding chapters. It begins with a self-interested account of political obligation and changes to a rights-based account of the same, to a way to preserve and expand the rights of freedom and equality, to a way to determine a just structure for laws based on freedom and, finally, to an account of justice that is based on the idea of a fairly-made agreement. These apparent changes are part of what make the differing conceptions different. Further differences develop based upon differing conceptions of rationality and other primary ideas, such as freedom. Yet, as noted above, the several similarities among the different social contract theories are connected together in a specific way, which all the conceptions share. The ideas that serve this connecting function form the concept of the social contract.

My argument for this claim is very simple. The fundamental ideas found in most examples of a theory type constitute the concept that type. There must be something that constitutes the intension of a theory type. For example, political theories are political theories because they deal with a certain set of problems, including justice, the limit of state authority, and political obligation, to name a few. Similarly, utilitarian theories are

utilitarian theories because of their reliance upon certain ideas, such as the notion of utility, the idea that utility is the good to be maximized, and the idea that the goodness-for-all-concerned takes precedence over the rightness of any action. I maintain it is their use of common fundamental ideas that make these ideas members of the theory types that they are, and thus the use of the same fundamental ideas makes social contract theories what they are. The similarities listed indicate the ideas that they all require, and thus the concept of the social contract.

The similarities are described as follows: in a pre-societal condition, free, equal, and rational individuals would make certain agreements to limit their freedom in order to secure certain other ends. These agreements are required by reason, and achieve a better condition, even with the limitation on freedom imposed by the agreement, than the pre-societal state they leave. It is assumed that agreement, actual or hypothetical, is the appropriate way to limit one's liberty. How each theory defines and develops these ideas makes it that particular conception, but each theory employs these basic ideas. Different conceptions of the social contract may emphasize different aspects of the concept. For example, Kant focuses on the preservation of freedom, while Rawls is more interested in equality. Similarly, the classic contractarians are interested in accounting for an origin of political obligation, whereas the Kantian contract theorists are more concerned with justice. In spite of all the differences, none of these applications fail to employ the underpinning ideas.

The three ideas that underpin the social contract are individualism, volunteerism, and the universality of rationality. It is evident from a cursory look at the conceptions of the social contract that these ideas are part of each of them. All the conceptions focus upon



individuals, rationality, and the claim that these rational individuals voluntarily, or would or should, enter into the social contract. These ideas connect the similarities already discussed in the particular ways that complete the concept of the social contract.<sup>224</sup> They serve as organizing principles, and thus provide a structural integrity to the concept.<sup>225</sup> I provide a brief description of what these ideas are and how they link the surface similarities below.

The basic idea of individualism is that individuals have certain properties, and it is in virtue of these properties that the social contract can be made.<sup>226</sup> The properties of individuals are the now familiar free, equal, and rational. If people have these properties, then the only way to limit that freedom in a just manner is through the person agreeing to the limitation. Anything else is outright coercion. One needs to remember that what free, equal, and rational are differs from conception to conception. For example, as we have seen, Kant has a highly specific idea of what freedom is, tied to the ideas of autonomy and reason, while Hobbes conceives of freedom in a thoroughly materialistic manner.<sup>227</sup> Regardless of this sort of difference, individualism holds that these features are the properties of individuals.

The idea is that if people are free and equal, then the individual is the appropriate unit of political analysis because any other analysis would violate that freedom in favor of

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<sup>224</sup> I use the terms 'underpinning ideas' and 'foundational ideas' to indicate that these ideas are used in all the conceptions of social contract theory. I do not mean to imply that the content of these ideas is rigidly fixed, or that the way in which they interact within a conception of the social contract is inflexible. Both the content and inter-relationships of these ideas change to some degree in the various theories. For example, I think the way Hobbes views the volunteerism of the social contract is different from the way Kant views it, while both would maintain that submission to legitimate state authority must be voluntary. Indeed, in the final chapters I will present my own conception of them. The point that needs to be made here is that these ideas, as types themselves, are fundamental to the further concept of the social contract.

<sup>225</sup> One similarity that has been identified is not included in this discussion, the assumption of particular conceptions of rationality. This issue will be discussed in detail in the following chapters.

<sup>226</sup> The different types of individualism are discussed in the introduction.

<sup>227</sup> Thomas Hobbes *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett) 1994. Part I, ch. xxi, par 2.

whatever other unit is serving as the focus. For example, if the focus of political analysis is the freedom of ethnic groups, then people are only free in terms of their place in those groups, and thus not free as people. This limits their ability to voluntarily incur the obligations to the state and civil society that are often assumed to extend to each individual person. It does no good to say that this or that particular group has an obligation to obey the law. We expect such obligations to extend to each individual person; we do not punish a group if a member breaks the law. Thus, each person must be free as an individual to make the social contract, and agreeing to the social contract requires understanding the unit of analysis as the individual. Anything less fails to generate the everyday obligations of citizenship. This is not to deny that there may be group obligations, or that in certain contexts analysis of groups rather than individuals serves the purpose better. It is simply that the social contract, to achieve the use that it has been put to, must focus on the free and equal individual.

Individualism strives to describe the everyman, the person in the abstract.<sup>228</sup> By inhabiting the pre-political state or state of nature, such individuals can be understood as free of all the obligations we generally presume actual people have. Particular features of actual people are not part of the idea.<sup>229</sup> The aim of individualism is to use only those features that every person (allegedly) has in order to gain a measure of universality for

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<sup>228</sup> I am well aware of the sexist presumption of the term 'everyman.' As I have throughout the text so far, I am deliberately following the sexist language that the theories were written in so that the feminist criticism in the coming chapter will not lose any of its force when it points out these male-assuming constructs.

<sup>229</sup> It should be noted that there are some features attributed to individuals in some theories that are not attributed to them in others. For example, Rousseau says that in the state of nature man has the passion of *amour de soi*. Rawls includes the sense of justice as an attribute of people in the original position. Neither of these features is attributed to people in other conceptions of the social contract. It is true that some of the content of these ideas may be included under different names, such as the self-preservation part of *amour de soi* being called a law of nature in Hobbes' theory. Despite these small differences, the notion of individualism is fairly constant as a free, equal, and rational being.

the theory. If each person were free, and free people would make particular agreement X, then agreement X *is* the social contract because it is what every person would agree to despite any particular differences between them. It should be remembered that, although the limitations imposed by the social contract sometimes seem to conflict with a particular person's actual desires, this is only an illusory conflict. The social contract is supposed to reflect what every rational person wants, and thus when a particular will, to use Rousseau's terms, conflicts with the general will, it is similar to the case of people who want to live a long life who also smoke cigarettes. These desires may appear to conflict, but the actual will is the one for long life, because without the life one couldn't enjoy other desires at all.

Individualism as described above links the properties of people to the idea of volunteerism. The basic idea is that if you are free, then nobody has any claims against you; there is no way to justifiably coerce you into behaving a certain way. Yet clearly a large part of civil society concerns itself with doing just that. Coercion is justified if the person being coerced agrees to the rules that are being enforced by that coercion. An example is following the rules of a game. When you agree to play Monopoly, you agree to being constrained in how much money you receive for passing Go. Nobody does you an injustice if they stop you from taking more than two hundred dollars. The social contract operates the same way. Thus, the obligation to obey the law, or said another way, the justification of the state to use coercive force against otherwise free people, must depend upon those people agreeing to the state. This is the fundamental aim of the classic social contract accounts, the justification of the state's power. The idea of volunteerism connects the properties and condition of individuals in a pre-obligation

condition to a state of obligation, both in a manner and condition that doesn't violate their freedom.

Because limitation of freedom requires agreement, the properties of freedom and equality of the individual require the idea of volunteerism, that state enforced limits on liberty must be incurred voluntarily. People need to be free and equal in order to incur obligation because if they were not free, then they may not be in a position to make the social contract. A simple example is that if I am under obligation to you for some reason, perhaps I have agreed to walk your dog, then that obligation limits what I may freely undertake as a further obligation. Since I have to walk the dog, I cannot agree to take a weeklong trip to San Francisco with another friend. Likewise, if we are not equal, then our ability to make an agreement may be compromised. For example, if you are my landlord and I have no other housing options, I am not really in a position to make an agreement to raise my rent; it is a decision I merely have to accept. In this manner individualism and volunteerism are mutually reinforcing.

The motivation putting oneself under such obligation is often two-fold. On one hand, the civil state that is created is a better state to live in than the pre-political state, even with the loss of liberty that comes with joining it. This is described in the different theories in different ways, but the civil state is always portrayed as better than the alternative.<sup>230</sup> Rousseau and Kant both describe the surrender of liberty as a case where natural freedom is given up so that civil freedom can be taken right back.<sup>231</sup> The civil state is where, for both Kant and Locke, one can fully enjoy one's rights, and for both

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<sup>230</sup> Technically Rawls does not offer the original position as an alternative to the civil state, but certainly the civil state that could be agreed to in the original position is thought to be better than any other condition.

<sup>231</sup> See Immanuel Kant *The Metaphysical Elements of Justice*, ed. and trans. J. Ladd (New York: Macmillan, 1965), pp. 80-81 and Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), pp. 64-65.

Locke and Hobbes it is a state of security. Volunteerism is thus the method of achieving the improvement of your lot in a manner consistent with your freedom.

On the other hand, joining the civil state is required by reason. In some cases it is argued that, since the civil state is an improvement, one would rationally join. Making the social contract is simply in your interest; it is irrational not to join. In other cases the improvement of the civil state over the pre-political state is a happy coincidence, but the joining of that state is required by bare consideration of reason itself. It is claimed that reason commands one to agree to the limitations of liberty whether one wants the benefit or not. For example, in Kant's theory it does not matter if you actually want property, the consideration of property as an idea of reason is enough to force your consent. To refuse on the ground that you do not actually desire property shows that you are irrational to the degree that you fail to recognize the idea of reason. Thus, reason and volunteerism are connected, either through rationally choosing to improve your lot by making the social contract, or by embracing the rational requirements of your freedom, thereby making the social contract.

The consideration of reason leads to the third of the foundational ideas of the social contract concept. Reason is both a feature of the individual and a motivational force for agreeing to the limitations on one's liberty. Reason dictates how such a limitation should look. Most importantly, reason is thought to be universal. There are two ways to understand the claim that reason is universal, and both of them are evident in social contract theory. The first is that reason is a faculty that everyone has. This basic idea of everyone having this faculty does not appear to be terribly controversial upon first look. It even seems to be empirically warranted, for most people do engage in means-ends

reasoning.<sup>232</sup> This sense of universality secures the egalitarian nature of the social contract. The justification of the social contract emanates from all rational people. In a sense, the faculty of reason binds all rational people together under the social contract.

The second sense of universality is the belief that the faculty of reason is the same for everyone. Given a set of premises, everyone will, or at least is able to, draw the same conclusions. Social contract theories need to adopt such a position because if different conclusions could qualify as reasonable or rational (in the usual sense of those words) based upon the same premises, then no description of the pre-political state could lead to *the* answer, either to the justification of the state's monopoly of force, the limitation of state authority, or the basic structure of the just state. There would be as many answers as there were rationalities. For example, if the original position yielded two rational sets of principles, then Rawls would not be in a position to conclude what the just state looks like. He would have no grounds from which to choose one over the other. Similar difficulties can be developed for all the social contract theories. Thus, the universality of reason assumes that there is only one way to arrive at conclusions that counts as reason, and thus makes sure that the solution provided by the social contract is *the* answer. That is, it is the same for everyone.

The pre-political description in social contract theory provides the premises that lead to the conclusion to make the social contract. Since people are rational by hypothesis they must therefore assent to the contract. In short, reason makes the voluntary limitation of liberty obligatory. To do otherwise would be irrational. Note that the individual is not being coerced by the obligatory nature of the contract, Rousseau's comment about

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<sup>232</sup> This view of 'everyone' is typically understood to mean adults with no cognitive handicaps. As will be discussed in the next chapter, it also is often taken to refer only to adult males.

forcing people to be free aside, any more than people are coerced into not having square circles, Hobbes' boasts aside. Rather, consultation with one's reason indicates that such an agreement must be struck in order for one to remain consistent with reason. Thus reason serves to link individuals to the content of voluntary agreement.

I need to make one final comment about the universal nature of reason. Not only is it supposed to be a feature of all men, it is also supposed to be universal in that it is a route to truth. This is the case even with empiricists such as Hobbes and Locke. Although they may argue that all knowledge of the world derives from sense data, they both accept reasoned conclusions based on sense data as well as the truth of tautologies. I think that showing the social contract to be required by reason is arguing that being a rational being is tautologous with making the social contract. Naturally with Kant there is no need to use the idea of tautology to explain the truth as revealed by reason. Nevertheless, for Kant what is commanded by reason must also be true.<sup>233</sup> In this manner, the idea of universal reason leads to finding the truth with respect to civil relations, and thus is a very important idea in its own right. As we will see later, however, this assumption of the universality of reason is a target of criticism against social contract theory.

### *Social Artifices*

There is an apparent problem with these underpinning ideas. Despite claims to the contrary, people are not free, equal, and rational in the manner that individualism suggests. Most actual conditions of humans are social. They are conditions of

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<sup>233</sup> I am uncertain about how to relate this point to Rousseau and Rawls since they are not also known for their work in epistemology. I am confident of saying that they both think their social contract theories provide *the* way to achieve balance between civil society on one hand and freedom and equality respectively on the other.

inequality, lack of complete freedom, and different sorts of ties (such as moral, societal, and familial) to people that distort both our freedom and our reason. We stand in relationships of inequality to almost every other person we know. The assumption that we are by nature equal also suffers when we consider that such claims require a specialized account of what equality is in order to make the claim plausible. Hobbes merely asserts that our natural abilities are not so different as to warrant calling us unequal on their account. Yet, if inequality in ability doesn't qualify as grounds for saying people are unequal in the state of nature, it is hard to imagine what would. Locke offers a formalist definition of all being bound by the laws of nature. This is like asserting that we are all equal because we are all subject to gravity in the same proportion. Such accounts do little to show us why we should consider ourselves equal in any meaningful sense, given our daily inequality.

Furthermore, almost nobody is free from the non-voluntary moral ties to others that constrain freedom, given that almost everybody has family members and loved ones. We all have ties to other people. Some of these are moral, such as to our friends, some biological, such as to our children and other family members, and some are social, such as to our acquaintances, colleagues, and fellow citizens. These bonds are taught to us; some are backed by sanctions of different sorts and severity, and others are mere custom. But the fact remains that they limit our freedom. These ties place us in positions of inequality of power and status with each other, despite the claim that we are equal.

The universality of reason and rationality is also a problematic assertion. As noted by Kant in his recognition that people cannot actually use pure reason, we are not at all free



from sensible influences.<sup>234</sup> Perhaps it is true that everyone is rational in the sense that they use some form of means-ends faculty. There is, however, a great disparity over what counts as rational, as evidenced by my analysis of the different assumptions that are part of the conceptions of rationality in the theories examined in chapters one and two. Given that analysis, it appears false that everyone is rational in the same way, even setting cognitively deficient and pre-rational people aside. Thus both aspects of the universality of reason are undermined. Reason is not a faculty that is the same for all people since different people are affected by other influences to different degrees and even to the extent that all people could in principle put these influences aside, not everyone who reasons does so in the same way.

Furthermore, it is not often the case that we have the opportunity to agree to the sorts of restrictions upon our liberty that the social contract theories address. State enforced restrictions are merely imposed upon most people by the state in which they live.<sup>235</sup> Even many of the ordinary obligations we undertake and limitations to our liberty we accept are not voluntarily shouldered by us, but rather seem required given the social roles we inhabit. It does not seem that I volunteer to take care of my father when he can no longer care for himself; I am his child, I have that obligation. Whatever the source of this obligation, I did not voluntarily choose it, even if I do choose not to avoid it. This is also the case with much of our civil obligations; we didn't choose them although we may

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<sup>234</sup> The claim that people are not rational varies widely, depending upon the conception of rationality used and the degree to which people are supposed to adhere to it. For example, Kant openly recognized our inability to use pure reason, while an account of being rational that entails only means-ends reasoning might apply to most.

<sup>235</sup> Admittedly, social contract theory only suggests what we would or should agree to were we in the pre-political condition. My point is that the assumption of volunteerism that plays such an important role in the theory is far from being representative of the actual conditions under which we live.

choose not to avoid them. This shows that the assumption of volunteerism is at the very least problematic.

In light of these observations, the concept of the social contract does not seem to capture or reflect conditions that resemble actual conditions of human life. Some may see this failure as grounds for criticism of the social contract. One could argue that if the social contract uses these ideas and the ideas are inaccurate, then certainly the social contract is correspondingly inaccurate. Yet one does not have to understand these ideas in terms of actual conditions of human life. Instead, one can view them as a social artifice, a socially created practice designed for a specific purpose. An examination of these underpinning ideas in this light must begin with an examination of what I mean by social artifice. I will then apply this idea to the underpinning ideas to complete my analysis of the concept of the social contract.

The idea of social artifice, as I will use the term, is found in Annette Baier's essay "Trust and Antitrust."<sup>236</sup> This essay argues, in part, that trust underlies any notions of agreement or promising. Baier derives her account from Hume's discussion of promising as "an artificially contrived and secured case of mutual trust."<sup>237</sup> A promise is artificial insofar as it is a social construct; it is not a natural feature of the world. Baier describes such constructs as "a most ingenious social invention...."<sup>238</sup> It is easy, however, once such a convention is in place, to overlook those conditions that are operating in the background and focus only on the artifice.<sup>239</sup> These conditions, while the focus of Baier's inquiries, serve only a minor role in my analysis, but they must be mentioned

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<sup>236</sup> Annette C. Baier "Trust and Antitrust" in *Moral Prejudices* (Cambridge, MA: Harvard University Press, 1995).

<sup>237</sup> *Ibid.*, 111.

<sup>238</sup> *Ibid.*, 112.

<sup>239</sup> *Ibid.*

nevertheless. Background conditions make the artifice possible, such as in Baier's case of trust and promising, or even meaningful, as I will argue below concerning the artifices of the social contract.

Baier's treatment of promising is a good example of a social artifice. First, it is an example of a social practice designed to compensate for a specific problem. We often see promises, and especially social contracts, as ways to make a binding agreement between two or more parties who do not trust each other. After all, if you trust someone you often accept what she says 'at her word.' You don't require them to make a promise.<sup>240</sup> The act of promising was developed to allow for agreements to be made when the parties didn't trust each other, such as those cases Hobbes describes when one party must perform first.<sup>241</sup> Promising didn't exist in nature; it was made for a specific purpose.

The second way in which promising is a good example of social artifice is in the way it is taken for the object of inquiry while the fact that it is an artifice is forgotten. When philosophers examine the act of promising, such as when working with social contract theory, they treat promising as *sui generis*, as a type of action in the world, and ignore that it is socially created to bridge the gap of non-trust. They examine what the act of promising entails, but ignore the fact that promising is not a basic moral institution, but rather an artifice. The fact that there are background conditions, such as trust, to such

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<sup>240</sup> People you trust don't need to engage in the convention of promising except in cases where the act of promising is used not to secure trust but to emphasize the sincerity of what is been agreed to. The typical marriage ceremony is a good example. The couple promise to forsake all others, but no one thinks that without this promise each would be free to take other lovers.

<sup>241</sup> C.f. Thomas Hobbes *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett, 1994), Part I, ch. xiv, par. 16-18.

seemingly basic moral institutions as promise keeping demonstrates that they are not basic at all. Yet this aspect of promising is often overlooked.<sup>242</sup>

This situation is analogous to that of a physicist describing a clockwork mechanism merely in terms of physics, and noting that remarkably it has timekeeping properties. This result only happens if the physicist overlooks the fact that the clockwork was designed to keep time. If an ethicist overlooks the artificial nature of promising, and only discovers the morally binding nature of promising, then she has similarly overlooked the fact that promising was developed to be a morally binding action. In both cases the analysis is incomplete due to the fact that the object of inquiry was not recognized as a creation for specific purposes.

Using the idea of social artifice, one can re-examine the underpinning ideas, thus providing a complete analysis that permits addressing two issues. The first is that one can answer the critic who charges that these features are not actual conditions in the world. Under the social artifice analysis, one can agree that indeed they are not, but that this fact is beside the point. They are artifices designed for a specific purpose, and the question then becomes not how well they describe the world, but rather how well they achieve their purpose. The second is that the complete analysis gives one a richer understanding of the concept of the social contract, and thus puts one in a better position to evaluate it. This richer understanding is the result of understanding the purpose behind the artifices, and thus for the social contract itself.

One should recall that the social contract is often considered a thought experiment rather than an historical account.<sup>243</sup> Understanding the social contract in this way is in

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<sup>242</sup> Examples of activities that are not social artifices, and thus exists in nature, might be heightened distress when a nearby child is in distress, a caring for the injured, and the like.

line with similar views, mentioned by Hobbes and explicitly endorsed by both Kant and Rawls, that the social contract and the condition of man prior to it is not to be taken literally, but as a device, a logical hypothesis. These ideas are the same as saying that individualism, for example, is a social artifice. It is a deliberate construction meant to achieve a certain goal. Individualism, and indeed the whole of the pre-political condition, can be seen, not as a description of how people are, but as a construction or description of people using only certain aspects. These aspects are, as we have seen, that people are free, equal, and rational.

The idea of the solitary person in the state of nature is an attempt to strip people of their actual confinements and present a stylized person with nothing but the appropriate features for making the social contract. The question at this point is why should people be stylized as free, equal, and rational? The answer is that they represent some important values with respect to (re)forming civil and political society. The construction of people in the pre-political condition (which is itself stylized to suit a conception of rationality, as we have seen) as free, equal, and rational presents an intuitive way to morally justify restriction of liberty. If such a person could or would choose these restrictions, then they are morally justifiable. This idea is evident in many of the conceptions of the social contract examined in the first two chapters. The only difference is that those conceptions held the features of the individual to be actual features of people in the pre-political condition and my revision holds that these features are a social construct of the type of

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<sup>243</sup> It should be noted that while I am viewing the social contract in this light, not all the contractarians necessarily share this understanding of the social contract as a thought experiment. In particular, Locke and Rousseau, for different reasons, can be read as holding the view that the social contract was or ought to be an actual event. Even if this is so, their descriptions of the state of nature are not descriptions in the sense of how things are, but rather descriptions of how they think such a state would be. Thus, they are offering descriptions of the pre-political condition that are no less idealized than any of their colleagues.

person who, by his agreement to the social contract, morally justifies the political limitations on freedom described by the social contract.

The idea that an appropriately described person could make choices that are binding upon actual people needs some justification. On the surface it may seem to be an idea that some people have and others don't. This, however, is not the case. I think most people share this intuition, but in a more basic form. Most people use the method of constructing hypothetical moral situations to help them clarify for themselves the requirements of morality and to resolve moral dilemmas. One common example designed to show the limits of utilitarian theory is the case where sacrificing an innocent person will save many other people. The interesting part of these examples is not always the conclusion, but the debate that goes into creating the appropriate description of the situation. In discussions of the sacrifice example, people want to know how many people will be saved (often the right number makes the difference), what kind of people are they (we wouldn't want to save violent criminals in this way), and whether the sacrifice will feel any pain. The moral intuition behind the social contract is the same. The issue isn't that people simply don't agree that if an appropriately described person accepts certain limitations in certain situations then we should accept those same limitations. They do in other moral contexts. Rather, the issue is how to describe the person appropriately.

The questions of whether a certain description of the person to make the social contract or whether the pre-political condition appropriately describes the situation in which such a choice is to be made make up a great deal of the criticism of social contract theory. Some critics, who will be discussed in detail below, hold that the description of the people making the contract leaves some kinds of people out. Other critics disagree

with the description of the state of nature. Still more criticize the anti-historical nature of the social contract. It may be replied that all these sorts of critics accept the moral intuition, but there may be other critics who insist they don't. In reply, I can only ask how such critics engage in moral explanation and exploration, if not through the use of hypothetical situations. If they do use this sort of method, I don't think they have a principled objection to the moral intuition behind the social contract. If they don't, and I don't think there are many people who don't use such methods, then I ask to hear about their method and how it provides a criticism of the moral intuition.

The goal of all the conceptions of the social contract is constant. Within the limitations of context, each theory tries to explain how freedom could be justifiably limited. Hobbes seeks to justify the absolute state. Locke does the same for a smaller state aimed at the preservation of property. Rousseau offers an answer to how people could live in society without ending up in chains. Kant wants to prove there is no contradiction between the state and autonomy. Rawls seeks to determine the basic structures of the just society so that injustice might be eliminated. All the theories seek to justify and explain civil and political limitation upon freedom. Remember, it is not that we ever had such freedom. But if we can explain how such freedom would be given up to make civil society, then we are in a much better position to evaluate our actual condition with respect to what freedoms we do and do not have.

This moral intuition, as I have called it, can be understood as a background condition of the social contract. I am not trying to establish background conditions for the social contract in the way that Baier establishes background condition of trust for the artifice of promising. I do not know if logical, metaphysical, or empirical conditions can be

established. When one considers the various conceptions of the social contract, however, they all have the moral argument in the background that if a completely free, equal, and rational person would make the social contract, then the limitations on freedom imposed by that contract are morally justified. My goal is simply to point out that individualism can be understood as a social artifice. This achieves the two purposes mentioned above. The first is that it removes the objection to individualism that people don't have these properties. It is therefore no objection to the social contract that uses the concept of individualism to say that people aren't and couldn't actually be free, equal, or rational in the manner suggested. The second purpose is that it deepens our understanding of the concept of the social contract. By understanding individualism as a social artifice, it emphasizes the intuition that if people with these features would agree to the social contract, then the state described by that social contract is morally justified by that fact. Social contract theory is thereby understood as a justificatory tool, rather than a prediction of how certain people in certain circumstances would behave. Individualism as social artifice reminds us of the nature of the social contract project.

I will now turn to the foundational idea of volunteerism. Volunteerism is assumed in order to make the contract moral. The tie between volunteerism and individualism is most clear when one understands that unforced agreement is what gives the choice of the free, equal, and rational person its moral force. As discussed above, volunteerism holds that (some) obligations are incurred voluntarily. This is certainly true, as when you take on the obligation of walking the dog after having promised that you would do so. Social contract theory asserts that certain social obligations, such as the obligation to obey the law, are voluntary. The reasoning is that if people did, would, or could voluntarily



assume the limitations on their freedom, then those limitations and the force used to enforce them are morally justified. Since most people hold that the coercive power of at least a just state is morally legitimate, the corresponding obligations must therefore be voluntarily assumed.<sup>244</sup> Similarly, Kantian contractarians hold that just limitations on freedom are not merely imposed from above, but rather must be such that one could voluntarily assume them.

In either the Kantian or classic aspect, social contract theory uses volunteerism to justify state coercion.<sup>245</sup> The concept of the social contract uses the artifice of volunteerism, knowing that it is not an accurate description of our actual moral lives, so that the social contract can achieve moral justification.<sup>246</sup> Understanding volunteerism as a social artifice rather than an actual condition alleviates the sorts of criticisms of volunteerism that are based upon its lack of accuracy in describing the world. Like individualism, volunteerism illuminates the morally justified limits the state may impose upon its citizens. Without these ideas the social contract could not achieve the justification that is its object, and without the understanding of them as artifices, they appear obviously false as descriptions of the world.

If obligations to the state or justified limitations on liberty are not such that they are able to be voluntarily assumed, then volunteerism would be false and the social contract

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<sup>244</sup> A. John Simmons is the most notable exception to this generalization. See his *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979).

<sup>245</sup> It may seem that volunteerism is simply assumed in the moral intuition described above. This is not the case. The intuition only says that appropriately described people could make choices binding upon actual people. It is the social contract that traditionally insists that these people be described with the freedom volunteerism implies. One could use the moral intuition and hold that the appropriately described person is one that fulfills his social roles, whether or not he volunteered for them. That person's choices would then be considered binding.

<sup>246</sup> It is possible that it doesn't even represent a possible human condition in that it may be possible that humans cannot live outside of the relationships that thrust obligations upon them. It is even more likely that individualism is a description that no possible human fit, for every person would have limited freedom, rationality, and unequal relations.

idea would fail to justify the state monopoly on force. If these restrictions couldn't be freely assumed, then the individuals of the pre-political condition wouldn't be free, and the entire social contract project fails. The freedom of the individuals requires the ability to choose the restrictions upon liberty, and both of these are required to give the moral justification to the contract.

The fact that Hobbes wrote *Leviathan* indicates that he thinks the use of coercion requires justification. The same is true with the other social contract theorists. There is a difficulty, however, in merely saying that coercion requires justification via the social contract. After all, one may point out that Hobbes thinks coercion in the state of nature was permitted. Rousseau says that people who do not join in the social contract must be forced to be free, a sentiment echoed by Kant. These acts of coercion fall outside the social contract, and seem to indicate that coercion need not always be justified. If this is the case, then the claim that the state use of force needs to be justified is undermined, and thus the entire social contract project as an exercise in moral justification.

These passages are taken out of context and do not do justice to the theories from which they come. For example, Hobbes' observation that one can do no right or wrong in the state of nature is the recognition of the socially constructed nature of rightness and wrongness. One can, if one is able, coerce another to her will, but such coercion is not justifiable. The ability to do something in the state of nature does not mean one has permission to do it. It is outside of the realm of morality. A society consisting of an individual who had coerced all the subjects into obedience may have a semblance of a state, but such a leader would have none of the moral authority that is sought for the exercise of state power. The people would not be morally obligated to obey. To have a

morally justified use of power, one must be the leviathan, the person or people who have not renounced their rights when everyone else has. Only in this way is the use of coercion justified.

Rousseau and Kant make remarks similar to each other about forcing people into civil society.<sup>247</sup> Both their theories hold the position that those outside of civil society are lacking in some way. In Rousseau's case, these people are ignoring the general will, the common good. To ignore the common good is to ignore one's own good, which amounts to willing two opposite things. Rousseau thinks that, once such a conflict is pointed out, the rational person will realize that the general will is what he truly wills. For Kant, to not join civil society is to not have conformed your will to reason, since reason requires the social contract. The person outside of civil society is not free. In both theories, freedom is enriched and expanded by entrance into society, something that is supposed to be desirable to all. By forcing people into society, Kant and Rousseau are not coercing them to live under involuntary restrictions as much as they are lifting the restrictions that are the result of imperfect reason from them. This is not a matter of one person deciding for another what will improve the lot of another. Rousseau and Kant both think that it is true, within the contexts of their respective theories, that people's lives are better in society. Both Kant and Rousseau recognize that people choose different ends in their lives and their theories are specifically built to accommodate freedom within society. Thus, to say that they think it is permissible to coerce people to live in certain ways ignores the specific aim of preserving the free nature of people found in both theories and

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<sup>247</sup> See Immanuel Kant *The Metaphysical Elements of Justice*, ed. and trans. J. Ladd (New York: Macmillan, 1965), pp. 76-77 and Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 64.

thereby does a serious injustice to them. Forcing people to be free is not coercing them as such, but rather removing their blinders so they can follow theirs.

In light of this discussion, it is clear that Hobbes, Rousseau, and Kant do not undercut the claim that coercion requires moral justification by the remarks cited above. Social contract theory, with all its differing conceptions, has at its root the idea of moral justification of the restriction of freedom and the use of force needed to sanction those restrictions. This observation supports the analysis of the underpinning ideas of individualism and volunteerism in terms of artifices designed to achieve that moral justification.<sup>248</sup> If the central project of social contract theory is to provide a moral justification, and the ideas of individualism and volunteerism are social artifices designed with a specific aim, then it would seem reasonable to conclude that achieving the moral justification may be their aim.

The universality of reason is the third underpinning idea. Its relationship to the other two ideas is clear; it is an element of individualism and it is the guide for the individual in deciding with what he will agree to. It is the alternative justification to tradition and

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<sup>248</sup> Some critics of the social contract point out that this construction of the problem presupposes individualism and volunteerism. It is true that if one rejects the problem(s) that social contracts are developed to solve, then one may not have a need to use ideas such as individualism and volunteerism. This does not show that those ideas are false, only that they are not required to resolve all issues. In order to show that the ideas of individualism and volunteerism are ill conceived, one will have to show that they do not work for the uses for which they are developed. Thus, the critic must accept the social contract problem in order to effectively criticize the ideas used to resolve it. Additionally, it is not as if this presupposition is circular in a vicious sense. It does not entail how these ideas are to be fleshed out, so the presupposition does not embody the conclusions of a social contract theory. It only indicates the parameters of the problem.

The critic of the social contract could argue that the social contract problematic itself is patriarchal, perhaps based upon its assumption of individualism or volunteerism. This claim is independent of the question of whether the social contract problematic is the appropriate approach to political theory. If the problematic is itself patriarchal based on individualism, then there should be an argument why individualism itself is patriarchal (in order to account for the patriarchalism of the problematic). I will show that apart from engaging in the debate about differences between men and women, there is no ground for maintaining that individualism is patriarchal, and thus no ground for holding that the social contract problematic is patriarchal.

authority as a method of justifying state use of force. Unlike individualism and volunteerism, however, the universality of reason is not often criticized as an inaccurate view of the world. Many people think there is one faculty that is the same for everyone and is had (at least potentially) by everyone. Thus, trying to understand it in terms of social artifice does not have the same initial plausibility as it does for the first two ideas.

It is true that many social contract theorists, notably Kant, believed that actual people failed to live according to (pure) reason. One may point out that suggesting that those in the pre-political condition do live according to reason is asking them to be unlike actual people, but this inaccuracy is not of the same degree as those committed by individualism and volunteerism. In those cases, the very possibility of being as those ideas described is questionable. Many people do believe, however, that people can live according to reason, if not pure reason. Given that the initial reasons to understand the universality of reason as a social artifice are not present, along with the fact that many people do in fact believe the idea of the universality of reason, I am going to set aside the question of whether it is a social artifice. This question will be taken up again, however, in chapter five.

I need to make clear that I am not suggesting that Hobbes, Locke, Rousseau, Kant or Rawls thought of these ideas in terms of social artifice. They may have believed that individualism was a description of the essential properties of human beings or that freedom entails volunteerism, for example. Insofar as they do, however, they are open to the criticism their theory is grounded in falsehoods. On the other hand, they may have understood these ideas as theoretical requirements necessary to make their respective cases. I think there is a good argument that Hobbes understood that his description of

individuals in the state of nature was purely theoretical, and the same can be said of Kant and certainly of Rawls. My aim is to develop a concept of the social contract, based upon those theories, which can withstand specific criticisms. It is not an attempt to expose implications of social contract theories of which the historical philosophers must have been aware.

The concept of the social contract can now be clearly and fully stated. Free, equal, and rational individuals would agree to limit their freedom in order to secure certain other ends, which are superior to the condition of absolute freedom that lacks them. The agreement is required by reason, and further, such agreement, whether actual or hypothetical, is the appropriate way to limit one's liberty. These similarities are bound together by the three underpinning ideas of volunteerism, individualism, and the universality of reason. The underpinning ideas serve to mutually reinforce one another, each requiring the others. The idea of social artifice explains how the ideas of individualism and volunteerism are stylized to highlight the idea that if such people as described by the pre-political condition agreed to the social contract, then certainly that contract is morally justified for us. In short, they describe the conditions under which a morally binding social contract could be made. These ideas constitute the concept of the social contract. The idea that what free people would agree to carries justificatory weight is a driving force behind these artifices, and thus the concept of the social contract. It justifies the limitations of freedom imposed by the state, either through justification of the state itself or by justification of a conception of justice to which the state should adhere. Each of the conceptions of the social contract, with all their differences, fits this concept.

## CHAPTER IV

### FEMINIST CRITICISM

Feminism is not a monolithic, homogeneous set of ideas. Apart from the common goal of opposing the subordination and domination of women, there is no simple definition or explanation of feminism that captures all those who consider themselves feminists. Similarly, there is no single feminist approach to social contract theory. Some feminists, such as Jean Hampton, defend and employ contractarian thought.<sup>249</sup> Others, notably Virginia Held and Annette Baier, hold that while contractarian theory “is an inappropriate metaphor for the whole of ethical life,” it does have a legitimate role in accounting for some aspects of that life, namely those involving justice.<sup>250</sup> Still other feminists, however, criticize social contract theory as being a tool of domination of women by men.<sup>251</sup> This last group provides some of the strongest objections to social contract theory, as well as the conclusion that the social contract is inherently patriarchal.

Before examining the arguments offered for this claim, it is important to understand the position from which they are offered. It is a position within feminism that I call the ‘dominance approach.’ As noted above, there are many types of feminist thought.<sup>252</sup> Each has contributed ideas that form part of the dominance approach, and each has drawbacks the dominance approach seeks to overcome. While sharing these ideas with

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<sup>249</sup> C.f. Jean Hampton “Feminist Contractarianism” in *A Mind of One’s Own: Feminist Essays on Reason and Objectivity*, eds. Louise M. Antony and Charlotte Witt (Boulder, CO: Westview Press, 1993), pp. 227-255.

<sup>250</sup> Ruth Sample “Why Feminist Contractualism?” in *Journal of Social Philosophy* vol. xxxiii, no. 2, (Summer 2002), p. 257.

<sup>251</sup> Carole Pateman is perhaps the most obvious member of this group. Ibid.

<sup>252</sup> For a good introduction to the types of feminism, see Rosemarie Tong *Feminist Thought: A Comprehensive Introduction* (Boulder, CO: Westview Press, 1989). For an excellent critical examination of most of these positions see Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988).

other types of feminisms, the dominance approach is designed to provide an analysis of women's oppression from a position that disregards questions concerning the difference between men and women. It remains focused on the ideas of domination and oppression, holding firm to the claim that nothing can justify systemic sexual domination. The following discussion examines the ideas that form the theoretical base of the dominance approach.

### *Feminisms*

Perhaps the most common form of feminism is liberal feminism. Liberal feminism seeks to apply liberal principles to women just as they are applied to men.<sup>253</sup> Liberal feminists accept most liberal concepts and values. As liberals, they value individual autonomy and seek maximum freedom while protecting the rights of all.<sup>254</sup> In fact, liberal feminists would embrace the social contract as long as women are included in the making of the contract. The contribution that liberal feminism makes to the dominance approach is in its analysis of the root of women's oppression.

The reason women have traditionally been denied freedom and autonomy in liberal states is that their sex dictates they fulfill certain roles in society, such as wife, mother, nurse, teacher, and other nurturing or servile type jobs. Liberal feminists (among others) seek to show that these roles are not sex related, but rather are socially created gender roles. The distinction between sex and gender is as follows: sex concerns biology, gender refers to social or cultural roles to which each sex is expected to conform. Thus, the fact of a penis or vagina is a matter of sex; the expectation to stay home and care for offspring

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<sup>253</sup> Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988), p. 35.

<sup>254</sup> *Ibid.*, 33.



is a matter of gender. Since gender is socially created, and can therefore be changed, it provides no justification for denying women freedom and rights equal to those of men.

Liberal feminists seek to free women from these oppressive gender roles and raise them to the full rights of a citizen in liberal society.<sup>255</sup> This gender analysis of the subordination of women is an important aspect of the dominance approach. Like liberal feminists, those taking the dominance approach see the gender roles assigned to males and females within a culture as both the source and justification of women's oppression. Yet much of the rest of the liberal feminist platform is deeply problematic for the dominance approach feminist.

Marxist feminism challenges one of the central ideas of liberal feminism (and liberalism as well). Marxists deny the idea of rationality as the essence of being human.<sup>256</sup> Instead, they emphasize the human ability to produce, to transform our environment to better suit our needs.<sup>257</sup> Marxist feminists hold that ultimately class oppression is the best way to understand women's oppression, and indeed most other forms of oppression.<sup>258</sup> Women as a class are also exploited in the interest of capital. Marxist feminists maintain that capitalism depends upon the unpaid domestic labor of women to maintain a healthy workforce.<sup>259</sup> This labor includes caring for a man so he can provide labor, as well as bearing and raising children to become the next generation of workers. The reason that capitalism exploits women in this way is to maximize the

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<sup>255</sup> Rosemarie Tong *Feminist Thought: A Comprehensive Introduction* (Boulder, CO: Westview Press, 1989), p. 32.

<sup>256</sup> Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988), p. 52.

<sup>257</sup> Rosemarie Tong *Feminist Thought: A Comprehensive Introduction* (Boulder, CO: Westview Press, 1989), p. 39.

<sup>258</sup> Ibid.

<sup>259</sup> Sarah Gamble, ed. *The Routledge Critical Dictionary of Feminism and Postfeminism* (New York: Routledge, 2000), p. 269.

labor that can be extracted from their husbands and sons. Capitalists don't want to compensate women for this contribution to profit because to do so would lessen that profit. Thus, women's oppression is directly tied to the class oppression of capitalism.<sup>260</sup>

The dominance approach does not necessarily adopt a Marxist perspective, but it does embrace one idea from that perspective, as well as a criticism of it. The former is that women are fully human. Liberals view human beings as essentially rational agents.<sup>261</sup>

Jaggar argues that this view of human beings leads to what she terms "political solipsism", the view that humans are essentially solitary beings with concerns and needs independent of any other individual.<sup>262</sup> One can easily see how this liberal view of human beings meshes nicely with the ideas of individualism. Some feminists, including Jaggar and Pateman, argue that this core concept of liberalism excludes women from the category of human.

This exclusion occurs on two related fronts. The first is that women are often denied the faculty of reason. Instead, it is alleged that they are emotional, which is thought to imply an inability to reason abstractly. Thus, they do not qualify as fully human, and thereby not as individuals. The second front is that women's interests are often tied to other people, especially their children. This tie to other people leads women to reason from concrete situations, where the parties involved are partial, rather than abstractly and impartially, as the liberal individual is supposed to reason. Reasoning based on the concrete circumstances is offered as evidence that women are not fully rational. Again, the liberal conception of the individual does not apply to women. In this way women are

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<sup>260</sup> Ibid.

<sup>261</sup> Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988), p. 37.

<sup>262</sup> Ibid., 40.

twice denied full humanity. They are emotional rather than rational, and when they do reason they fail to do so impartially, which further demonstrates their emotional nature.<sup>263</sup>

In light of the discussion of social artifice in the preceding chapter, one may ask why this criticism needs to be considered seriously. One may suggest that since individualism is a social artifice that fails to describe any person accurately, feminists should not be concerned that it fails to describe women accurately. This reply, however, utterly misses the point of the criticism. Even as a social artifice that is an inaccurate description of all actual people, individualism identifies the features of people that carry the moral force of the social contract. It is those sorts of people who, by the mere fact that they would or could make the social contract, justify the restrictions upon liberty for everyone else. The feminist criticism points out that women are excluded from being those types of people. They are conceptually ruled out as members of civil society because they lack the features, stylized in the artifice of individualism, that the members of civil society allegedly have, however imperfectly. This exclusion sets the foundation for subsequent theoretical and actual subordination. This is why the feminist criticism of individualism needs to be taken seriously even after the recognition that individualism is a social artifice.<sup>264</sup>

The dominance approach rejects the identification of humanity with rationality, although it doesn't thereby adopt the Marxist identification with production. Rather, it notes that both the identification of being fully human with being rational and that of rationality with universality are open to criticism.<sup>265</sup> The criticism that is leveled at the Marxists is that the Marxist view of women's exploitation does not recognize this

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<sup>263</sup> The arguments for these claims are given in the next section.

<sup>264</sup> Indeed, as a social artifice, individualism may have been designed to exclude women in just this manner.

<sup>265</sup> These criticisms are also explored in the next section.

exploitation as uniquely a women's problem. Indeed, the type of oppression that concerns Marxists remains the same regardless of who is providing the unpaid domestic service, be it women, children, or slaves. The dominance approach uses an analysis of the exploitation and subordination of women as being about women. This type of analysis is also the unifying theme of radical feminism, understanding women's oppression in terms of how *women* are oppressed.

Radical feminism develops an account of women's oppression that shows how it is women, as women, that are being oppressed. Radical feminists criticize liberal and Marxist feminists for accepting the values of male culture.<sup>266</sup> Against the liberals they argue that being a liberal means trying to be like a man because liberalism holds men's experience and values as the exemplars of human experience and values. Against the Marxist the radical feminists charge that by analyzing women's oppression in terms of class oppression, they ignore the unique aspect of it being oppression of women. As Jaggar notes, radical feminists stress the commonalities in the experience of all women.<sup>267</sup> Their oppression is not to be understood as a further iteration of class oppression.

Radical feminists develop an analysis of women's oppression that returns to the issue of gender. They hold that gender is a social construction designed to structure and control women, that "gender is an elaborate system of male domination."<sup>268</sup> They add the

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<sup>266</sup> Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988), p. 251. See also bell hooks' discussion of why a liberal feminist victory would not be a victory in her essay "Feminism: A Movement to End Sexist Oppression" in *Feminism and Equality*, ed. Anne Phillips (New York: New York University Press, 1987), p. 69.

<sup>267</sup> *Ibid.*, 133.

<sup>268</sup> *Ibid.*, 85.

insight that gender is the unquestioned framework that structures our entire lives.<sup>269</sup> The pervasiveness of gender is such that it reaches into every corner of our lives. It structures how we think about others and ourselves, determines what it is to be a human, a man, and a woman. It is so unnoticed that even when women seem to control their own appearance through the use (or not) of make-up and other products, they are adapting to the dominant views concerning beauty as defined through gender.<sup>270</sup> The controlling nature of gender is used to keep women in an inferior status within the society. If gender reaches into the whole of women's lives, and gender is the system of male domination, then that domination exists in all aspects of women's lives.

Radical feminists seek an account of women's oppression that recognizes that men are the oppressors, that women's oppression is oppression of women by men, rather than a symptom of some other oppression. Analyzing male dominance in terms of gender achieves this goal. Male dominance is grounded in men's universal control of women's bodies.<sup>271</sup> This fact is exhibited by the gender roles under which women are forced to live. Women are mothers and sexual partners. Their bodies define who they are, and this definition is then used to justify itself and the gender roles ascribed to it. Once the gender construction is in place, it seems only obvious that women have these roles; after all, they are biologically suited for them. The ideology of gender defines women's lives.

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<sup>269</sup> Ibid., 85. It is interesting to note that Jaggar uses the pronoun "our" as well when she makes this point. It is not clear whether she means it to refer to women or to all people. Certainly men live under an unquestioned ideology of gender as well, one which might account for issues of men not being able to "be a man", although clearly theirs does not serve to socially oppress them, but perhaps only leads to individual issues.

<sup>270</sup> Sarah Gamble, ed. *The Routledge Critical Dictionary of Feminism and Postfeminism* (New York: Routledge, 2000), p. 317.

<sup>271</sup> Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988), pp. 147, 266.

Furthermore, the gender roles that are based on bodily functions are inferior to those based on “rational” functions. Thus, women are inferior to men, just as was the case above with respect to rationality. Once women are defined as inferior due to their limited capabilities, domination of them becomes permissible. This is how radical feminists understand patriarchy- as a complete system of domination that develops an ideology that identifies women as inferior so that the domination of women is justified.<sup>272</sup> Finally, radical feminists all hold that male power cannot be reformed via a new application of the laws or a restructuring of the means of production; rather male power must be eliminated.<sup>273</sup> Indeed, this is what makes radical feminism radical.

The dominance approach is very similar to radical feminism, especially with respect to the idea that gender is the unquestioned power structure of our lives, as well as the source of women’s oppression by men. Yet radical feminism has its drawbacks. One criticism is that it takes a universal approach to women’s oppression.<sup>274</sup> It treats all women as if they are oppressed in the same way as all other women. Even if all women are oppressed, it seems false that they are all oppressed in the same way. For example, white upper middle class women in the United States, although oppressed by a certain conception of gender, do not suffer the same oppression as women in the Middle East or in sub-Saharan Africa even though those women are also oppressed via conceptions of gender.

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<sup>272</sup> Ibid., 255.

<sup>273</sup> Sarah Gamble, ed. *The Routledge Critical Dictionary of Feminism and Postfeminism* (New York: Routledge, 2000), p. 302.

<sup>274</sup> See Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988), pp. 116-118.

Socialist feminism is designed to synthesize the best parts of Marxist and radical feminism while escaping their respective drawbacks.<sup>275</sup> Jaggar notes the above-mentioned assumption about the universality of women's oppression. She also thinks that the radical feminists accept too much male ideology in their focus on sex and motherhood.<sup>276</sup> The socialist feminist agrees with the radical feminist that you cannot offer a complete analysis of women's oppression without reference to procreation, but it cannot be explained entirely in terms of it either.<sup>277</sup> Socialist feminists share with Marxists the conviction that human nature is not equated with the property of rationality, but rather is created historically via the interactions of society, biology and the environment.<sup>278</sup> Yet, they worry that Marxist feminists ignore that the oppression of women is oppression of women by men.<sup>279</sup> Thus, socialist feminists try to provide a nuanced account of women's oppression that recognizes the different ways in which different women are oppressed, while holding true to the position that women's oppression is a problem in itself, not just a sub-category of another problem, and that it involves both economic and sexual bases. They agree with the radical feminist that people's lives are structured by socially imposed gender constructions, and these constructions are a fundamental element of continuing male dominance.<sup>280</sup> However, by keeping the Marxist view of human nature, socialist feminists are able to provide

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<sup>275</sup> Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988), p. 123.

<sup>276</sup> *Ibid.*, 139.

<sup>277</sup> *Ibid.*

<sup>278</sup> *Ibid.*, 125.

<sup>279</sup> Rosemarie Tong *Feminist Thought: A Comprehensive Introduction* (Boulder, CO: Westview Press, 1989), p. 63.

<sup>280</sup> Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988), p. 127.

accounts of women's oppression that, while still being oppression of women as women by men, varies with the differences in historical and social circumstances.

The ideas of gender oppression, of an historical rather than rational based view of human nature, of subordination being that of women by men, and the recognition that these ways of oppression can take different forms in different times and places are all accepted by the dominance approach. Indeed, if one views these various feminist positions as building upon one another, then one would be tempted to identify the dominance approach with some strand of either socialist or radical feminism. Yet these feminist positions form only one dimension of feminist thought, and the dominance approach, while partaking of the ideas of the political feminisms discussed above, is designed to overcome the shortcomings of a different debate.

This second feminist dimension is concerned whether women are significantly different from men. One of the criticisms of liberal feminism is that it implies that women can, want to, and should be like men.<sup>281</sup> The critics say that women shouldn't have to be like men in order to not be oppressed.<sup>282</sup> This idea has developed into an entire debate in the literature on whether or not there are political and moral differences between men and women that are not just a result of assigned gender roles.<sup>283</sup> The two primary sides of this debate are the assertion of women's sameness to men or their difference from men. They arise for the most part from the liberal and radical feminist

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<sup>281</sup> Rosemarie Tong *Feminist Thought: A Comprehensive Introduction* (Boulder, CO: Westview Press, 1989), p. 32.

<sup>282</sup> Catharine A. MacKinnon "Legal Perspectives on Sexual Difference" in *Theoretical Perspectives on Sexual Difference*, ed. Deborah L. Rhode (New Haven: Yale University Press, 1990), p. 214.

<sup>283</sup> This second aspect to feminism should not be construed as the only other way to approach feminism. Karen Offen offers another approach, relational vs. individualist, which is not reducible to the difference debate in her article "Defining Feminism: A Comparative Historical Approach" in Gisela Bock and Susan James (eds) *Beyond Equality and Difference: Citizenship, Feminist Politics, Female Subjectivity* (New York: Routledge, 1992). p. 75.



positions, with the liberals asserting that in all relevant areas women are the same as men, and (some) radical feminists asserting that there are significant differences between men and women that should not and cannot be ignored. Perhaps the most cited work in this area is Carol Gilligan's *In a Different Voice: Psychological Theory and Women's Development*.<sup>284</sup> Gilligan's findings, that women exhibited a different moral development than men, triggered a great deal of difference philosophy.

A way of categorizing feminist theories within the difference debate is by whether they are humanist or gynocentric.<sup>285</sup> Humanist feminists hold that there are no natural differences between the genders.<sup>286</sup> While it is easy to point out sex differences between men and women, humanist feminists say there is no natural basis for the existence of gender differences; indeed the enforcement of gender roles is the core of sexist oppression. Gynocentric feminists, on the other hand, hold that there are some natural differences between the sexes, but that these differences do not provide a reason for the subordination of one by the other. Such differences, for example, may include the way women experience moral development. Sexism is the result of one approach to the world, the masculine approach, being privileged above all others through the use of social sanctions.<sup>287</sup> The gynocentric feminist replies that although there are real differences, they are not such that justify oppressing or being oppressed. Rather, differences ought to be celebrated, and society altered so that difference from the norm is accepted.

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<sup>284</sup> Carol Gilligan *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, 1982). It should be noted that although her work is influential in radical feminist theory, Gilligan herself is not a radical feminist.

<sup>285</sup> I am following Iris Marion Young in this terminology and the claim that this method of categorizing feminism is not reducible to the divisions previously discussed, as found in her article "Humanism, Gynocentrism, and Feminist Politics" in *Women's Studies International Forum* vol. 8, no. 3 (1985), pp. 173-183.

<sup>286</sup> Or at least such differences are accidental, and thus irrelevant. *Ibid.*, 174.

<sup>287</sup> *Ibid.*, 176.

The importance of the difference debate is that it serves as a touchstone for much of the theoretical work being done in feminism today. In particular, the idea that women either are, or are not, substantively different from men leads to discussions of essential traits of women, men, and human beings. The most prominent development has been the development of theories of ethics of care, an allegedly female-based approach to ethics.<sup>288</sup> The care approach to ethics developed as an attempt to legitimize the sorts of differences reported by Gilligan.

These theories are sometimes criticized as being feminine, not feminist, and thus as being guilty of buying into the dominant view of what it is to be a woman. For example, the care theories mentioned above hold that women are nurturing and seek resolution to conflict in a way that preserves relationships between people rather than in the legalistic, allegedly masculine way of applying a rule. While such a view indicates an alleged difference between men and women that can be used to explain a variety of issues, including why women do not seem to solve ethical problems abstractly, it does so by accepting the dominant view of what a woman is: a biologically-determined caretaker. Another related method of approaching ethical situations that has been claimed to be 'female' is a tendency to approach and solve problems with reference to the context in which they actually occur rather than resort to abstract considerations. Yet such a view of female nature builds upon the dominant view of women as emotional and irrational. As is the case with liberal feminism, to accept the concepts of the oppressor is to contribute to the continuation of that oppression.

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<sup>288</sup> For discussions of ethics of care, see Joan Tronto *Moral Boundaries: A Political Argument for an Ethic of Care* (New York: Routledge, 1993), and Nel Noddings *Caring* (Berkeley: University of California Press, 1984).

The difference debate does not, however, exhaust the approaches to women's oppression. As Deborah Rhode notes, there are three ways to approach gender in this context: deny that there are fundamental differences (which roughly corresponds to the humanistic category), celebrate essential differences and demand that those differences are given equal recognition within the society (which roughly corresponds to the gynocentric category), and the removal of difference discussion from the debate.<sup>289</sup> The dominance approach is a feminism designed to take this last strategy.

Feminists taking the dominance approach seek to recast the debate about women's oppression from the types discussed above to one that focuses upon the domination of women by men. These feminists recognize real dangers involved in the difference debate. To assert differences runs the risk of trapping political theory in insoluble controversies.<sup>290</sup> Yet to deny difference validates the norms held by the dominant group in just the way liberal feminists and care ethicists have been criticized.<sup>291</sup> They wish to return the focus of feminism to the subordination of women. These feminists still hold that the discussion of difference is important, but that this importance stems from the recognition that gender differences are the result of gender dichotomies, and more specifically gender hierarchies, not the cause of them.<sup>292</sup> Their discussions are in terms of domination, not difference/similarity.

As noted above, there are many strands of each category of feminism discussed. Thus, there are different types of radical feminists, just as there are different kinds of

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<sup>289</sup> Deborah L. Rhode "Theoretical Perspectives on Sexual Difference" in *Theoretical Perspectives on Sexual Difference*, ed. Rhode (New Haven: Yale University Press, 1990), p. 3.

<sup>290</sup> Ibid., 4.

<sup>291</sup> Ibid.

<sup>292</sup> Ibid 7. See also Estelle B. Freedman "Theoretical Perspectives on Sexual Difference: An Overview" in *Theoretical Perspectives on Sexual Difference*, ed. Deborah L Rhode (New Haven: Yale University Press, 1990), pp. 257-258.

gynocentric feminists. Furthermore, the two views of feminism presented, the political and the difference debate, are not exclusive, so one should easily be able to find a humanist as well as a gynocentric radical feminist. The dominance approach is similarly multifaceted. There are feminists of every kind discussed above whose work can be understood as taking the dominance approach.<sup>293</sup>

The unifying theme of the dominance approach is stated as follows: The exploitation of women by men is a complex phenomenon that takes place both socially and economically. It is perpetuated by oppressive gender roles, roles that differ through time and place, but maintain the constant feature of justifying women's subordination via certain alleged sexual attributes. These include a fitness for caring for others, a lack of rationality, and a nature rooted in the physical rather than the abstract that demonstrates a less than full humanity. Such oppression is morally unjustified, although the gender roles that give it its shape are so ingrained in each society that they are difficult to perceive. Even the conceptual tools that one might use to criticize women's oppression, such as the concept of the autonomous individual, reflect a male bias. Questions of whether gender, not sexual, differences between men and women actually exist further muddy the discussion. The dominance approach seeks to expose the aspects of male domination of women as methods of domination, including male bias.<sup>294</sup> It tries to offer an analysis of women's subordination that makes it clear that such subordination, while systemic throughout most societies, is unjustified. The focus is upon the domination of women, as

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<sup>293</sup> Indeed, not all strands of feminism have been examined here. Other types include psychoanalytic feminism, existentialist feminism, postmodern feminism, black feminism and lesbian feminism. Even this list should not be considered complete.

<sup>294</sup> There is also, as there is with many feminist positions, an activist element to the dominance approach. Thus, it not only seeks to identify the male dominated nature of society, it also tries to provide solutions that will rectify this condition.

women, by men. The question of whether women really are morally different from men plays no role in this analysis.

The nature of the social contract is to set the limits and conditions on the use of force against people, on their being dominated. Domination-centered feminism focuses on power and force, the very issues upon which the social contract theory is focused. In their criticisms of the social contract these feminists, such as Pateman, hold that it is a dominating tool that cannot be used in a way that doesn't dominate and subordinate women. Yet the social contract is not the only tool of male domination. Thus, while some feminists taking the dominance approach do focus upon social contract theory, not all do. For example, Nancy Hirschmann attacks liberal assumptions concerning obligation, in particular the voluntary nature of political obligation that derives from the liberal vision of the abstract individual.<sup>295</sup> It is true that her attack on liberalism can be turned to the social contract, but my point here is that the social contract is not the focus of her critique. Another criticism is to expose that the definition of normalcy, even with respect to institutions and practices that are apparently gender neutral, actually reflects male experience.<sup>296</sup> A frequent example of this sort of criticism is to point out that the medical establishment tends to study the effect of drugs on male patients, and then assume they have similar effects upon women.

There are close connections between the assumptions of liberalism and some of the assumptions of the social contract. This is particularly true with respect to the claims against the permissibility of coercion and the priority of reason. I do not, however, think

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<sup>295</sup> Nancy Hirschmann *Rethinking Obligation: A Feminist Method for Political Theory* (Ithaca NY: Cornell University Press, 1992).

<sup>296</sup> Alison M. Jaggar "Sexual Difference and Sexual Equality" in *Theoretical Perspectives on Sexual Difference*, ed. Deborah L. Rhode (New Haven: Yale University Press, 1990), p. 253.

that social contract theory requires the truth of liberalism. One reason is that social contract theory may serve as a justificatory tool even in an illiberal society.<sup>297</sup> Perhaps a theocracy could use contract theory to resolve issues that are not addressed by the religious beliefs that otherwise structure the society. More importantly, one must recognize that the similarity between social contracts and liberalism is the result of shared ideas. If liberalism turns out to be false, it does not follow the liberal-appearing assumptions of the social contract, that people should not be coerced for example, are also false.<sup>298</sup> In addition, it needs to be remembered that not all social contract theorists were liberals. Hobbes is an example of a non-liberal contractarian. Thus, since liberalism could turn out to be false based upon flaws not shared with social contract theory and since it is not the case that social contract theory must be liberal, the merit of social contract theory must be decided independently from that of liberalism. Furthermore, viewing liberalism and social contract as sharing certain ideas rather than one being a dependant outgrowth of the other also explains why some criticisms of liberalism, or even liberal feminism, are so easily adaptable to criticisms of social contract; they are aimed at the shared ideas. Thus, a criticism of liberalism's use of individualism can be easily applied to social contract's use of the same.

The best arguments that the dominance approach offers against social contract theory are the related critiques of individualism, the public/ private distinction, and abstract, universal reasoning as the mark of the human being. These issues form the core of one of the most sustained attacks on the social contract, Carole Pateman's *The Sexual*

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<sup>297</sup> See John Rawls *Political Liberalism* (New York: Columbia University Press, 1993) for an extended treatment of the use of contractarianism and illiberal societies.

<sup>298</sup> This defense assumes that the discredited ideas of liberalism are not those that are shared with social contract. If, for instance, volunteerism turned out to be the fatal flaw of liberalism, it would also be so for social contract theory.

*Contract*.<sup>299</sup> I will use arguments offered by other dominance approach feminists, either against the social contract or adapted to that purpose, to flesh out Pateman's treatment of these criticisms, but it is Pateman's work that will serve as the exemplar of the feminist claim that the social contract is inherently patriarchal. In her text, Pateman provides careful interpretations of many conceptions of the social contract, but I will not be discussing or criticizing them here. I am only concerned with the general arguments she presents.

### *Against the Social Contract*

There is some dispute over whether Pateman actually is saying that the social contract is inherently patriarchal. Susan Moller Okin argues that Pateman does hold this position.<sup>300</sup> Elizabeth Frazer and Nicola Lacey, however, deny this, saying (although not arguing) that Pateman's work does not establish that agreement cannot serve as the foundation of a political arrangement that includes women.<sup>301</sup> I agree with Okin that Pateman thinks that the social contract could not be used as part of a feminist theory. Pateman says "[t]o begin to understand modern patriarchy the whole story of the original contract must be reconstructed, but to change modern patriarchy, to begin to create a free society in which women are autonomous citizens, the whole story must be cast aside."<sup>302</sup> As Okin points out, Pateman concludes that the very ideas of the contract and the individual that makes the contract are "rendered totally incoherent" by the inclusion of

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<sup>299</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988).

<sup>300</sup> Susan Moller Okin, "Feminism, the Individual, and Contract Theory" in *Ethics* 100, (3) (1990), p. 659.

<sup>301</sup> Elizabeth Frazer and Nicola Lacey *The Politics of Community A Feminist Critique of the Liberal-Communitarian Debate* (London, UK: Harvester Wheatsheaf, 1993), p. 72.

<sup>302</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 220.

women.<sup>303</sup> Herta Nagl-Docekal says that for Pateman the problem for women in modern political philosophy is the very notion of the contract itself.<sup>304</sup> Finally, in *The Sexual Contract* Pateman discusses the “incongruous character of an alliance between feminism and contract.”<sup>305</sup> This concerns the possibility of extending the civil liberties of men to women, much as the liberal feminists hope. Pateman concludes, however, that since such a move entails using patriarchal ideas, it is doomed to fail to relieve patriarchy and women’s subordination.

The reasons why Pateman holds this position are made clear below. Before examining them, it is important to clarify Pateman’s meaning of the term ‘patriarchy.’ The term has ‘pater’, father, as its primary root, with the suffix ‘archy’, to rule. Thus, the straightforward understanding of ‘patriarchy’ is the rule of the father. While this is the literal meaning of the word, there is much more to the idea of patriarchy in political philosophy. Pateman distinguishes three forms of patriarchy: traditional, classic, and modern. Traditional patriarchy is a father authority model; all power relations are understood in terms of paternal rule.<sup>306</sup> In a traditional patriarchy the ruler is obeyed as if he were the father. Traditional patriarchy perhaps developed from the (presumed) natural hierarchy of family groups. In such groups, especially those depicted in the Old Testament, the father of the family was the natural authority. One needs only to look at the blessings and curses such patriarchs as Noah, Abraham, Isaac, and Jacob were able to bestow upon their children, as well as the ability to offer them up to sacrifice and cast

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<sup>303</sup> Susan Moller Okin “Feminism, the Individual, and Contract Theory” in *Ethics* 100 (3) (1990), p. 659.

<sup>304</sup> Herta Nagl-Docekal “Modern Moral and Political Philosophy” in *A Companion to Feminist Philosophy* eds. Alison M. Jaggar and Iris Marion Young, trans. Kathleen Chapman (Malden, MA: Blackwell, 1998), p. 61.

<sup>305</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 184.

<sup>306</sup> *Ibid.*, 23.



them out of the family, to see the power that these fathers held over the members of their families. This 'natural' scriptural based model was used to justify the paternal way of understanding non-family groups, particularly in the Christian West.<sup>307</sup>

Classic patriarchy, of which Sir Robert Filmer is the main representative, holds that political power is not to be understood in terms of paternal authority; rather they are identical.<sup>308</sup> The reason for the change in the nature of patriarchy concerned the origin of subjugation.<sup>309</sup> Traditional patriarchy held political power to be *as if* the ruler were the father. But such a view cannot explain how rulers gained their political position as these metaphorical fathers.<sup>310</sup> Therefore, there is no explanation of how people became subjects of their father-like rulers. Some suggested that rulers exercised their paternal powers by consent of their subjects.<sup>311</sup> This move opens the door to the idea that people are naturally free, and therefore must consent to their subjugation. Filmer shuts off speculation about consent and freedom through his formulation of classic patriarchy. He holds that people are born into subjugation to their fathers, and fathers are kings over their families.<sup>312</sup> Rulers had political power, not because of consent, but because they inherited it from their fathers, reaching all the way back to Adam, the first father.<sup>313</sup> Thus, political power isn't like paternal power. Paternal power is political power.

While it solves problems that plague traditional patriarchy, this characterization of political power has its own difficulties. Filmer can't explain how fathers could be subject

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<sup>307</sup> Obviously this source of patriarchy does not explain the worldwide dominance of father figures over their families, but it is a root of the patriarchy found in the Western world, with which Pateman and others are (mostly) concerned.

<sup>308</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 24.

<sup>309</sup> *Ibid.*, 82

<sup>310</sup> *Ibid.*

<sup>311</sup> *Ibid.*

<sup>312</sup> *Ibid.*, 24.

<sup>313</sup> *Ibid.*, 82.

to kings if paternal power is political power.<sup>314</sup> If the fact of my being a father gives me political power, how could I also be a subject? If I am a subject, I do not exercise political power due to my being a father. Any attempt to try to resolve this problem will lead to a denial that paternal power just is political power, and thus is self-defeating. Indeed, this internal contradiction leads to the defeat of classic patriarchy.

Contract theorists generated modern patriarchy as they strove to provide a solution to the problems of these previous theories of political right. These theories started from the premise of natural freedom and equality among all men. If all people began as equals and made an agreement as to how they would be ruled, then there is no difficulty explaining how the ruler received his position or how the subjects received theirs.<sup>315</sup> Thus, modern patriarchy does not derive from paternal authority, but rather is fraternal and contractual.<sup>316</sup> The story told in *The Sexual Contract* is of brothers who overthrew the classic patriarchal power of their father to relieve their subjugation under him. In doing so, they appropriated what had been his by paternal right and devised a way to distribute those powers and goods among themselves. The social contract is the agreement among equals (the brothers) as to what was previously the domain of the father.

The powers of the father that the brothers divided up included his right of sexual access to women. Following Freud, Pateman says that, since a patriarch must be a father before he gains the political power associated with paternal dominion, men must be able

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<sup>314</sup> Ibid., 84.

<sup>315</sup> This ignores the problem of the consent of later generations, but most social contract theories provide an account to counter this issue, so I do not need to trouble with it here.

<sup>316</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 25.

to get and control access to women's bodies in order to gain patriarchal power.<sup>317</sup>

Pateman calls this the patriarchal "sex-right." The brothers did not need such access to generate their power, as their power was contractual rather than paternal, but they still desired the powers and rights held by their father. Thus, they devised a way to distribute the patriarchal sex-right so that they too had assured sexual access to women. When the brothers shared out this right, it became a universal male sex-right, no longer tied to fatherhood, but rather to maleness.<sup>318</sup> Preserving sex-right means preserving the natural subordination of women. The equal, civil society of the social contract is only for those who are dividing their father's power. Pateman then describes how male sex-right became the marriage-contract, and the image of patriarchy, while actually being preserved within the agreements among the brothers, appears to have been abolished through reliance upon the ideas of equality and freedom as the sources of those agreements.

Thus, 'patriarchy' refers to "the form of political right that all men exercise by virtue of being men."<sup>319</sup> It is about the universal political rights that men have over women. It allows for gender oppression to be about the oppression of women as women, and for it to be committed by men as men. To say that the social contract is inherently patriarchal is to say that the social contract necessarily gives men political rights over women. In the course of this project I do not want to be tied to the idea that this political right is best or primarily described in terms of sexual access to women. Pateman makes her case in those terms, but I think a Marxist analysis of the sexual contract, as a way for the brothers to preserve the domestic labor done for the patriarch, also qualifies as modern patriarchy.

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<sup>317</sup> See *ibid.*, 103-110.

<sup>318</sup> *Ibid.*, 109-110.

<sup>319</sup> *Ibid.*, 20.

There are probably other scenarios that could also serve as examples of women's oppression that are not tied to sexual access. This is not to deny Pateman's claims, nor to downplay the sort of sexual oppression that is her primary concern. The sexual aspect of women's oppression is a too common element in gender domination. I merely want to make certain that modern patriarchy is not being understood too narrowly.

One may object and ask why we should hold that the contract theorists examined in the first two chapters should be considered patriarchal. After all, they do not write about sex-right or the sexual contract. Why should we endorse such a story? Most of those philosophers, however, made comments apart from their social contract texts about women's natural subordination and lack of rational faculties. It is clear that Locke, Rousseau, and Kant held such views of women. All of them thought women were, by nature, irrational and thereby subject to control by rational men.<sup>320</sup> That they held this view is unsurprising to us given their place in history. Their comments, however, require a story that can account for women's exclusion in order to make them consistent with their social contract theories, whose basic ideas include freedom and equality. To suggest that these authors meant to include women in the social contract requires ignoring their explicit statements.<sup>321</sup> While these theorists did not themselves offer arguments about women being excluded from the social contract process, arguments such

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<sup>320</sup> C.f. Rousseau's description of Sophie in book five of *Emile*, Jean Jacques Rousseau's *Emile*, trans. Barbara Foxley, introduction by André Boutet De Monvel (New York: E.P. Dutton & Sons Ltd., 1955).; Locke's view of the subjugation of wives being founded in nature in John Locke "The First Treatise" in *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), § 47; and Kant's comments about women's philosophy not involving reason, but rather sense in Immanuel Kant *Observations on the Feeling of the Beautiful and Sublime*, trans. John T. Goldthwait (Berkeley: University of California Press, 1960), p. 79. Hobbes is the acknowledged exception here, although as many feminists have noted, after asserting women's equality with men in the state of nature, women disappear from the text. See Carole Pateman and Elizabeth Gross, eds. *Feminist Challenges: Social and Political Theory* (Boston: Northeastern University Press, 1987), p. 32.

<sup>321</sup> Hobbes may also be included here, for although he formally includes women, as noted above they are as invisible in his theory as in the others.

as Pateman's account of the sexual contract and Charles Mills' account of the racial contract are useful in reconciling Locke, Rousseau, and Kant's otherwise self-conflicting positions.<sup>322</sup> In the following sections I will present a story of women's exclusion based upon their nature as embodied beings that achieves this goal. This story not only reconciles the positions of these philosophers regarding women with their own social contract theories, it also provides a general account of the patriarchal nature of social contract theory.

Rawls, however, presents a different case. He doesn't make the sorts of comments or hold the same positions concerning women and their lack of rational faculties that most of his predecessors do. Thus, one may ask why Rawls should be counted among the authors of patriarchal social contract theories. A common feminist response is to point to Rawls' use of 'heads of families' as the person in the original position.<sup>323</sup> Yet Rawls explicitly says that this turn of phrase is intended only to indicate a concern with future generations.<sup>324</sup> It is not meant to be indicative of the familial role a person in the original position would play.

One way to defend Rawls is to say he merely overlooked the subject of gender relations as he constructed his theory. The index to *A Theory of Justice* does not even contain entries for 'women', 'female', 'gender', or 'sexism', and neither does that of

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<sup>322</sup> One should note that Locke, Rousseau and Kant's positions do not begin with a definition of women in terms of their bodies, but rather with the claim that they are irrational. The story of women's bodies, however, is required to justify the claims of irrationality and natural subordination in the face of the freedom and equality espoused in their social contract theories. With respect to the racial contract and how it is a similar story to Pateman's used to account for racial exclusion from the social contract, see Charles Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997).

<sup>323</sup> See John Rawls *A Theory of Justice* (Cambridge MA: Harvard University Press, 1971), p. 128 for his discussion of heads of families. For the feminist argument against this position, see Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 43.

<sup>324</sup> John Rawls *A Theory of Justice* (Cambridge MA: Harvard University Press, 1971), p. 128-129. Again, I thank Dr. Miller for pointing this out to me.

*Political Liberalism*. One could argue that the issue of gender simply wasn't an issue that Rawls explicitly considered, although his theory should be able to extend to it.<sup>325</sup> Yet this sort of oversight is indicative of the larger problem of women being invisible in traditional Western political theory. The reason this invisibility occurs, even in cases where it was unintentional, is because the concepts used in traditional Western political theory were developed with a bias toward the interests of men while excluding women. The subjects of political philosophy, the interests and properties of the individual, were seen as universal interests and properties of all (visible) people. The story of the definition of women in terms of their bodies answers the question of how women ended up being invisible in these theories.<sup>326</sup>

One may wish to further defend Rawls and ask why we should believe that the ideas he uses have a patriarchal taint despite his protestations to the contrary. The response to this challenge is to begin by noting that Rawls seeks to justify (for the most part) the current institutions of a Western liberal democracy. He says that the original position is a device to help "us work out what we now think."<sup>327</sup> Pateman points out that Rawls wants

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<sup>325</sup> Rawls says that the lack of discussion of gender in *A Theory of Justice* was an omission, but denies this omission is necessarily a fault. He states that in a well-ordered society, race and gender "would not specify relevant points of view." He says that if justice as fairness could not "articulate the political values... needed to secure the equality of women and minorities" then as a theory it would be seriously flawed. His defense of women's equality is that they are citizens with respect to justice even though justice does not necessarily penetrate to the family level. Therefore, justice of fairness no more overlooks women than it does other people who are members of associations within which they are not equal. The feminist response to all this is that it ignores the central feminist claim that the very ideas he is working with, such as the relevance of wealth and power (whereas sex is irrelevant) are male biased ideas. At best, Rawls can assert that he intends his categories to be genuinely universal, but this does not alleviate the patriarchal nature of some of his assumptions. See John Rawls *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001), pp. 64-66 and 163-168, especially p. 66.

<sup>326</sup> See Carole Pateman "Introduction" to *Feminist Challenges: Social and Political Theory*, eds. Carole Pateman and Elizabeth Gross (Boston: Northeastern University Press, 1987), p. 3 for chapters further discussing women's invisibility in political theory.

<sup>327</sup> John Rawls "Justice as Fairness: Political not Metaphysical" in *Philosophy and Public Affairs*, 14, 3 (1985), pp. 225, 238. Cited in Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p.42.

to “show how free and equal parties, suitably situated, would agree to principles that are (pretty near to) those implicit in existing institutions...”, and then points out that these existing institutions “include patriarchal relations of subordination.”<sup>328</sup> Certainly women would not agree to this state of affairs. Indeed, it seems to run counter to Rawls’ difference principle, which would justify inequality only if that inequality provided everybody, including those subordinated, with a better result. The fact that his theory shows how free and equal people would select institutions very similar to those we have now, including women’s subordination, indicates that women must be excluded from the original position. Thus, there must be a way to reconcile Rawls’ explicit statements concerning freedom and equality in the original position and the result of the deliberations in the original position, principles that (perhaps unintentionally) permit the subordination of women.

The immediate response from Rawls would be a denial that women’s subordination is one of the institutions he means when he discusses the basic institutions. This response ignores the claim that women’s subordination is an integral part of the institutions he does wish to include. For example, as noted above, Rawls does view the capitalist market as one of the institutions of the modern western democratic state. Yet as the Marxist feminists have pointed out, this economic system relies upon the unpaid domestic labor of women. Another example is how the accepted subjects of political philosophy, markets, justice, and freedom, are, in Pateman’s words, concerned with “male attributes, capacities, and modes of activity.”<sup>329</sup> In short, the assumptions of the

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<sup>328</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p.42.

<sup>329</sup> See Carole Pateman “Introduction” to *Feminist Challenges: Social and Political Theory*, eds. Carole Pateman and Elizabeth Gross (Boston: Northeastern University Press, 1987), pp. 6-7.

institutions found in the society Rawls seeks to analyze are tied to women's subordination, both on practical and theoretical levels.

These arguments show why particular conceptions of the social contract are patriarchal; they require a patriarchal story to make them consistent. The next question, of course, is: What is it about the social contract that makes it such that it *must* include or be preceded by the sexual contract? Why shouldn't the social contract be understood, as liberal feminists suggest, in such a way that women simply need to be recognized as rights bearers in the same way men are? The answer to this question, as mentioned above, is that social contract theory relies on ideas that are themselves patriarchal. The dominance approach maintains that the ideas of abstract individualism and the public/private distinction are themselves patriarchal, due in part to their reliance upon universal reason, and therefore any theory using them is also patriarchal.<sup>330</sup> Pateman identifies these two interrelated ideas to be both essential to social contract and irrevocably patriarchal. The key to resolving this criticism of social contract theory lies in the ability to offer conceptions of these ideas that are not necessarily patriarchal.

### *The Public/Private Distinction*

I will begin with the public/private distinction. Pateman says that this issue "is, ultimately, what the feminist movement is about."<sup>331</sup> The public/private distinction divides society into two spheres: the public sphere of universality, equality, rationality, and knowledge, all of which are within the domain of state authority, and the private sphere, which is characterized by emotion, particularity, and the concerns of domestic life

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<sup>330</sup> As I noted above, I am focusing upon reason. There are also other, non-reason based criticisms of abstract individualism and the public/private distinction. In my concluding remarks, I will discuss how these sorts of criticisms are met.

<sup>331</sup> Carole Pateman "Feminist Critiques of the Public/Private Dichotomy" in *Feminism and Equality*, ed. Anne Phillips (New York: New York University Press, 1987), p. 103.



and the family. The private sphere, the realm of women, has as its domain sexuality, procreation, the structure of family relations and other aspects of human living typically seen as “natural.” It is the realm of emotion and judgments based on particular circumstances rather than knowledge and reason. This realm is supposed to be free from state interference; nobody should be able to tell you how to live your life in these areas. The proper area of state authority is the public realm. This realm is variously understood as the marketplace, the area of legitimate state interference, the realm of knowledge and reason. It is the public sphere where the interests of men intersect and sometimes conflict, and where the state holds the authority to sort out such issues. This is the realm of men.

Women are set apart from civil society, placed in the private sphere where their domination can be continued. The reason offered for this domination, although outside of feminist scholarship it is not called domination, is that women are naturally subordinate. Women lack the capacities to take part in the public sphere.<sup>332</sup> Pateman notes that the classic contractarians were not clear on the reasons for this belief, although some reasons can be reconstructed from the properties civil individuals are supposed to have, as opposed to the features women are believed to have.<sup>333</sup> Briefly, the features of the public sphere (rationality, universality etc.) have corresponding properties found in civil individuals, and women lack them.<sup>334</sup> As Pateman notes, “[c]ivil freedom is a

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<sup>332</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 93.

<sup>333</sup> Ibid. See also Carole Pateman “Feminist Critiques of the Public/Private Dichotomy” in *Feminism and Equality*, ed. Anne Phillips (New York: New York University Press, 1987), p. 105, where she writes about “the belief that women’s natures are such that they are properly subject to men and their proper place is in the private, domestic sphere.”

<sup>334</sup> I present the arguments for the view of women as irrational in social contract theory in the following section.

masculine attribute....”<sup>335</sup> It reflects not only the concerns of men, but is structured so that women are excluded outright due to their sex. These claims will be closely examined below in my development of the feminist criticism of individualism. For the moment, it is important to understand that that there is a division between public and private, the private sphere being a place where natural subordination is the order of the day.

It is interesting to note that men occupy both spheres, while women are constrained by “their nature” to just the private sphere. Even there, women do not rule, as men do in the public. It is merely the only place for them in society. Furthermore, the capacities that determine to which sphere one belongs are clearly gendered attributes. They are socially created. It may seem to be a fact of sexual identity that women are natural caregivers due to their role in the birth process, but this role is no more natural than women being more inclined to leave financial decisions to their husbands. Both these ‘female’ attributes are socially sanctioned gender roles, and it is just these types of socially created roles that are used to sort the world into public and private spheres.

In terms of Pateman’s story of the original, sexual contract, the public/ private separation arises because, although the brothers parceled out their father’s patriarchal power in the form of male sex-right, in order to maintain this right they had to continue the domination of women. If women were included in the social contract rather than dominated through the sexual contract, there would be no sex-right, and thus men would be lacking something their father had. Yet such domination violates the spirit of equality that is supposed to characterize the contract the brothers have made with each other; so the subordination of women must be held outside of that agreement.

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<sup>335</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 2.

There are two points that need to be made prior to examining the claims about women's unfitness to participate in the public sphere. The first is that the social contract needs a public/private division. The second point is that the rights of civil society can't be fully extended to women without disrupting the division, and thereby civil society. If the social contract doesn't require a separation of the public and the private, then political philosophers can ignore the public/ private distinction as a mistake in the past, much as we look at justifications for slavery today. Furthermore, if all the benefits of civil society can be extended to women despite the public/ private separation, then women's subordination could be ended much in the way liberal feminists envision. Unfortunately, neither of these options is open. The social contract needs a division between the public and the private, and according to feminist theory the nature of this division requires the oppression of women.

With respect to the first point, Pateman points out that the natural family is presupposed by conventional civil society even as it is held apart from that society.<sup>336</sup> If domestic life were not at the center of society, then the decline of the stability of the nuclear family would not be of social concern.<sup>337</sup> But it is. This is because society needs the domestic life of the people to provide the platform from which they can have a civil life. This is akin to the Marxist analysis of women's domestic labor discussed earlier. Without the stability of domestic life, without a home being provided and tended, men's participation in the public sphere would be radically curtailed. If they had to provide those things for themselves that domestic life provides for them, men would not be concerned with the universal common good or their natural freedom; they would be

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<sup>336</sup> Carole Pateman "Feminist Critiques of the Public/Private Dichotomy" in *Feminism and Equality*, ed. Anne Phillips (New York: New York University Press, 1987), p. 119.

<sup>337</sup> Ibid.

trying to eat. Thus, the very notion of the public civil world requires a background domestic world, which makes participation in the civil world possible.

Clearly such an argument was not advanced by contractarians within their theories. It is a result of criticism of those theories that we are in a position to see the inter-relatedness between the two spheres. At the same time, those theories did separate elements of people's lives along the public/ private distinction. The reason social contract theory requires a separation of life into the two spheres, in addition to making the public sphere possible, is that there are some aspects of life that most people do not want to be matters of public concern, that are not properly within the limits of state authority, and are not about rationality and universality.<sup>338</sup> Our personal relationships and our domestic lives are examples of areas to which universality, rationality, and equality, as they are construed in social contract theory, are not appropriate. No one believes that all members of the society should love my child equally to my love of her; clearly I can have great, and even irrational, love for my child while the rest of society is at best ambivalent towards her. Similarly, whom I have as friends, and how I feel about those friends, are not matters of public concern, are not universal in nature, and may have very little to do with reason at all. If there are aspects of our lives that do not fall under the requirements of 'public', then there must be some sort of division, some sort of limit to state authority that recognizes the public and the private.

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<sup>338</sup> This reflects a parallel concern between liberalism and most social contract theory. As discussed above, social contract need not be explicitly liberal, but given its foundation of natural freedom, it certainly tends that way. I suggested that this is the reason why criticisms of liberalism are often easily adaptable to criticisms of social contract theory. Again, if liberalism turned out to be false, this would not imply that the shared idea concerning limits upon public life were also false unless limits upon public life were the idea shown to be false. If this were the case, then social contract may turn out to be false, but not because liberalism was false, but rather because a core assumption that it happened to share with liberalism was false.

Locke, Rousseau, Kant, and Rawls all recognized that there are aspects of individual lives that are not the province of the state. Hobbes may not have recognized such a limit on state authority, but this is because he thought one would give up the right to everything else in order to secure one's life. Part of the point of the social contract is that it removes arbitrariness from the political arena through the requirement of consent.<sup>339</sup> The private world, however, the world of emotion and partiality, is arbitrary. If the arbitrariness of emotion and particularity were within the public sphere, then that sphere would not be the realm of universality and reason. The social contract would then be as arbitrary as the forms of political organization it tries to replace, such as hereditary kingships. Thus, given the recognition that there are parts of our lives that are outside the domain of reason, parts that are properly arbitrary, such as who we love, there must be a public/ private distinction in the social contract to avoid what would be an internal contradiction.

Another way of looking at this issue comes when one considers the rational requirement of the contract makers. The social contract is supposed to be the result of reason. Whatever falls outside the realm of reason is not appropriate subject matter for the contract. For example, a non-rational decision based solely on taste, say to eat only tapioca pudding for dessert, is not a matter that can be restricted by the social contract as conditions of property ownership can be. The existence of the exercise of freedom in areas to which reason does not apply leads to the de facto creation of the private sphere. Thus, social contract theory requires a division between public and private for three

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<sup>339</sup> I have adapted this argument from one presented by Nancy Hirschmann in her book *Rethinking Obligation: A Feminist Method for Political Theory* (Ithaca NY: Cornell University Press, 1992), p. 59. There she discusses the nature of obligation and its relation to the social contract. The point I have taken is that arbitrariness has no place in the civil society created by the social contract, for then it would become arbitrary itself.

reasons: that there are parts of our lives that should not be subject to public control, that there are parts of our lives where emotion and arbitrariness are warranted, the inclusion of which in the public sphere would destroy that sphere, and that the very nature of the public sphere requires a background domestic sphere to make it possible.

The second point mentioned above was that the benefits of the public sphere couldn't be given to women without upsetting the balance between the two spheres. Pateman argues that such a move can't happen because it would disrupt the patriarchal structure of domestic life.<sup>340</sup> If women were equals, then they would not have to provide the domestic services upon which civil society depends. The foundation of the public sphere would be eroded to the point that it could no longer support the existence of civil society because no one would be providing those services that women were supposed to be providing. The very society, of which women sought to be members, would cease to function. At the same time, the two spheres cannot collapse into a single sphere where everyone is equal because civil equality stands in direct contradiction to the familial subordination of the private sphere.<sup>341</sup>

Furthermore, if they were equals, women wouldn't be pressured to bear and raise children. Women would decide whether to have children, and could negotiate who was going to do the domestic labor that comes with children. Yet most hold that this part of women's lives is a key element of women's natures.<sup>342</sup> The requirement of this service is so strong that it virtually dictates all aspects of women's minimal inclusion in the public

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<sup>340</sup> Carole Pateman "Feminist Critiques of the Public/Private Dichotomy" in *Feminism and Equality*, ed. Anne Phillips (New York: New York University Press, 1987), p. 115.

<sup>341</sup> *Ibid.*, 114.

<sup>342</sup> *Ibid.*, 109.

sphere; it is inclusion based on patriarchal values and practices.<sup>343</sup> Women can work until it is time for them to bear and raise children. Then they are expected to return to their homes and get down to the real business of their lives. The requirement to have a family would have to be revised if women were to become equal members of civil society. This would require a radical transformation in understanding of the respective attributes of citizens and women. The impossibility of such a change of understanding lies at the heart of the feminist criticism of individualism.

To sum up the criticism of the public/ private distinction before moving on to that of individualism, social contract theory requires this distinction as long as it requires the public world to be one of reason, equality, and universality. As long as there are areas of our lives that are not properly within state control, there will be a separate private sphere. What make this division patriarchal is that it views women as being naturally unfit for inclusion in the public sphere, the criteria for which are associated with a conception of the male individual, thereby condemning them to the private sphere where equality has no place.<sup>344</sup> It is the realm of 'natural' subordination, where women are seen as natural subordinates, fit only to play the role of helpmeet to their husbands, keeping the home and raising his family.<sup>345</sup> Finally, women cannot expect relief from this subordination through inclusion in the civil world because that world depends upon their remaining subordinate, and to change their status requires a wholesale change in some of the basic assumptions of social contract theory.

As Pateman notes, arguing from within the public/ private distinction will not resolve the criticism of the social contract that is based on the critique of the public/ private

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<sup>343</sup> Ibid., 118.

<sup>344</sup> Ibid., 107. The arguments for this lack of fitness are discussed in detail in the following section.

<sup>345</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 93.

distinction; the division itself is patriarchal as it is founded upon women's perceived natural subordinate status.<sup>346</sup> Their subordination is ultimately the result of how the nature of women is understood to be in contrast to the construction of the civil individual, which is a foundational part of social contract theory. The condition of subordination cannot change unless there is a change in how women are perceived. If the public/private distinction is inherently patriarchal, indeed if it is constitutive of liberal patriarchy, so too is the social contract upon which it depends.<sup>347</sup>

### *Abstract Individualism*

The analysis of the public/private distinction presented above shows that it is based upon the idea that women lack the requisite characteristics for participation in civil society, and are thus relegated to the private sphere. These characteristics are those of abstract individualism. Pateman says, "[t]he story of the sexual contract begins with the construction of the individual."<sup>348</sup> Indeed, she holds that the abstract individual framework used in social contract theory in part constitutes the public/private distinction.<sup>349</sup> Pateman, among others, holds that women do not qualify as individuals under the description of individuals who are fit to make the social contract.<sup>350</sup> Individualism, as Pateman understands it, holds that one can think about humans as having fundamental characteristics that can be abstracted from all particular social settings.<sup>351</sup> Understanding individualism in terms of social artifice does not counter this

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<sup>346</sup>Ibid., 229.

<sup>347</sup> Carole Pateman "Feminist Critiques of the Public/Private Dichotomy" in *Feminism and Equality*, ed. Anne Phillips (New York: New York University Press, 1987), pp.117-118.

<sup>348</sup> Carole Pateman *The Sexual Contract*(Stanford, CA: Stanford University Press, 1988), p. 38.

<sup>349</sup> Carole Pateman "Feminist Critiques of the Public/Private Dichotomy" in *Feminism and Equality*, ed. Anne Phillips (New York: New York University Press, 1987), p. 111.

<sup>350</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 6.

<sup>351</sup> Jean Grimshaw *Philosophy and Feminist Thinking* (Minneapolis: University of Minnesota Press, 1986), p. 165.



criticism. Within the context of the artifice the description of individuals is clear from the texts examined in the first two chapters; irrespective of their place in the world individuals are rational, naturally equal, and free. Many feminists argue that this description of individuals fails to include women, especially at the theoretical level of the social artifice, and thus they are left out of the social contract from the beginning, as well as being fit only for the subservient role they play in the private realm.

The glaring question is: How could women not qualify as individuals? They are human beings, just as men are. Yet 'individual' does not mean the same thing as 'human being.' The individual of social contract theory has that very specific set of properties that render him fit for making the social contract and participating in civil society, the most important of which is having the faculty of reason. Other properties of the individual are that they can be conceived of in isolation from other people, that they are free, and that they are equal to others. Clearly not all human beings have these properties, for example, children and the insane. The feminist charge is that women do not qualify as individuals because it is alleged that they, too, lack a complete set of these properties.

Before examining the arguments for the conclusion that women do not count as individuals, it is important to note the impact that the difference debate has on this discussion. Both the public/ private distinction and the arguments about individualism arise significantly from questions about women's differences from men. Yet the domination approach doesn't argue whether women have or lack the properties of individuals. Rather, it criticizes the way that the civil individual is constructed to begin with, suggesting that it is a masculine conception that is designed to subordinate women,

and as such it ought to be abandoned, along with the social contract itself. Pateman says that to ask if sexual difference has political importance is to ask the wrong question.<sup>352</sup> The same is true of gender difference. As Catharine A. MacKinnon points out, gender difference is the result, not the cause, of gender subordination.<sup>353</sup> The focus of the dominance approach is to show that the subordination of women is built into the system through a set of definitions.

One of the central issues in feminism tackles the question of the source of women's oppression.<sup>354</sup> In social contract theory women's oppression is rooted in the way they are defined so that they do not qualify as individuals according to the description of abstract individuals. There are two related arguments for women failing to be individuals that have been foreshadowed above in the discussion of the public/ private distinction. The first argument is that women fail to qualify as individuals through their relationship to their bodies. The second is that women lack the rational capacity to make the social contract; they are emotional rather than rational and particular rather than universal in their thinking. These are not the arguments that the social contract theorists themselves have offered, but rather are arguments that can be offered to make the positions of those theorists consistent with other statements they made.

This is Pateman's strategy in *The Sexual Contract*. There, she says that she is not primarily interested in interpreting texts, but rather exposing the story that must be told to make sense of women's subordination in light of the social contract.<sup>355</sup> I offer a similar

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<sup>352</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 226.

<sup>353</sup> Catharine A. MacKinnon "Legal Perspectives on Sexual Difference" in *Theoretical Perspectives on Sexual Difference*, ed. Deborah L. Rhode (New Haven: Yale University Press, 1990), pp. 213-214.

<sup>354</sup> Jane Mansbridge and Susan Moller Okin "Feminism" in *A Companion to Contemporary Political Philosophy*, Robert E. Goodin and Phillip Pettit, eds. (Cambridge, MA: Blackwell Publishers, 1993), p. 271.

<sup>355</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 4.

story designed to bring together the ideals of the social contract theories with the fact of women's subordination and the view that such subordination is natural. This story is designed to show that, in virtue of the way that abstract individualism is defined in terms of rationality in contrast to the body, women have been defined out of civil society.

The explanation that supports these claims starts with the definition of 'women,' which is usually offered in terms of the female body. Ideas of what a woman is typically concern her role in reproduction, and that role is differentiated against the masculine role, which is taken as the norm. Women are those people who conceive and bear children. Furthermore, since reproduction is a biological, and thus 'natural' event, this definition of 'woman' is often taken to be natural as well. As Pateman says, "[p]atriarchalism rests on the appeal to nature and the claim that women's natural function of childbearing prescribes their domestic and subordinate place in the order of things."<sup>356</sup> The link between women as defined in terms of their bodies and their subordination as women is found when one considers the conception of a person found in abstract individualism.

One will recall that the abstract individual is free, equal, and rational. Rationality is considered universal and impartial; anything that is in opposition to universality must be in opposition to rationality. Furthermore, since impartiality is the mark of the public sphere, anything in opposition to rationality properly belongs in the private sphere.<sup>357</sup> There is no reference to body type. As Frazer and Lacey note with respect to liberalism, social contract theory officially puts no weight on one's form of embodiment.<sup>358</sup> This is

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<sup>356</sup> Carole Pateman "Feminist Critiques of the Public/Private Dichotomy" in *Feminism and Equality*, ed. Anne Phillips (New York: New York University Press, 1987), p. 109.

<sup>357</sup> Marilyn Friedman "Impartiality" in *A Companion to Feminist Philosophy*, eds. Alison M. Jaggar and Iris Marion Young (Malden, MA: Blackwell, 1998), p. 399.

<sup>358</sup> Elizabeth Frazer and Nicola Lacey *The Politics of Community A Feminist Critique of the Liberal-Communitarian Debate* (London, UK: Harvester Wheatsheaf, 1993), p. 45.

an extension of the assumption of natural equality. To discriminate on bodily grounds would be arbitrary discrimination because the form of embodiment seems to have no impact on one's equality with others and one's right to be free. Yet this is precisely what has happened to women. Pateman links the definition of women through their bodies with rationality and women's exclusion when she writes that political theory "is dependent on an opposition to women and all that is symbolized by the feminine and women's bodies, and why, traditionally, women's intuition and deficiency in rationality have been presented as the antithesis of the logic, order, and reason required of theorists."<sup>359</sup> The definition of women in terms of their bodies excludes them because of the connotations of that definition within a set of common philosophical dualisms.

One can follow the justification quite easily. Women are defined in terms of their bodies and bodies are opposed to minds in the common dualism of mind/body. The category of mind connotes the qualities of rationality, universality and impartiality. Given women's 'natural' opposition to mind, it is clear that they must also naturally stand in opposition to reason, universality and impartiality. Pateman offers a concise overview of how women are viewed, via their nature, as emotional and irrational, unable to control themselves according to abstract universal principles.<sup>360</sup> Women are defined in terms of their bodies and as such do not have rational natures. Thus, they are emotional and particular rather than rational and universal. Finally, since these latter three categories are explicitly associated with the public sphere and civil life in social contract theory,

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<sup>359</sup> Carole Pateman in "Introduction" in *Feminist Challenges: Social and Political Theory*, eds. Carole Pateman and Elizabeth Gross (Boston: Northeastern University Press, 1987), p. 3.

<sup>360</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), pp. 96-102. See also Susan Moller Okin "Thinking Like a Woman" in *Theoretical Perspectives on Sexual Difference*, ed. Deborah L. Rhode (New Haven: Yale University Press, 1990), p. 147.

women are seen as not belonging in those categories either.<sup>361</sup> This argument rests upon the dualisms mentioned above, which are part of a larger set of dichotomies common in Western philosophy. The set includes mind/ body, universal/ particular, rational/ emotional, public/ private, and male/female.<sup>362</sup> These dualisms are such that each side precludes the other, and further, they are gendered.<sup>363</sup> Women are described in terms of the right side of these dichotomies, men by the left.<sup>364</sup>

One is entitled to ask why we should accept that these dualisms all mirror the male/female dualism. It seems that one could be embodied, as feminists note we all actually are, and still be rational. Such a solution, however, ignores the patriarchal assumptions behind these dualisms. Pateman says that these apparently universal categories are actually sexually particular, “constructed on the basis of male attributes, capacities, and modes of activity.”<sup>365</sup> When one abstracts, one abstracts away from something. In the case of abstract individualism, the male body and male concerns are the source of the abstraction. MacKinnon says, “to be an abstract individual...is to be male.”<sup>366</sup> Maleness is the type of existence considered to be universal, the norm. Any

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<sup>361</sup> One objection, raised by Dr. Bruce Miller, was to the description of the public/ private distinction in terms of universal/ particular rather than simply as a limit to the authority of the state. One can see how such a substitution of terms can take place when one considers these sets of dualisms. The limit of state authority corresponds to reason (indeed, that is one of the reasons for the rational requirement in social contract theory, to rationally set this limit), which connotes universality. The opposing term to universal is particular, just as the opposing term to reason is emotion. Thus, through a substitution of terms one moves from a description of the limit of state authority to a description of a difference between universal one hand (the public sphere) and the particular (private sphere).

<sup>362</sup> Carole Pateman “Feminist Critiques of the Public/Private Dichotomy” in *Feminism and Equality*, ed. Anne Phillips (New York: New York University Press, 1987), p 109.

<sup>363</sup> Elizabeth Frazer and Nicola Lacey *The Politics of Community A Feminist Critique of the Liberal-Communitarian Debate* (London, UK: Harvester Wheatsheaf, 1993), p. 63.

<sup>364</sup> For a discussion of these dualisms that mirror male/female, see Carole Pateman “Feminist Critiques of the Public/Private Dichotomy” in *Feminism and Equality*, ed. Anne Phillips (New York: New York University Press, 1987), p 109.

<sup>365</sup> See Carole Pateman “Introduction” to *Feminist Challenges: Social and Political Theory*, eds. Carole Pateman and Elizabeth Gross (Boston: Northeastern University Press, 1987), pp. 6-7.

<sup>366</sup> Catharine A. MacKinnon “Legal Perspectives on Sexual Difference” in *Theoretical Perspectives on Sexual Difference*, ed. Deborah L. Rhode (New Haven: Yale University Press, 1990), p. 223.

differences or deviation from the universal are particulars, non-universals. Women's lives, including their bodies, are thus understood in terms of how they differ from men's lives and bodies. Such a definition makes women non-universal, particular rather than abstract, and thus not individuals in the relevant sense. The justification is based upon the assumption of the universality of male experience.

This identification of women with their bodies has a host of ramifications. One ramification is that women's proper roles in society become identified with bodily issues, and in particular childbirth and caring for the well being of others. A second ramification is that, being identified as having a nature that is at odds with universality, women are ruled out of the world of politics and public society via the public/ private distinction.<sup>367</sup> Thus, although social contract officially holds that the form of embodiment doesn't carry any political weight, the fact that women are identified through their bodies leads directly to their exclusion from politics, the civil world, and even the realm of ethics.<sup>368</sup>

It is important to remember that the point is not whether women actually are or are not emotional and particular, rather than rational and impartial. The point is that a distinction is drawn that serves to allow some to wield power over others. The identification of women as emotional, and thus not rational, causes them to be further identified as "non- or less ethical beings."<sup>369</sup> If women are by nature unable to participate in the rational dealings of the social contract, then they are unable to be full citizens. The justification for this view of women is again based upon the definition of women in terms of their

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<sup>367</sup> This move returns us to the universal/arbitrary reflection of the public/ private distinction. It is in this manner that 'arbitrary' issues, which are identified with women's concerns, are relegated to the private realm.

<sup>368</sup> Elizabeth Frazer and Nicola Lacey *The Politics of Community A Feminist Critique of the Liberal-Communitarian Debate* (London, UK: Harvester Wheatsheaf, 1993), p. 53.

<sup>369</sup> Marilyn Friedman "Impartiality" in *A Companion to Feminist Philosophy*, eds. Alison M. Jaggar and Iris Marion Young (Malden, MA: Blackwell, 1998), p. 399.

bodies. Once women are defined into the realm of partiality and emotion, these alleged traits are used to further justify women's exclusion from the public sphere; they are partial and emotional rather than rational and universal. This is the second argument for the exclusion of women mentioned above, their inability to reason. It is important to note that the definition of women in terms of their bodies leads to a self-reinforcing exclusion. They are excluded because being defined in terms of a body puts one in opposition to the description of the abstract individual, which in turn maintains that one is unable to reason properly, which provides a second reason for exclusion.<sup>370</sup> In both arguments, the faculty of reason is at the center.

One may attempt to reject the feminist argument by rejecting the dichotomies it critiques, saying that we no longer accept a sharp division between reason and the body. The problem with endorsing such a position, as welcome as it may be, is that this dualism, along with much of our current philosophical theory, is developed within the context of Cartesian philosophy and its associated questions and issues, of which the mind/body dualism is emblematic. Descartes opposes the mind and the body, assigning to each distinct and exclusive attributes. Further distinctions are developed that parallel these positions, not so much by Descartes, but in response to him. Thus, thought, reason, and universality are attributes that reflect the mind, while embodiment, particularity, and emotion are taken to reflect the body. Clearly, traditional social contract theory, with its emphasis upon the rational and denial of the importance of the body, is deeply mired in these dualisms. To reject them requires abandoning of much of our philosophical repertoire, for many of our arguments and even the questions we try to answer depend

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<sup>370</sup> It is this second exclusion that turns out to be the first difficulty for Locke, Rousseau, and Kant, as I discussed above.

upon the assumptions of these dualisms we have inherited as post-Cartesian philosophers. Such a rejection is a possibility; indeed I think it was one of the later Wittgenstein's main points, and is embraced by many feminists. A large number of philosophical problems are dis-solved when one rejects the Cartesian problematic. Yet doing so entails either discarding or substantially reworking social contract theory.

The feminist critiques of social contract theory are multi-faceted, and do not all focus as narrowly on the issue of universal reason as I do.<sup>371</sup> I narrow the focus because it provides the theoretical crux linking women's bodies and their subordination. All the definitions and dualisms can be understood in terms of universal reason or its lack. My focus on the universality of reason and the connotations of that universality highlights how the resulting subordination of women is their subordination *as* women through the very definition of 'women'. The definition of 'woman' is gendered not because of sexual difference, but because it is held in opposition to the masculine norm, and thus in opposition to all the connotations of male found in traditional philosophy. Furthermore, my focus upon universal reason provides a common source to many feminist critiques that do not sharply focus upon it.

For example, as noted above, Pateman thinks the public/ private distinction is "what feminism is all about." Young echoes this point, arguing that the generality of the public sphere requires women's exclusion from that sphere.<sup>372</sup> Marxist feminists also maintain that women's oppression is due to the need to maintain the private sphere as the support for the capitalist public sphere. A focus upon universal reason provides a common factor

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<sup>371</sup> I will return to and address feminist criticisms of abstract individualism and the public/ private distinction that are not able to be subsumed under the problem of universal reason in my concluding remarks.

<sup>372</sup> Iris Marion Young *Throwing Like a Girl and Other Essays in Feminist Philosophy and Social Theory* (Bloomington, IN: Indiana University Press, 1990), p. 117.



among these views of women's oppression. Universal reason is supposed to establish the line between the public and the private spheres, it provides the impartiality that generates the generality of the public sphere, and it is the excuse for keeping women tied to their domestic roles. It provides the theoretical grounds for the initial exclusion of women, which then can manifest in different ways, such as unpaid domestic labor, outright exclusion from the civil world, or limited civil rights. My focus upon universal reason provides a theoretical root to all these critiques. Universal reason, with the further categories it connotes in the sets of dualisms described above, is at the core of patriarchalism in political theory.

The position described above maintains that since women are fundamentally embodied beings, they are by nature in opposition to reason, since reason connotes universality and the mind, while the body connotes irrationality and particularity. This story provides the link between being a woman and being secluded to the private realm and excluded from abstract individualism. There is a great deal more that can be said about individualism, the public/ private distinction, and the view of women as embodied and thus not fully ethical beings. Perhaps the most interesting is the claim that individualism of this sort disassociates "the 'free' individual from the matrix of social relations and norms that in fact make agency, freedom, and even self consciousness possible."<sup>373</sup> This criticism leads to the conclusion that the notion of individualism embodies a self-contradiction. The abstract individual is alleged to have features that only have meaning within a social context, and by abstracting away from that context to

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<sup>373</sup> *The Oxford Dictionary of Philosophy*, ed. Simon Blackburn (New York: Oxford University Press, 1996), p. 191.

achieve impartiality the very notion of the individual becomes meaningless.<sup>374</sup> This sort of criticism of individualism is important, and it is a thread that will be taken up again in the next chapter; but for the moment it is sufficient to show that women are ruled out as political beings through the construction of the abstract individual in social contract theory.

I have offered an account that permits consistency between the universal claims of the social contract theorists and their other statements regarding women, or in Rawls' case, society. This account draws together several aspects of feminist criticism. First, beginning with the differentiation of the male and female body, it demonstrates the patriarchal nature of the ideas of abstract individualism and the public/ private distinction insofar as these ideas are rooted in the idea of universal, impartial reason. Second, it identifies universal reason as the lynchpin of these patriarchal ideas. Universal reason is a common element to both abstract individualism and the public/ private distinction. Reason is what traditionally distinguishes the public realm from the private. Reason is the critical factor in individualism; it is the feature that replaces tradition as the mode of justification in social contract theory. It is the feature that justifies condemnation of the body. Finally, my account shows why universal reason itself is patriarchal. The idea of universal reason is linked through the set of Cartesian style dualisms to the ideas of mind, impartiality, the public, and opposed to emotion, the body, and the particular. The difficulty is that these categories are gendered. Since universal reason connotes these ideas and they are gendered, it stands to reason that universal reason is gendered as well.

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<sup>374</sup> See also Elizabeth Frazer and Nicola Lacey *The Politics of Community A Feminist Critique of the Liberal-Communitarian Debate* (London, UK: Harvester Wheatsheaf, 1993), p. 55 for a similar argument.

The focus of the domination approach's criticism of social contract theory as I have developed it is the assumption and priority of the universality of reason since it is this feature that serves as the theoretical connection between women as women and their invisibility in social contract theory. As stated above, the dominance approach rejects the identification of being a human with rationality. It certainly rejects the identification of embodiment as inferiority. The dominance approach does not, however, advance any theses concerning embodiment or rationality. Rather, it is concerned with establishing claims about the patriarchal nature of the social contract by showing how it is a tool of women's domination. Furthermore, from the standpoint of the dominance approach, it does not really matter if women actually have or lack these features. The point with respect to abstract individualism is that it (individualism) is committed to the existence of these differences. It is a matter of how abstract individualism conceives people who are fit for civil life and those who are fit for subordination.

These arguments about abstract individualism provide support for a premise of a larger argument. The dominance approach is advancing a simple *modus ponens*. It assumes that of course women ought to be fully political beings, just as men are. To have any other situation hold is to endure domination and inequality. Based on this assumption, the first premise is that if any political theory excludes women outright, then it must fail on those grounds alone. The second premise is that social contract theory does, and indeed must, exclude women. My arguments in the preceding two sections establish the claim that the ideas of abstract individualism and the public/ private distinction are themselves inherently patriarchal. Women are excluded from being individuals, and thus from participating in the social contract, and, indeed, from the

public society justified by that contract. This is accomplished through their domination by men and justified by men through definitions that reflect that domination. If any political theory that excludes women because they are women is to be rejected, then, clearly, social contract theories are to be rejected.

The reason Pateman says that the social contract is inherently patriarchal is that it relies on ideas, particularly the importance of impartiality and universality of reason, individualism, and the public/ private distinction, that lead directly to the domination of women, as women, by men. These ideas are patriarchal, and thus make any concept that employs them patriarchal as well. The use of these patriarchal ideas conceptually excludes women from the social contract. The only way to defend against the charge that the social contract is inherently patriarchal is to not argue directly against the domination argument, but rather to present an understanding of reason, individualism and other elements of the social contract that are not patriarchal, and thus not anti-feminist.

## CHAPTER V

### CONCEPTS OF REASON

The dominance approach described in the previous chapter presents a set of criticisms of the social contract that share a common root, an emphasis on the presumed universality of reason. This presumption lies at the heart of abstract individualism and serves as the dividing line between the public and the private. It is the standard associated with the mental, equality, citizenship and maleness, while the particularity of emotion and embodiment is associated with the inferior condition of being female. Finally, this concept of reason connotes a set of alleged differences that both create and justify the gender roles that subordinate and dominate women.

Since it has a central role in the dominance approach, the assumption of the universality of reason is also an opportune place to stage the defense of the social contract against the charge that it (the social contract) is inherently patriarchal. I am not going to defend the assumption of the universality of reason, however. I acknowledge the force of feminist criticism concerning this issue. My strategy is to provide an alternative concept of reason that both serves the appropriate function within the concept of the social contract and meets the feminist criticisms. There are three sections in this chapter. The first is an analysis of Annette Baier's view concerning the social nature of reason as presented in her *The Commons of the Mind*.<sup>375</sup> The second section substitutes this concept of reason in place of that of universal reason in the idea of abstract individualism. This section includes an examination of the use of the idea of abstract

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<sup>375</sup> Annette Baier *The Commons of the Mind* (Chicago: Open Court, 1997).

individualism. The third section applies the insights gained in the first two sections to defuse similar criticisms of the public/ private distinction.

### *Social Reason*

In her criticism of liberal theory, Jaggar points to normative dualism, the separation of mind and body, with its valuation of mind and reason over the body, as the source of political solipsism, the view that people are essentially self-sufficient.<sup>376</sup> The necessary qualities of people belong to the mental realm: freedom, equality, and rationality. In short, one can conceive of human individuals in isolation from other people. In doing so, one still believes that these individuals have wants, intentions, and conceptions of the good, and ideally these features operate under the authority of reason. Abstract individualism adopts this view of individuals and it is thereby passed into social contract theory. Thus, the separation of mind and body and the valuing of reason over the body lead to a view of individuals as isolated, unconnected beings whose essence is their use of universal reason. These beings are the individuals in the pre-political state.

Valuing universal reason in this way leads, as some feminists have argued, to the exclusion of women as individuals in the pre-political condition, leading to their subjugation under the social contract. This is the heart of feminist criticism of the abstract individual; it denies women personhood by holding that they are emotional rather than rational, particular rather than concrete, and essentially bodies rather than minds. Furthermore, it artificially describes people as cut off from others in an implausible way (and a way women allegedly aren't able to be cut off, given that their natures are rooted

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<sup>376</sup> Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988), p.40.

in connections to people). This last criticism is offered by a wide variety of feminists from different feminist positions.<sup>377</sup> Both abstract individualism and the public/ private distinction subordinate women in ways that are tied to their (women's) alleged lack of universal rationality.

The concept of reason as universal and impartial is not the only possible concept of reason.<sup>378</sup> One could consider cost/ benefit analyses, which are not necessarily impartial, as a type of reason. Another possibility is that one can understand reason as a plan that achieves a conception of ultimate human good, perhaps viewing compliance to the requirements of scripture as rationality.<sup>379</sup> As Alasdair MacIntyre points out, rational judgment as conceived by Enlightenment philosophers was supposed to replace authority and tradition to the extent that that all rational beings could assent to its dictates.<sup>380</sup> Impartiality allegedly provides the universality needed to achieve this goal.<sup>381</sup> If one is impartial, then the inferences one draws reflect no bias, and thus must be universal. A further feature of universal reason that the social contract seems to demand is that it must be a faculty that each individual has, apart from all others but essentially the same. If this were not the case, then there is no explanation of how individuals in the pre-political state acquire reason. Thus, they must have it as an intrinsic feature of being an individual. In this manner, the concept of reason as both universal and individualistic became the

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<sup>377</sup> Pursuing this criticism often leads to discussions of whether women actually are connected to others in some special way or not, a debate the dominance approach seeks to rise above. Nevertheless, the universality of reason and the political solipsism it leads to conceptually isolate individuals in a manner alien to actual human life.

<sup>378</sup> The distinction between a concept of reason and a conception of reason follows the distinction between concept and conception made in chapter three. Thus, the concept of reason is the bare idea that it is a universal faculty, whereas a conception of reason may be a sharply defined account that can be used to make rational choices.

<sup>379</sup> Alasdair MacIntyre *Whose Justice? Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988), p. 2.

<sup>380</sup> *Ibid.*, 6.

<sup>381</sup> *Ibid.*, 3.

dominant concept of reason in social contract theory. The concept of reason as universal, individual, and impartial seems ideally suited to this task, so much so that these aspects of reason are almost seen as self-evident within social contract theory.

While there may be a wide range of concepts and conceptions of rationality, I am not going to explore how each might fit within social contract theory and somehow determine the correct one. My aim is to meet the patriarchal charges leveled against social contract theory. To this end I will offer one alternative to the concept of universal reason, but I recognize are other possibilities. Baier presents a concept of reason, call it social reason, which is designed in part to meet difficulties with the tradition of impartial, individualistic universal reason. It also meets specifically feminist criticisms of the elements of the social contract, elements that are objectionable based upon their reliance on the concept of universal reason. Its usefulness for overcoming both sorts of problems uniquely qualifies it to serve as an alternative to the traditional concept.

Baier begins the first lecture in *The Commons of the Mind* by wondering about Descartes' view of the mind (the source of Jaggar's normative dualism) and asking whether we should

take reason to be complete in each individual, but also incipiently social, easily able to adapt itself to actual social interchanges, and capable, in advance, of imagining such exchanges? Or should we take it to be essentially a social skill, but one that can adapt itself to temporary solitude, by turning its monologues into pretend dialogues or pretend many-personed discussions?<sup>382</sup>

That reason is used in social situations is beyond serious question. We use reason to form expectations of others' behavior and actions, to guide conversation, and to determine what we can expect from others. Furthermore, we believe that others are also capable of this and will draw the same conclusions we do. One has to ask oneself why,

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<sup>382</sup> Annette Baier *The Commons of the Mind* (Chicago: Open Court, 1997), p. 4.



given reason's "incipiently social" nature, should we consider it as a faculty completely within us that somehow manages to mesh with the same faculty within other people? Baier puts a finer point on the question when she asks when are we confident that some piece of reasoning of ours is actually a piece of reasoning, and answers that the confidence comes "only when some other reasoner can follow it, and reassure us that commonly accepted standards of reasoning are minimally met."<sup>383</sup>

Certainly if we depend upon others to verify that our reasoning qualifies as reasoning, then the idea of reason and rationality being primarily social rather than essentially private deserves a hearing. Baier makes a strong case for reason as social rather than individual when she points out that because we are beings

who associate with others, who speak and who laugh, as well as ones who infer, and because our sense of humor, our speech, and our understanding of reasonable terms for our conversations, do pretty obviously depend on the presence of other people, and the cultivation of standards of inference, of speech, of conduct in conversations, of wit, of moral evaluation, of ways of arriving at agreed terms in a variety of our mutual dealings, then *we are none of us really self-sufficient in our reason and our rationality*, however capable we may be, in maturity, of composing meditational handbooks in our solitude, or in making our own lists of the god-given individual rights that no community should deny us.<sup>384</sup>

Not only do we reason in social settings, but also without some community to provide conventions and standards of reasoning we are unable to reason. Reasoning isn't possible without others to help guide and reassure us as we reason. That we are not self-sufficient in our reason implies that we need others in order to reason. Baier is not simply drawing attention to the fact that people need to be taught how to reason, or that particular societies value particular methods or standards of reason. Her point is that reasoning isn't possible without society. Reason and reasoning require society.

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<sup>383</sup> Ibid., 5.

<sup>384</sup> Ibid., 13. Italics are mine.

Unfortunately, Baier doesn't offer explicit arguments for this position. Instead she draws our attention to how the practice of reasoning takes place within a social context. An argument for the claim that reason requires a community can be made, however, by constructing a parallel argument to Wittgenstein's observations about the meanings of words and private language. Just as one could not have an entirely private language because one would never know if she were using the words correctly, one cannot have a private reasoning standard.<sup>385</sup> If one did, how would one ever know if one were meeting one's own standard? Whatever you thought was a piece of reasoning would be, even if it contradicted a prior piece of reasoning. There is no way to evaluate your consistency with your own standard. The only way to check the caliber of one's reasoning is, as Baier points out, by checking to see if another can follow it. Thus, just as Wittgenstein concludes that language requires a shared form of life to have meaning (i.e. the language and rules for its use are public), so does reason. Without public criteria of correctness, at least in some minimal sense, reasoning is impossible.

A further similarity between language and social reason is the fact that although they both are relative to groups, from the perspective of individuals within those groups the meanings of that language and the requirements of reason are objective. There is nothing necessary about the fact that Austrians speak German; it is a contingent fact relative to the course of history. If history had been different, perhaps the people of Austria would speak Italian or French. Yet despite the fact that there is nothing necessary that makes it such that Austrians speak German, the meanings of words for Austrians are entirely

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<sup>385</sup> Cf. Ludwig Wittgenstein *Philosophical Investigations*, 3<sup>rd</sup> ed., trans. G.E.M. Anscombe (Englewood Cliffs, NJ: Prentice Hall, 1958), # 258 concerning the lack of a criterion for correctness in a private language.

objective. The meanings within the language are not open to individual choice. One may reason or use a word in a novel way, but if others don't follow what you are doing, then you are simply not reasoning or not using the word appropriately. I will return to this issue of the relativity of concept of social reason in the next section.

Baier does not offer a specific conception of social reason that one could apply. She does not offer an account of the requirements of reason. She only points out how the idea that reason is social, rather than individual and universal, makes sense. To engage in reasoning requires what she calls "a commons of the mind, the background and often the foreground existence of essentially many-person reasonings, intentions and actions."<sup>386</sup> The commons of the mind results from enough tokens of a given activity to generate a custom or convention regarding how that activity is to be done properly.<sup>387</sup> It is a commons of the mind because it is the mental landscape formed by a particular society that is open to all members of that society. Without access to these commons, reasoning would not exist.<sup>388</sup>

In his introduction to the Everyman's Library edition of Rousseau's *The Social Contract* and *Discourses*, G.D.H. Cole says,

Great men make, indeed, individual contributions to the knowledge of their times; but they can never transcend the age in which they live. ... When they are stating what is most startlingly new, they will be most likely to put it in an old-fashioned form, and to use the inadequate ideas and formulae of tradition to express the deeper truths towards which they are feeling their way. They will be most the children of their age,

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<sup>386</sup> Annette Baier *The Commons of the Mind* (Chicago: Open Court, 1997), p. 41.

<sup>387</sup> This does not mean that there is now a fixed, unalterable convention. Just as language changes, so can the standards of reason. Additionally, the standards of reason are no more open to individual choice than are the meanings of words in a language. Thus, reason, like language, is neither absolute and static nor subjective and individually malleable.

<sup>388</sup> Again, this notion is very similar to the later Wittgenstein, and I think reference to his ideas is very helpful in filling in Baier's ideas.

when they are rising most above it.<sup>389</sup>

People reason, evaluate, consider, and explain within the paradigm of their times. Even those who are iconoclasts break with tradition using the tools and platforms of those traditions. Advancements are made through consideration of current shortcomings, which implies working within the tradition of those shortcomings. Ideas and explanations are not created *ex nihilo*.

A similar reliance upon one's times is evident in the social contract tradition. Consider the thread of my analysis of the social contract theories that I set aside in the third chapter, the assumption of specific conceptions of rationality. As a means of fleshing out the concept of social reason, I return to this issue and demonstrate how the concept of social reason can account for this issue, while the concept of universal reason cannot. One will recall that one of the similarities of the social contract theories examined in the first two chapters was the assumption of specific conceptions of rationality that lead to the very conclusions those theories were trying to justify. I did not use this similarity in developing the concept of the social contract because I do not think the authors of those theories thought they were making any such assumptions. They believed they were working with universal reason, an unchanging faculty that grounded their arguments. Thus, the fact that they all assumed certain values under the name of reason is a criticism of those social contract theories, for none of them were free of their particular conception of rationality, and thus none relied only upon universal reason.<sup>390</sup>

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<sup>389</sup> G.D.H. Cole, "Introduction" in *The Social Contract and Discourses*, Jean Jacques Rousseau, trans. G.D.H. Cole (New York: E.P. Dutton and Co., 1950), p. vii.

<sup>390</sup> I take this criticism to be in addition to the feminist criticisms of universal reason being used to exclude women. It is a point that has also been made by some feminists.

If one replaces the universal, individualistic concept of reason with the concept of social reason sketched above, this criticism can be met. Instead of error as the source of the different assumptions concerning rationality, as must be the case if purported accounts of universal reason differ, the concept of social reason recognizes the fact that each author did of necessity partake of a commons of the mind, and therefore reflected his society's assumptions about reason into his theory. A brief examination of the conditions of the day for each philosopher provides an understanding of how social reason accounts for differences in conceptions of rationality.

First, consider Hobbes and Locke. It is quite common when introducing Hobbes to point out that he was living during the English Civil War, and witnessed the terrible toll wrought by that conflict. Instructors point out that Hobbes sought a solution to such war so that people could get on with their lives in peace. Therefore, he had no trouble justifying an absolute authority such as the Leviathan, whether it was royalist or parliamentarian, because this sort of authority was the only power that could achieve such peace. The justification was one of reason, not tradition, and thus was thought to be the truth of the matter. One certainly can see how a society might value security of life above most everything else under such circumstances. This value is reflected in Hobbes' conception of rationality, as evidenced by his right of nature allowing self-preservation at any cost, and the first law of nature, which requires that everyone seek the peace.<sup>391</sup>

Yet Locke also lived during times of revolution and civil war in England. Thus mere insecurity cannot account for the difference in their accounts of rationality as evidenced in their different laws of nature. One answer that may provide such an account is that the struggle in Hobbes' life was against the old feudal order, centuries of tradition, and at the

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<sup>391</sup> Thomas Hobbes *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett, 1994), Part I, ch. xiv, par. 1 and 4.

beginning of a new social order, the market economy. During Locke's life, the feudal order had been defeated and the struggle was to secure one's property.<sup>392</sup> Instead of the overthrow of the old order, Locke's times were concerned with setting the parameters of the new market society. These different concerns manifest in Locke's different law of nature, which although it also says not to harm others, it includes property as a significant part of what is being protected.<sup>393</sup> The emphasis upon property makes it clear that Locke partook of a different commons of the mind than did Hobbes, despite some similarities.

Let us briefly turn to Rousseau and Kant. They also wrote at two ends of an historical moment, the French Revolution, but from different perspectives. Rousseau, living prior to the revolution, was concerned about the freedom of those who were trapped by the conventions of the day, which prevented people from acting according to their wills. The intellectual society that formed the commons of the mind for this otherwise most solitary person was concerned with individual freedom for the sake of freedom, and it is from this value and its resulting conception of rationality that Rousseau derived his theory.

It is important to note that the society that forms a commons of the mind need not be the whole society of a state. Almost any size group can form a commons of the mind, as long as it generates a standard of rationality to which members can appeal to as they reason. Rousseau certainly thought this was true.<sup>394</sup> I think Baier has a larger group in mind in her discussion of social reason, but nothing substantial depends upon the size of

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<sup>392</sup> C.f. C.B. Macpherson *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962), pp. 64-65 and 257.

<sup>393</sup> John Locke "The Second Treatise" in *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), § 6.

<sup>394</sup> Recall that Rousseau thought a people had to be a people before they could make a social contract. This entailed having a shared way of life, and thus a shared general will, something that is difficult to establish over an entire large nation. See Jean-Jacques Rousseau *The Social Contract*, trans. Maurice Cranston (New York: Penguin Books, 1968), p. 59.

the society except for the ability to impact other groups, and thereby bring about changes in the greater society.

Unlike Rousseau, Kant lived during and after the French Revolution. While he did not support the overthrow of the king, he did support the calls for individual freedom and autonomy. The society of which Kant was a part tended to emphasize individual obligation and responsibility, as evidenced by the Pietist emphasis upon the individual's relationship with God. Kant was not concerned with freedom for freedom's sake, but because freedom was the only way for individuals to take up their responsibilities. Thus, an individualist-oriented commons of the mind differed greatly from the freedom-oriented commons of Rousseau, and these differences are displayed in Rousseau and Kant's different conceptions of rationality.

Finally, Rawls draws upon a commons of the mind of a society steeped in liberalism. The values derived from Locke, Rousseau, and Mill, and enshrined in the Bill of Rights and many subsequent court decisions, are often taken for granted (at least by non-minorities and the upper and middle classes) in the late twentieth century United States. The questions that his society wrestles with concern the extension of those rights to minorities, and what exactly such an extension entails. The difficulty is how to balance the individual rights of liberalism with the limitation upon those rights necessary to bring about a completion of that extension. The need to strike this balance tempers what a person concerned with his own interests may rationally claim as outside the sphere of public control. Rawls, therefore, lives in a society that although influenced by Locke, Kant and Rousseau, has its own issues and values, and thereby its own commons of the mind.

This long example is not meant to provide a decisive account of the source of the different conceptions of rationality for these different philosophers. Certainly, in addition to historical settings, other influences play a role in what particular commons of the mind an individual shares. There are many possible factors, just as there are many factors that make up an individual's frame of reference or worldview: class, education, religion, and position in the societies power structure.<sup>395</sup> MacKinnon may have described this situation best when she remarked, in reference to past justifications of differences between men and women, that what mirrored the values of society was considered by that society to be abstract, and thus impartial.<sup>396</sup> This is precisely what happened in the social contract theories I have examined. Each author had a specific conception of rationality that he thought represented universal reason because it mirrored the values of his commons of the mind. The only way to explain this situation and still use the traditional idea of universal reason is to hold that at least four of these authors are simply mistaken with respect to what qualifies as rational. The concept of social reason provides a much more palatable solution.<sup>397</sup> The resolution of this issue, however, is not the end of the explanatory power of the concept of social reason. The following two sections use the

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<sup>395</sup> It is possible that people participate in several commons of the mind, one for each association they belong to that develops a commons. This observation does nothing, however, to damage the arguments for social reason. It merely suggests that the commons that an individual participates in are very complicated.

<sup>396</sup> Catharine MacKinnon "Legal Perspectives on Sexual Difference" in *Theoretical Perspectives on Sexual Difference*, ed. Deborah L. Rhode (New Haven: Yale University Press, 1990), p. 216.

<sup>397</sup> Dr. Bill Lawson has pointed out to me that using the concept of social reason in this way implies that I, too, am using social reason, and the conception of reason that I use can in no way be privileged or considered superior to theirs. Thus, one may ask why my reasoning about the social contract, especially where it changes the understanding of an idea within the tradition, should be accepted as authoritative on those issues. Although my conception of reason is objective from my perspective, as I discuss below, in absolute terms it is not better than theirs. However, as far as a commons of the mind about the social contract goes, my position is one of having a better perspective on the tradition simply because of the years of discussion and criticism of the social contract that separates these philosophers from me. This perspective, due to this consciously more refined commons of the mind, is the only advantage I have over those I have studied. Those who come after me will have a better perspective yet



concept of social reason to defuse the feminist criticisms of individualism and the public/private distinction as they are used against social contract theory.

### *Abstract Individualism*

With an understanding of the concept of social reason, we can address the two core criticisms of the social contract developed in the preceding chapter. The primary vehicle of women's domination via the concept of universal reason within social contract theory is abstract individualism. One will recall that this criticism has three interrelated points. The first is that abstract individualism excludes women because it emphasizes rationality, impartiality, and the mind while it is thought that women are better understood in terms of emotions and bodies. Thus, even if, *contra* Pateman, the public/private distinction were non-patriarchal, the fact the women don't qualify as individuals permits their domination. Secondly, the concept of abstract individual excludes women because women are categorized as emotional and particular, as opposed to rational and universal. Lastly, it excludes women because women are seen as being connected to other people as part of their being and abstract individualism conceives of people as fundamentally isolated.

One way to meet these criticisms is to argue that the understandings of women as emotional, non-rational, bodily-based, and fundamentally connected to others are all mistaken. Indeed, this is the avenue of many feminists. Yet, as discussed above, other feminists sought to recognize the differences between men and women. They offered alternative values to the traditional conception of the highest human ideal. The best example of this is the proposed substitution of care ethics in place of justice-based

ethics.<sup>398</sup> This strategy, however, quickly leads to the difference debate about whether there actually are differences between men and women. I am not going to take that route.

Rather, I will recast the discussion. Instead of focusing on the social contract as a tool of domination and subordination, I focus on the core of these criticisms as developed above, the universal, individualistic conception of reason. The nature of reason, although different in each theory with respect to what qualifies as rational, as I pointed out above, is itself rarely challenged.<sup>399</sup> Philosophers who argue that the universal and individualistic concept of reason is flawed often offer a contextual concept of reason in its place, typically on the grounds that universal reason ignores the rational practices of women. Contextual reason, the idea that one must reason in terms of concrete situations, and thus may come to different conclusions to the same question if conditions are different, is supposed to capture the way in which women are rational outside of the traditional masculine, universal concept, which excludes women. Yet using contextual reasoning in this way forces one to take sides in the difference debate. I wish to move beyond that issue. Therefore, in my recasting of this debate I offer the concept of social reason as a replacement to that of universal, individual reason, but not because it captures the alleged differences in the way women reason. I offer it because, as the discussion in the preceding section makes clear, it is a more accurate conception of how we reason and it has useful explanatory power. In particular, it can remove the patriarchal stain within

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<sup>398</sup> As discussed above, there are some, notably Baier, who seek to meld justice and care perspectives into a whole. Such suggestions, however, implicitly endorse recognition of the difference between men and women. There are some philosophers that argue that the justice perspective is lacking without reference to the contributions of 'women's perspectives'. It has been pointed out to me that Marilyn Friedman makes a point similar to this one in her *What Are Friends For?* (Ithaca, NY: Cornell University Press, 1993).

<sup>399</sup> Apart from feminist challenges, which often emphasize the difference debate or the biased nature of the conception of reason.

abstract individualism without resorting to the question of differences between men and women.

Abstract individualism holds that people are free, equal, and rational. I have already discussed why we may wish to consider people free and equal when they obviously are not; it frees them from prior limits on their actions so their choices in making the social contract are not coerced. The rationality requirement was meant to remove arbitrariness and particular interest from the social contract. One may think that given the relative nature of social reason, such a move would inject an unacceptable amount of arbitrariness into the social contract project. As with language, however, social reason is not arbitrary or relative in a worrisome way. From the point of view of each person, the conception of reason and rationality, taught within and valued by her society, is completely objective; they simply are what reason and rationality are. What a given commons of the mind holds as rational is objectively true for the individuals that partake of that commons of the mind, just as it is objectively true what the meaning of the symbol 'dog' is for speakers of English. Thus, replacing the universal, individualist concept of reason with the social concept of reason changes nothing with respect to people making the social contract; both concepts can be used to counter the happenstances of history and tradition.

One objection to this change occurs if one holds the conviction that the social contract is supposed to provide the framework for all societies everywhere. Certainly Hobbes, Locke, Kant and perhaps Rawls thought that their social contract theories provided *the* social contract that was applicable to all people.<sup>400</sup> This was due, in part, to their respective beliefs about the universality of reason. They thought they were getting at

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<sup>400</sup> Rousseau certainly did not think this way, as evidenced by a people having to be *a people* before making the social contract in order for them to know what their general will is.

actual truth. With the discovery of the differences in conceptions of rationality, however, this conviction is no longer a possibility. What qualifies as rational is a product of societies, and these conceptions are different among different peoples, just as Rousseau saw. Since rationality and reason are not absolute features of the world, it is not plausible that a social contract based upon reason will provide absolute answers.<sup>401</sup>

To return to the main argument, changing the 'rational' component from a universal and individualistic conception to the social conception has no effect upon the abstract individual with respect to making the social contract. The abstract individual is supposed to use reason to generate the agreement that would be made in the pre-political condition. As has been shown above, many different conceptions of reason are used in the different conceptions of the social contract. Substituting social reason instead of the presumed universal reason may alter the agreement that the abstract individual might make, but it does not change the role of reason within the concept of the social contract. The abstract individual still operates using reason to guide her choices that form the agreement.

Yet this change does have a great impact on the feminist criticisms of abstract individualism. The most obvious is that the political solipsism Jaggar points out fails to materialize. The abstract individual, in virtue of being rational *via* a social conception of reason, is certainly not conceptually isolated from other people. If she were, then she would fail to be rational; she would not even be an abstract individual. The use of social reason in the idea of the abstract individual eliminates the criticism that individualism artificially separates people from their connections and ties to others.<sup>402</sup> These ties must

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<sup>401</sup> Having said this, in my concluding remarks I will sketch a possible way that this understanding of the social contract could be used to provide global, if not absolute, answers.

<sup>402</sup> It needs to be remembered that when discussing the abstract individual, we are discussing a social artifice. Thus, this 'person' does not actually exist; it is an abstraction. All the same, the use of social

exist for those individuals to be rational. This also means that the claim that women are not fit for the social contract because of their intimate interpersonal ties is also defeated without arguing that women actually are, or aren't, this way. The social view of reason implies that people are interconnected, and thus interconnection or failure to be isolatable is no longer grounds for exclusion from the social contract bargaining table.

The second way mentioned above that the traditional understanding of abstract individualism excludes women is based upon women's reasoning being particular or contextual rather than universal, emotional rather than rational. Again, without arguing that women are or are not this way, social reason can defuse this criticism of abstract individualism. The criticism depends upon an opposition of universal and contextual reasoning, and upon a corresponding dualism of emotion and reason. The alleged emotional nature of women is associated with contextual reasoning, and indeed an inability to use universal reason. While I am replacing the universalistic concept of reason with a social concept of reason, this does not entail that social reason is identified as contextual reason. One can use the concept of social reason to explain how a particular society's conception of reason includes the idea that reason is universal. It can similarly explain a society whose conception of reason is that reason is contextual.

Social reason as a concept makes no choice between these. In this way social reason fails

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reason implies that a reasoning person is connected to other people. This understanding of abstract individualism serves the same purpose within social contract theory as the traditional understanding of abstract individualism in that it is the description of a person whose agreements would be morally binding. The reliance upon the abstract individual being conceptually isolated from others was in the social contract tradition was to assure freedom and equality of the individual. The understanding of abstract individualism as social artifice is designed to meet the requirements of freedom and equality while permitting the implication of ties to others. It achieves this through the use of social reason, which shows that one cannot have reason and isolation at the same time, thus any possible conception of freedom and equality must be reconcilable with ties to other people. In this way my proposed understanding of the abstract individual, while still abstract and serving the same function as the traditional idea, does not require the conceptual isolation of that traditional view.

to register on the opposition of universal vs. contextual. It steps outside the dualism. This means that without taking a stand on the 'true nature' of reason, social reason can maintain that people cannot fail to qualify as individuals fit to make the social contract based on the fact that they reason in a contextual manner.

One may counter that, since social reason holds that the conception of rationality that a particular society uses is relative to that society, social reason is relative and thus fails in its truth-finding role. This sort of failure does not occur with the concept of universal reason. An initial response is that this argument completely overlooks the advantages of social reason over universal and individualistic reason that are discussed above. The concept of social reason has powerful explanatory ability with respect to how people are able to reason properly; the universal concept relies upon reason as a natural property of human beings, and cannot explain why reasoning needs to be taught, or how whole groups of people can have different conceptions of rationality from other groups.<sup>403</sup> The real force of the argument against the 'relativity' of social reason lies in the blurring of two sets of ideas.

Many philosophers oppose the idea of something being relative with the idea of that thing being objective. The best example comes from ethics, where instructors argue against ethical relativism in favor of some view of objective ethics. In this way, objective is understood to be the opposite of relative. This view is the result of confusing relativity with subjectivity, the proper antonym of objective.<sup>404</sup> Similarly, the proper antonym of relative is absolute. Thus, a position can be absolute, holding for all time and all places, for example the ratio between the radius and circumference of a circle. The current laws

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<sup>403</sup> It seems implausible to assume that whole groups are simply wrong with respect to the requirements of reason simply because they don't share the same conception of reason as some other group.

<sup>404</sup> Professor Martin Benjamin pointed this issue out to me over the course of a number of conversations.

of the United States exemplify a relative position. Likewise, a position can be objective, such as the meaning(s) of the word 'flower' in English, or it can be subjective, such as which flower one finds most beautiful. It may be true that absolutes are also objective in that the circumference of a circle is not open to personal taste, and that subjective views are also relative (since they are relative to the individual). This does not imply, however, that objective ideas are absolute (compare the English word 'gift' with the German word 'Gift') or that relative ideas are subjective (compare the relativity of the laws you live under and ask whether they reflect your personal taste).<sup>405</sup>

The concept of universal reason commits the fallacy of substitution, maintaining that, since universal reason is absolute, any deviation from universal reason must be subjective. Thus, social reason is understood as merely a matter of personal preference. Once one is clear on the proper pairing of terms, one can see that, although social reason is relative, and thus not absolute, it is still objective in the sense that what counts as rational is not subjective. In fact, this is one of the very reasons offered to support adopting the concept of social reason; it requires adherence to some minimal standards to qualify as reason, thus indicating that it is not merely subjective. While social reason is relative to society and culture, it is not subjective, and thus is no less capable of truth finding than language itself.

The third way that abstract individualism excludes women from full personhood is through the identification of women's nature as emotional and embodied, whereas the abstract individual is rational (the opposite of emotional) and thereby essentially mental (as opposed to embodied). This view is obviously dependent upon the sorts of Cartesian dualisms discussed in chapter four, with a normative element added to make clear which

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<sup>405</sup> *Das Gift* is the German word for poison.

mode of existence is better. Jaggar points out that the Cartesian problematic is the framework within which liberalism developed, and it is clear that both the universal, individualistic concept of reason and thereby the traditional understanding of social contract theory also have Cartesian roots.<sup>406</sup> Thus there is a tie between the mental and moral superiority insofar as the mind, and thus reason, are essential features of human beings, while the body is only an accidental feature.<sup>407</sup> Yet this identification vanishes once one discards the Cartesian framework, introduced into social contract theory *via* the concept of universal reason and the assumption of its superiority to other modes of reason, which gives it meaning.

The concept of social reason is not Cartesian. It doesn't differentiate between mental and physical modes of being; it makes no pretensions concerning the essential and accidental features of human beings and it doesn't value one set of those features over another. Thus, using the concept of social reason, a person conceived abstractly may or may not be an embodied individual.<sup>408</sup> No one is excluded because of his or her embodied nature. Again, it is worthwhile to point out that this dissolution of the criticism takes no side in the argument of whether women are or are not essentially embodied beings. Neither is excluded by abstract individualism under this understanding of reason.

One may ask how social reason can be used to escape the Cartesian roots of social contract theory as discussed in chapter four. After all, it is one thing to devise a non-

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<sup>406</sup> Alison M. Jaggar *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Littlefield Publishers, [1983] 1988), p. 40.

<sup>407</sup> As Frazer and Lacey point out, the ontological conception of the individual informs the normative conception. See Elizabeth Frazer and Nicola Lacey, eds. *The Politics of Community: A Feminist Critique of the Liberal-Communitarian Debate* (London, UK: Harvester Wheatsheaf, 1993), p. 46.

<sup>408</sup> I grant that all persons seem to be embodied. One must admit however that the Cartesian 'thinking thing' is a logical possibility. My point here is simply that even should minds turn out to be distinct from bodies, either in a Cartesian manner or perhaps in terms of some form of idealism, since the concept of social reason does not rely upon states of embodiment for anything, such beings would not be excluded due to their particular state.



Cartesian component of social contract theory and quite another to develop a non-Cartesian conception of social contract theory. The solution to this challenge lies in the source of Cartesian influence, which is the use of universal reason. One will recall that it is the dualisms that revolve around universal reason that both give social contract theory its Cartesian nature as well as its patriarchal taint. The ideas within social contract theory that are specifically used to dominate women do so in terms of women's natural opposition to reason. Through the use of social reason in place of universal reason, these dualisms are abandoned, thus purging the ideas of social contract theory of Cartesian influence and its corresponding patriarchalism.

It may be asked, however, whether such a theory still qualifies as a social contract theory. The way to answer this question is to see whether a conception of the social contract fits with the concept of the social contract developed in chapter three. If it does, even without a Cartesian foundation, then it qualifies as a social contract theory. In my concluding remarks I show precisely how a conception of the social contract using social reason instead of universal reason does indeed qualify as a social contract under the concept of the social contract. At this point it suffices to know how this inquiry can be made, which in turn demonstrates that a non-Cartesian social contract theory is at least logically possible.<sup>409</sup>

As noted above, the concept of social reason seems to fit very well with the claims advanced by many feminists that we are all essentially embodied and interconnected. Social reason requires such interconnection in order for reason to exist. The final aspect

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<sup>409</sup> If a non-Cartesian social contract were not logically possible, then there could be no test to see if a non-Cartesian description of social contract theory fit the concept. It would be like trying to devise a test to see whether there could be married bachelors; the bare designing of such a test is impossible. Since the test to see if a non-Cartesian social contract is still a social contract is possible, it shows that such a conception of the social contract is at least logically possible.

of women's exclusion from the ranks of the fully human: their emotional nature. The fact of being interconnected implies that we have ties to some people. Clearly we aren't connected to every other person, and more clearly some of our ties are stronger than others. Those who hold that women are essentially emotional beings mean one of two things: either they (women) are not rational at all, or they let their feelings for those to whom they are most strongly tied affect their (rational) judgments concerning those people, and thus don't reason properly. The first disjunct is defensible only when one has a very narrow view of both women and rationality. Perhaps women don't reason as men do, but that is not saying they don't reason at all. One would have to maintain that no woman could possibly reason as men do, and this is empirically false. Furthermore, as the argument for adopting the concept of social reason in place of universal reason shows, there is good reason to not accept the narrow view of reason that is necessary to define women out of the set of reasoning beings. Thus, although this first view of women and rationality may have been standard positions in political philosophy, there is no reason to hold on to them and a good deal of reason to abandon them completely.

The second disjunct, that women are partial to people to whom they are close, and thus unable to reason properly concerning them, depends upon reasoning being universal and impartial.<sup>410</sup> It is true that a society could have such a conception of reason, and if it did, those who reasoned in a contextual and partial manner would be irrational in that society. To make this argument go through, the critic needs to prove that women as a group are this way, such that irrespective of their society and standards of rationality they fail to be rational. This is to say that women, as women, are always irrational regardless of the conception of rationality that is standard in their society. I don't think such a proof

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<sup>410</sup> It should also be noted that empirically men often reason this way as well.

is possible. More importantly, the concept of social reason does not require a universal conception of reason. It allows for societies to have contextual conceptions of reason (it is rational to favor your child over other children, for example). Thus, even if it could be proved that women fail to reason in a universal way, this does not show that women fail to qualify as fully human under abstract individualism. It could only show that in some societies women are irrational. Again, the concept of social reason does not take a side in the debate of whether women are or are not essentially emotional rather than rational. Instead, it takes a position that regardless of which side prevails, it does not matter with respect to reason. What matters is whether a person reasons within the standards of her society.<sup>411</sup> Since there are different conceptions of reason in different societies, it is unlikely that all women will be disqualified in all societies. In this manner, the final objection to women qualifying as individuals under abstract individualism is met.

The final issue to consider is how the concept of social reason meshes with the idea of abstract individualism. One will recall from the discussion in chapter three that individualism is to be understood in terms of a social artifice rather than the traditional idea of describing the fundamental attributes of a person. In that discussion, the properties of being free and equal were explained in these terms, but the third property, that of being rational, along with its corresponding underpinning idea of the universality of reason, was left as it had been traditionally understood, an actual property of people. I have argued that the feminist objections to abstract individualism examined above are

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<sup>411</sup> Admittedly, women could be excluded in sexist societies whose conception of reason deems women to be irrational. I think using the concept of social reason, such a position would be much more difficult to maintain than within the context of universal reason. This is because, as discussed above, social reason is not tied to the structure of Cartesian dualisms that are used to show women to be irrational. Furthermore, if there were a society that held women to be irrational (as there actually is), the concept of social reason allows a method for overcoming such sexism, a method that is not readily apparent within the context of universal reason. I discuss this issue in depth below in my concluding remarks.

resolved if one replaces the problematic concept of universal, individualistic reason with that of social reason. Yet it is precisely this move that appears to cause a difficulty. How can something that requires a commons of the mind be stylized so that it achieves the goal of the artifice of individualism, that it captures the intuition that if this sort of person makes the agreement, then it is morally justified for everyone?

The problem is this: replacing the concept of universal reason with a particular conception of rationality from a particular commons of the mind fails to capture the intuition that any agreement made by the stylized person is binding on everyone. It would only be binding upon those who recognized the abstract individual's conception of reason as their own. Yet the morally binding nature of social contract theory is supposed to be much broader in scope. On the other hand, to present a conception of reason that isn't the result of a commons of the mind fails to generate a conception that is social. In order to use social reason within the context of individualism, one must find a way that allows for the stylization of reason without undermining the nature of social reason. To achieve this aim, I must return to the goals of the social contract itself.

Consider the fact that there are not very many, if any, completely homogenous societies in the world. A homogenous society does not need a social contract because all the members know how they fit into the group. They share the values that assign societal roles, they acknowledge the authority of the leadership, and agree upon how violators of social norms are punished. When a society is not homogenous it is heterogeneous, comprised of different groups with different sets of beliefs, values, and commons of the mind, although there may be significant overlap, sharing, and similarities among them. The need for social contract arises when a set of heterogeneous groups are bound together

in a greater political structure, for they do not necessarily share a conception of rationality and thus don't share a conception of political structure for their unification.

These groups may have come together via migration, conquest, trade, or any number of other reasons. The method of confederation doesn't matter much, for one purpose of social contract theory is to justify political structures apart from the way they actually came together. This is the anti-traditional aspect of social contract theory. It rejects mere fact of who holds the power as sufficient justification of that state. The issue that is important is how these groups, with their varying conceptions of rationality and values, can 'create' the political bond among them.<sup>412</sup> The idea of a stylized conception of reason used in terms of abstract individualism can help answer how such heterogeneous societies are to conceive of justice, to interact with those who have different conceptions of rationality and values, and, in short, make a social contract.

These groups, whether they are racial, ethnic, religious, academic, or what have you, are the sources of actual people's commons of the mind. Yet in order for there to be a social contract between such groups, there needs to be some sort of agreement between them as to what the standards of rationality for making that contract are going to be.<sup>413</sup> They must create a political commons of the mind, a social artifice that gives meaning to political reasoning and practices. This political commons of the mind will give rise to a political rationality, which in turn can be implemented as the conception of rationality of the abstract individual.

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<sup>412</sup> This idea of creating the political bond is precisely analogous to the bond created between individuals in the traditional conceptions of the social contract.

<sup>413</sup> Dr. Lisa Schwartzman has pointed out to me that the question of whether these groups are equal in power or not has a significant impact upon how such a procedure would go. In my concluding remarks I discuss the uses of the social contract and how this issue bears upon those uses.

Let me clarify this idea. The ‘historical’ story is that the groups that find themselves bound together in a state and wishing to morally justify their political union establish a commons of the mind among each other that is meant to deal only with political questions.<sup>414</sup> This commons of the mind would have to be such that each group can recognize themselves in it with respect to political issues. This commons of the mind would give rise to a political rationality. This rationality would not be identical to any particular group’s conception of rationality, but it would at least be recognizable given each group’s contribution to the political commons of the mind. This idea is no different than a group of individuals actually participating in a commons of the mind- each with their own ideas and notions but adapting to the requirements of the group. Once the political rationality is created, it is used within the artifice of the abstract individual to determine with what such an individual would agree, which is to say to make the social contract.

Note that the political rationality is a social artifice. It is designed with a specific purpose, to be the conception of rationality used by the abstract individual. Through the use of social reason and the story told above, the understanding of individualism as a social artifice is now complete; all the features of that individual are stylized in precisely the manner needed to achieve the moral justificatory role of social contract theory. In chapter three I said that any conception of the social contract must focus on the individual and the properties of being an individual. This understanding of the social contract does

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<sup>414</sup> Clearly, which issues are considered political is a very important question. Given the nature of social reason, any answer to this question is itself political (what gets set aside as personal is a political decision). This answer is explored further below in the discussion of my revised public/ private distinction.

precisely that, although they are not the actual properties of actual individuals but rather the properties of an individual whose choices are morally binding upon actual people.<sup>415</sup>

I am not suggesting that the ‘historical’ story described above actually took place, or even that it could. I was simply using the metaphor of historical contract in the same way that many contractarians and some social contract critics (such as Pateman). The non-historical version runs like this. Given that there are many conceptions of reason within the political boundaries of the state, how can a conception of reason be generated to serve the appropriate role in the idea of the abstract individual? You attempt to describe a commons of the mind that is only concerned with the political ideas before you. This commons will be rather bare, as on one hand much of the usual aspects of it will be removed because they have no bearing on political questions as they are identified (i.e. you would leave behind aspects such as the recommendations for gardening) and on the other hand you will need it to be recognizable to all the different competing groups so it can’t be too detailed for fear of ruling some conceptions out. I think this idea is very similar to the idea of overlapping consensus developed by Rawls.<sup>416</sup> Once the political commons of the mind is established, one can generate a political rationality. Once the conception of rationality is in place, the familiar work of determining to what such a person would agree begins.

This understanding of the social contract is not far removed from the social contract theories examined in the first two chapters. It is an idea that replaces tradition and

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<sup>415</sup> I discuss the issue of whether this conception of abstract individualism still is a form of individualism in my concluding remarks.

<sup>416</sup> John Rawls *Political Liberalism* (New York: Columbia University Press, 1993). Note that I am not endorsing Rawls’ conception of what qualifies as political. I am only noting that differing groups are likely to have enough overlap in their conceptions of rationality and political issues to allow a process of generating a political commons of the mind. This is not to say that such a project is easy, or even guaranteed of success.

arbitrary authority with a reasoned framework for political society. It recognizes the differing desires and goals of the participants, but proceeds upon the idea that there are some areas of commonality that can serve for a foundation. It attempts to provide a moral justification for a conception of the state that is binding upon most or all people.<sup>417</sup> The main difference is that instead of individual people making the social contract, the abstract person, described in such a way that its choices are morally binding upon actual people, is at the bargaining table. Under the traditional understanding of the social contract, the bargainers resorted to universal reason to strike their bargain, and in doing so relied upon ideas that are intrinsically patriarchal. My proposed understanding of the social contract does not rely on such ideas because the concept of universal reason has been replaced by the concept of social reason. Without the patriarchal aspects of abstract individualism, an artificial commons of the mind can be generated and a social contract be made that is not intrinsically patriarchal.<sup>418</sup>

In summary, the concept of social reason holds that a society is necessary for people to be able to reason. This concept of reason is superior to the traditional concept of universal, individualistic reason because it can account for why reason must be taught, why a piece of reasoning only qualifies as such after public acceptance, and how one can have differing conceptions of rationality without having to insist that all other groups with differing conceptions are simply mistaken. When one substitutes the concept of social reason for that of universal reason within the idea of abstract individualism, one can remove the patriarchal nature of that idea without becoming embroiled in the debates surrounding alleged similarities and differences between men and women. Social reason

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<sup>417</sup> I will discuss the universality of the application of this idea below.

<sup>418</sup> As I discuss in my concluding remarks, this move does not exclude the possibility of patriarchal social contracts. It only shows that social contract theory is not necessarily patriarchal.



does not conceptually exclude women from the category of individual. In short, the idea of abstract individualism is not, when understood as a social artifice designed to resolve a certain set of problems, inherently patriarchal.

### *The Public/ Private Distinction*

Using the concept of social reason we can also meet the criticisms concerning the public/ private distinction. It was argued above that women are relegated to the private sphere for two reasons: they allegedly lack reason and thus aren't capable of participating in the public life characterized by reason, and they are bodily-natured rather than essentially mental and thus are not fit for the public life. However, as was discussed above, the social contract cannot exist without a public/ private distinction. Furthermore, as Frazer and Lacey point out, "a rejection of the idea of some limits on proper state intervention and control would be a grave mistake for feminist politics."<sup>419</sup> They add that the goal for feminism should be a reinterpretation of the public/ private distinction that is less or non-exploitive.<sup>420</sup> One traditional goal of social contract theory is to establish the limits of state authority. If there were no line between the state and one's personal life, then there would be no need for a social contract; the state could do whatever it wanted. Thus the question is not whether there should be a divide between what is public and what is private, for even the harshest critics of social contract theory think there is a limit to the extent that state can encroach in one's life, but rather where, and how, one should draw the distinction.

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<sup>419</sup> Elizabeth Frazer and Nicola Lacey *The Politics of Community: A Feminist Critique of the Liberal-Communitarian Debate* (London, UK: Harvester Wheatsheaf, 1993), p. 74.

<sup>420</sup> Ibid.

The conception of universal reason served as the dividing line between the areas where the state could and could not limit the freedom of its citizens. It divided public and private along the division found in the dualisms discussed earlier. The use of universal reason in this way necessarily condemns women to the private sphere due to their embodied nature, which clearly displays its patriarchal nature. Replacing universal reason with the conception of social reason eliminates the necessity of anti-woman bias within the public/ private distinction. It can establish a division between the public and the private, without doing so in a necessarily patriarchal manner.

Social reason does not necessarily draw a value distinction between the mental and the embodied, thus it does not necessarily draw the division between public and private according to the Cartesian-based dualisms. This strategy, in keeping with the dominance approach method of not taking a stance on differences, allows me to ignore the question of whether women do have a different nature than men as suggested by the patriarchal nature of universal reason. Social reason holds that people who meet the socially defined requirements of reason are reasoners; there is no value judgment placed upon embodiment, implied or otherwise. Thus, if women reason in accordance with the minimum conditions established by their commons of the mind, they are fit for the public sphere, however that sphere is determined.

Note that different societies will have different commons of the mind. Not all societies will understand the public sphere in terms of universality and impartiality. Some may understand the difference between public and private in terms of whether an action impacts the common good, or whether an issue involves people outside one's relatives. It will turn out that what is public or private is a reflection of the political

values of the society as developed through its particular commons of the mind. Since the concept of social reason allows for different values with respect to what qualifies as rational, it is likely different societies will have different views as to the proper limit of state authority. This in turn provides reason to believe that not every society will have a patriarchal conception of reason, although some may. This shows that even if some societies, using the concept of social reason, do develop patriarchal conceptions of rationality, there is nothing necessarily patriarchal about the concept of social reason. In fact, its ability to account for patriarchal conceptions of rationality in addition to non-patriarchal conceptions shows it to be a superior concept of reason. Social reason can explain all the different conceptions of rationality as products of different commons of the mind, while the concept of universal rationality cannot explain any differentiation in conceptions of rationality except to insist upon the rather implausible claim that all deviations are mistaken.

The use of social reason in place of universal reason has two additional positive aspects. First, it explicitly embraces the “personal is political” position common in feminist politics. As many feminists have noted, the delineation of the private sphere is itself a political decision. This is aspect of what “the personal is political” means.<sup>421</sup> Social reason recognizes that whatever line is drawn between the two spheres is a choice. There is no implication that certain issues are simply beyond state intervention; rather they are deliberately placed there. A public/ private distinction made in this way emphasizes the use of the public/ private distinction as a limit of legitimate state authority, rather than as a tool of domination or as an explanation of domination. The

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<sup>421</sup> A good overview of this slogan is found in Jane Mansbridge and Susan Moller Okin “Feminism” in *A Companion to Contemporary Political Philosophy*, Robert E. Goodin and Phillip Pettit, eds. (Cambridge, MA: Blackwell Publishers, 1993), p. 274.

distinction is simply the agreed upon bounds of state intervention. This permits a feminist understanding to the public/ private distinction, an understanding that also functions, in the sense of a boundary of state authority, in the same manner as the distinction functions in social contract theory tradition.

Second, the use of social reason in place of universal reason also negates Pateman's claim that "[p]atriarchal domination lies outside their frame of reference."<sup>422</sup> Pateman believes that the patriarchal domination cannot be addressed from within the ideas of the social contract because those very ideas are part of that domination. Yet, since social reason is not necessarily patriarchal, a public/ private distinction drawn in terms of social reason does not have to be gender-exploitive. Without the necessary patriarchal element provided by universal reason, there is no reason to maintain that the public/ private distinction is incapable of addressing women's subordination. The choice of where to place the limit of government can easily include such issues since the distinction does not necessarily imply that subordination.

To summarize this section, the public/ private distinction is a necessary element of social contract theory, yet its reliance upon the concept of universal reason in traditional social contract theory made it a patriarchal tool for the domination of women. Since this patriarchalism is the result of the concept of universal reason, replacing that concept with the concept of social reason, itself a non-patriarchal concept of reason, removes the necessarily patriarchal element from the distinction. The concept of social reason still permits the derivation of a line between the proper sphere of state authority and that of private life, and this division is rooted in the commons of the mind that informs the particular conception of reason of that society. Since the social view of reason does not

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<sup>422</sup> Carole Pateman *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), p. 13.

exclude women based upon their alleged embodied nature, but rather includes all who reason in accordance with the requirements established by the society, women are not necessarily excluded from the public sphere, and thus the patriarchal element of the public/ private distinction is eliminated.

The general argument of this chapter is that the use of the conception of social reason as a replacement for the traditional individualistic, universal conception of reason allows the ideas of the public/ private distinction and abstract individualism to be understood in terms that are not necessarily patriarchal. Abstract individualism, as a social artifice, includes an artificial conception of reason developed specifically for capturing the aspects of many conceptions of rationality as they relate to political union. An artificial commons of the mind is created to achieve this, where representatives of many different particular conceptions of rationality come together to determine what would count as a basic political rationality for the purposes of social contract theory. This political rationality is not necessarily patriarchal because it does not rely upon the same dualisms and corresponding norms as the concept of universal reason does.

Similarly, the idea of the public/ private distinction loses its patriarchal overtones once the concept of social reason replaces the traditional universal reason. Given social reason, there is still a division between the proper realm of the authority of the state and those aspects of human life where the state has no authority. This division arises from a conception of reason developed from the artificial commons of the mind created to enable the social contract to be made. Note that the line is not the product of any particular group's conception of rationality, but the conception that is worked out to identify the parameters of the social contract. Since this division does not depend upon

the concept of universal reason, the public/ private distinction is no longer necessarily patriarchal. This is not to say that no such division is patriarchal. A society whose political commons of the mind reflects patriarchal values will probably draw a patriarchal division.<sup>423</sup> The point is that these divisions are not necessarily patriarchal. Having shown that the source of patriarchalism within social contract theory is the concept of universal reason, and that social contract theory does not require use of this concept, it is time to turn to the central question of this project: is the social contract inherently patriarchal?

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<sup>423</sup> It should be remembered that I am making the weak claim that the conceptions of the public/ private distinction and abstract individualism that uses the concept of social reason are not *necessarily* patriarchal, not that any such conception wouldn't be patriarchal. This is not to say that there couldn't be a patriarchal conception of social reason, only that as a concept social reason isn't necessarily patriarchal. There may be other sources of patriarchy that influence a society and cause it to be sexist or to have a sexist conception of reason, but such causes would not be due to the nature of social reason, nor rooted in the existence of the public/ private distinction or abstract individualism. It should also be noted that causes of patriarchal domination that fall outside these elements of social contract theory would be precisely the sorts of arbitrary uses of force that social contracts were designed to overcome. In my concluding remarks I discuss why social reason is still better than universal reason despite the fact that it permits sexist conceptions.

## CONCLUDING REMARKS

In my concluding remarks I will address a number of questions concerning the analysis of the concept of the social contract that I have proposed. The first involves completing the analysis of the social contract. In the preceding chapter I made some rudimentary remarks concerning how the social contract would operate given the new ideas of social reason and non-patriarchal understandings of individualism and the public/private distinction. In these concluding remarks I will more fully flesh out the understanding of the social contract that I am proposing by explaining how these new ideas work within the concept of the social contract, and then indicate why this understanding demonstrates that the social contract is not inherently patriarchal.

I will also discuss two second order questions. These questions are not concerned with the concept of the social contract *per se*, but rather with the uses to which the concept can be put. The first question asks: can the social contract bring about change in a society? For example, what good is the social contract if the society that makes it, and thus their commons of the mind, is sexist? The resulting social contract would be sexist as well. Since, at least from the standpoint of feminism, sexism is unjustified, feminists may ask what value a theory that permits sexism has? How is my proposed understanding of the social contract better than the traditional understanding if it still permits the domination of women? The answer to this question involves the difference between a conception of the social contract that permits the domination of women in some cases and a conception of the social contract that requires that domination. My

general thesis is only that the social contract is not inherently patriarchal, thus it does not necessarily subordinate women. I take this change to be an improvement.

The second question asks: is the social contract trivial since it can easily be construed as merely a reflection of a conception of rationality? If this is the case, one may ask, what actual work is being done by the idea of the contract, as opposed to the conception of rationality? Another way of posing the problem is that if the values that are brought out by the social contract are already implicit in that society's conception of rationality, of what use is the social contract? The answer to this question lies in the social contract's ability, as a social artifice, to transcend actual conceptions of rationality and thereby unite otherwise different groups into a political union.

A further challenge, connected to both these questions, is that if the social contract has no way to bring about change in society, then one could argue on that ground that the social contract is trivial. In general, I think the role of social contract theory in social change is limited to two kinds. The first is as a normal device, exposing actual political practices that are not justifiable through the contract method. Through pointing out inconsistencies between actual political practices and those that are justified by the contract, social contract theory can inspire people to change those political practices. The second role involves determining the political commons necessary to generate a contract that embodies some vision of society, thus enabling activists to try to change the actual commons of the mind in hopes to achieve that vision. The details of how such changes can occur involve the alterable nature of different commons of the mind and how convincing some people of a position can bring about change in the conception of



rationality, which is then reflected in the social contract, which in turn can be used to convince still more members of society.

The developed answers to these second order questions require the full accounting of the concept of the social contract as I am suggesting it, so to that task I will turn. Finally, after the second order questions have been answered, I will conclude my remarks by briefly indicating avenues of future inquiry my proposed understanding of the social contract opens.

### *A Not Necessarily Patriarchal Social Contract*

One will recall that the concept of the social contract, developed out of the similarities found in the exemplars of social contract theory presented in the first two chapters, held that free, equal, and rational people in the pre-political condition would agree to limit their natural freedom in order to secure certain other ends, that such agreement is the appropriate way to limit freedom, that such an agreement is required by reason, and that the limitation of freedom that is the result of the agreement is an improvement over the pre-political condition. The third chapter brought these ideas together and offered an analysis of the concept in terms of the three underpinning ideas of volunteerism, the universality of reason, and individualism.

A criticism charged that the underpinning ideas of individualism and volunteerism were inaccurate descriptions of people and their relationships, and thus were not appropriate for use within the concept of the social contract. This criticism was met by adopting the idea of social artifice as a way to understand volunteerism and individualism. The analysis suggested that these ideas, while factually inaccurate, are

stylized notions purposefully designed to describe the sort of person whose choices in the pre-political condition would be morally binding for all people. This approach is clearly in keeping with the social contract tradition of at least the hypothetical and ideal types of social contracts. The analysis provisionally left the underpinning idea of the universality of reason as an actual assumption on the grounds that the sorts of criticisms leveled at the first two ideas were not usually brought against the ideas about reason as well.

The fourth chapter, however, developed a feminist argument that hinged upon the universality of reason. The dominance approach, as I called it, sought to avoid the difficulties of asserting sameness or difference between men and women, and instead argued that conceptual elements of the social contract are inherently patriarchal. These elements are individualism and the public/ private distinction. Both these ideas were criticized on the grounds that they conceptually exclude women from being members of the political union through their (women's) lack of rationality. Again, the dominance approach does not take a side on the question of whether women do or do not have this lack; it merely points out that the definition of women in terms of their bodies and a common set of Cartesian type dualisms that oppose that definition with universal rationality are used to exclude women, and further, to justify their subordination.<sup>424</sup>

The argument for concluding that the social contract is inherently patriarchal based upon the idea of the universality of reason is clear. Any political theory that excludes women on the grounds that they are women is inherently patriarchal. The social contract has elements, individualism and the public/ private distinction, which were supposed to

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<sup>424</sup> One will recall that to argue that these ideas are simply outdated and that of course women are rational in the relevant way leads to two difficult issues: it entails that women must be like men in order to participate in the social contract, and it denied the possibility that women may have alternative ways of being rational. These options are not acceptable for reasons detailed above.

necessarily exclude women. Any concept that relies upon patriarchal ideas imports their patriarchal aspects, and if these ideas are necessary to that concept, as individualism and the public/ private distinction are to the social contract, then the concept becomes necessarily or inherently patriarchal as well. Thus, it was alleged that the social contract is inherently patriarchal.

The fifth chapter offered the concept of social reason as an alternative to the concept of universal reason. The concept of social reason has a number of helpful properties. It enables us to overcome the difficulty pointed out in the first three chapters that each conception of the social contract depends upon a different conception of rationality. Social reason explains how this can be so without having to conclude that at least four of the philosophers examined had faulty understandings of the requirements of rationality. A second helpful property is that the concept of social reason does not have the patriarchal aspects that the concept of universal reason has. This allows us to analyze the ideas of individualism and the public/ private distinction and show they are not, in themselves, patriarchal. Rather, it is their reliance upon the concept of universal reason that gives them their patriarchal stain. Finally, the concept of social reason permits an understanding of the 'universality of reason' as a social artifice, designed to accommodate many particular conceptions of rationality within a single social contract. This artifice, which I called political rationality, is universal in the limited sense that all members of the group that formed the artificial commons of the mind for the purpose of making the social contract share it, even though it may differ in degrees from their actual

conceptions of rationality.<sup>425</sup> Thus, the social artifice of reason is of universal reason, but universal in a different sense than that which was rooted in the Cartesian dualisms, and which led to the exclusion of women.

The ideas of social artifice and social reason function well within the concept of the social contract developed in chapter three. It must be stressed that the use of these ideas does not change the concept, only how we understand some of the elements of that concept. My proposed understanding still makes use of the three underpinning ideas. Just as these ideas underwent change in the different conceptions of the social contract examined in the first two chapters, I too have changed them. Their function, however, remains within the scope described in the concept of the social contract. The idea of volunteerism, as a social artifice, generates the moral freedom of the abstract individual. The artifice of the individual, with the properties of freedom, rationality, and equality, can act upon this freedom and make the choices concerning the social contract. The concept of reason, which is universal in the limited sense discussed above, is the faculty that overcomes the arbitrariness of custom and tradition, which was the original reason for developing the social contract in terms of reason. A closer examination will make these claims clear.

One may challenge the claim that the artifices function in the same way within the concept of the social contract. In particular, one may ask whether the social artifice of abstract individualism still is a form of individualism at all. The reason for thinking that this social artifice is not individualism in a meaningful sense is that it doesn't appear to involve the self-interest of the individual, and thus doesn't provide the problem of justice

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<sup>425</sup> Note that 'universal' is being used in a different sense than in the preceding chapters. I am retaining the term to emphasize how the concept of social reason does the same job *vis-à-vis* overcoming arbitrariness as the traditional conception of universal reason did.

that the social contract was designed to resolve. Yet the fact that the artificial individual is imbued with a conception of reason developed by people who presumably do have some self-interest, perhaps of varied descriptions, offers reason to suppose that the conception of reason she uses would include some element of that self-interest. This is due to the fact that the political conception of rationality is created out of actual conceptions of rationality, and insofar as self-interest is a component of rationality, it will be transmitted to the artifice of the abstract individual.

This does not explain how such self-interest would generate the need for the social contract. The social artifice is created for the purpose of making the social contract and therefore can't also be the reason for it. The need for the social contract, the problem that it is supposed to solve, arises from the fact of many groups with varying conceptions of rationality having to interact within the framework of a state. The issue of self-interest is simply shifted from the abstract individual to the groups that come together to make the political commons of the mind. Thus, while the social artifice of abstract individualism is different from the traditional understanding, it functions similarly within the concept of the social contract insofar as it is about the binding choices on people with varied interests. The problem of self-interest is merely moved back a step to the people who have come together to use social contract theory to reach a consensus on their political issues.

At the heart of the social artifice of individualism we are asking what a person, appropriately described, would agree to in a certain set of circumstances. This is precisely the role that abstract individualism plays in the traditional understanding of the social contract. The fact that this revised account of individualism holds that this

individual is a social artifice created for a specific purpose highlights the aspect of it being an 'appropriately described' being. The society that wishes to generate a social contract must develop the political commons of the mind that is the appropriate description for that society. If this includes a high degree of self-interest, then that will be part of the abstract individual's conception of reason. Thus, the artifice of the abstract individual functions within the context of the social contract as the traditional understanding does, although without the metaphysical issues concerning embodiment that form the basis of much criticism of abstract individualism,

The idea of social reason also conforms to the concept of the social contract. It is the faculty of reason used by the abstract individual.<sup>426</sup> One may be inclined to doubt that social reason can replace individualistic universal reason in social contract theory since social reason has no universalistic pretensions and the concept of the social contract depends upon the universality of reason. Yet, as I have indicated, the necessary aspect of universality within the social contract is that everyone recognizes the conception of political rationality as rational.<sup>427</sup> The choices of the abstract individual are binding upon all those who do. The construction of political rationality satisfies this requirement. Every group's conception of rationality is involved in making the political commons of the mind, and thus the conception of political rationality, just as each individual person participates in developing and refining her particular group's conception of rationality.

It is true that if one doesn't recognize the political rationality as rationality, then one will not recognize the conclusions of the social contract as binding. Yet this is not a

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<sup>426</sup> It should be noted that while this view of reason is different than those traditionally used in social contract theory, it is in itself not an entirely new idea.

<sup>427</sup> It is true that there is no guarantee that a particular set of groups would come to any sort of agreement, but then they would not be able to generate a social contract theory for their state. They would be held together, not by social contract and moral justifications, but perhaps only custom and power.

criticism of the concept of the social contract as much as it is evidence that, if one does not participate in the set of commons' of the mind that generated that conception of political rationality, then one is not a participant in that social contract. As pointed out in the discussion of Rousseau, a people must be a people before making the social contract. The different groups must be united at some level in such a way as to want to expose the moral connections of their union. When the conception of rationality used in a conception of the social contract does not meet one's rationality requirements, then one is not one of the people making that contract.

I mentioned above that there is a question concerning the relative power of the groups participating in the making of the social contract. If some groups are subordinate to others, their conceptions of rationality may not be included in the final political commons of the mind. If the political commons of the mind is to be developed in good faith, all the groups within the society must have their conceptions of rationality given due consideration. This entails ignoring actual facts such as a particular group's subordination by another group, or indeed the rest of society. Anything less would distort the political commons of the mind, and thus one should not expect to achieve an undistorted social contract. I do emphasize that my suggestions are designed within the context of the hypothetical contract. The creation of the political commons of the mind is an exercise designed to highlight the connections between conceptions of rationality and the political practices that are justified by those conceptions. Thus, subordinated groups must rely upon those engaged in social contract modeling not to dismiss their views. Having said this, I recognize that such a standard is idealistic, and would be very difficult

to achieve. It is the standard one must adhere to, however, if one is to develop a political commons of the mind based upon the groups in a society.

I have pointed out how my revised conceptions of the underpinning ideas function similarly to the traditional conceptions, despite their differences to those conceptions. I have also indicated how the concept of social reason removes the patriarchal stain from both abstract individualism and the public/ private distinction while still permitting them to fulfill their respective functions within social contract theory. In short, the changes to these ideas are such that there are no grounds for exclusion from the social contract or the public sphere that is the subject of the social contract based upon the Cartesian dualisms. Not only is social reason non-Cartesian, its use within the ideas of abstract individualism and the public/ private distinction eliminates their reliance upon those dichotomies. It permits a radical new understanding of social contract theory, not in the sense of how to understand the canon, but in how to move the theory forward in the face of stiff criticism. Indeed, by slipping free of the Cartesian dualisms, social reason offers the promise of something that critics of the social contract, such as Pateman, thought was impossible: a possibility of a non-sexist conception of the social contract.

All the similarities used to develop the concept of the social contract are consistent with my proposed understanding of the concept. The social contract is still about what appropriately described individuals would do in a given set of circumstances, about how their conception of reason would lead them to limit their freedom in certain ways, and indeed how failure to do so indicates a lack of rationality through a failure to follow the conclusions of the political commons of the mind. Thus, since the ideas of social artifice and social reason can work within the context of the concept of the social contract, there



is no objection on those grounds to their use within the concept of the social contract.

Although these ideas have changed to some degree, they still function together to enable the generation of a social contract. They play the same roles as they have in their various incarnations in the social contract tradition, but in a way that cannot be interpreted as a metaphysical account of people or that relies upon the common Cartesian dualisms.

These ideas form an understanding of the concept of the social contract.

There is one limitation the use of the idea of social artifice does impose upon the generation of conceptions of the social contract. It removes the possibility of making an actual contract. Since my proposed understanding is based upon the notion that the descriptions of the individual in the pre-political situation, that person's ability to have only voluntary obligations, and that rationality is a universal property are all stylized fictions created to make a point, it rules out the social contract as an actual contract between actual people. It is an hypothetical exercise. If one were to assert that the social contract must be an actual contract to which actual people give their consent, either expressly or tacitly, then the understanding of the underpinning ideas as social artifices would not be helpful, since the social contract would then be made by actual, not stylized, people.

To this criticism I reply that if one is asserting that the social contract is an actual contract, then one has much larger difficulties to overcome than the understanding of the underpinning ideas that I am proposing. Among these are the lack of an acceptable notion of tacit consent, a factual lack of express consent for the vast majority of people, and the conclusion, albeit endorsed by some, that there is no obligation to the state based upon these very deficiencies. Such a conclusion, however, is not a conclusion drawn

from social contract theory, but rather is a criticism of social contract theory. The inability of actual social contract theories to overcome such an objection indicates the conceptual shortcomings of insisting that the social contract be actual. Since the idea of the social contract as an actual contract, rather than hypothetical or ideal, has these fatal shortcomings, the fact that my analysis is inconsistent with it is not a very worrisome criticism.

As I noted above, my proposed understanding of the concept of the social contract falls cleanly into the tradition of hypothetical social contract theory. The intuition that motivates the creation of the social artifices, namely that the limitations that a perfectly free and rational person would or could accept are morally binding upon us all, even though we aren't perfectly free and rational, is the same sort of argument offered by Kant and Rawls; we are or should be bound by that which the appropriately described person would or could agree. The fact that the person described in the pre-political condition doesn't exist is of no consequence at all. Without this moral intuition, this moral background condition to the underpinning ideas, hypothetical and ideal social contract theory would be meaningless.

One may object to the assumption of this moral intuition, either in general or as a background condition of the concept of the social contract. I maintain, however, that doing so not only eliminates the possibility of using social contract theory, it hampers the ability to conduct moral inquiry. Therefore, in response to such an attack I ask two questions. The first is: what is the argument against this moral intuition? After all, it seems plausible and has been rather convincing in an assortment of theories. A simple denial that "I, the critic, don't have this intuition" may indicate the immoral nature of the

critic as much as it harms social contract theory. Furthermore, as I discussed in chapter three, this moral intuition is no different than proposing hypothetical situations in order to clarify what one should do in some set of circumstances. This model of investigation provides prescriptions for individual behavior; the abstract individual of social contract theory does so as well. My second question is: what is a suitable alternative to social contract theory? As indicated in the introduction, the idea that our political organization and conception of justice are derived from a rational agreement that recognizes our moral agency is a powerful justification. I don't think there is a suitable alternative readily available.

To return to the main discussion, a further way in which my proposed understanding of the concept of the social contract fits within the tradition of social contract theory concerns the scope of its conclusions. One will recall that Hobbes, Locke, Kant, and to a lesser degree, Rousseau and Rawls thought that their conception of the social contract provided *the* answer to the questions of political union, obligation, and justice. My proposed understanding, however, is obviously limited in scope to those who participate in the creation of the artificial commons of the mind. I have two comments to make concerning this issue. The first is that this limitation is similar to Rousseau's claim that a people must be *a* people before they can make the social contract mentioned above. In my terms, a group must form the political commons of the mind before the social contract can be made. Thus, since some groups (understood as conceptions of rationality) may not be part of a particular political commons of the mind, they may not be included in the social contract. All this shows is that there may be several different conceptions of the

social contract, much as Rousseau envisioned. They all, however, fit the concept of the social contract.

My second comment, however, leads in a different direction. There is no necessary reason why all conceptions of rationality, perhaps even all imaginable conceptions of rationality (irrespective of whether any group actually uses it), cannot be brought together to create a general or universal (in the limited sense) political commons of the mind.<sup>428</sup> Granted, there may be a great deal of negotiation needed given that some conceptions of rationality may be nearly diametrically opposed, at least on certain issues, to each other. In principle, however, a political commons of the mind could be developed, and the resulting conception of the social contract would then have universal scope in the manner originally envisioned by most social contract theorists. Thus, while I earlier denied the possibility of deriving absolutist answers from this concept of the social contract, there does seem to some possibility of them, although I grant that it is very remote.<sup>429</sup>

The preceding overview of this project ties the strands of my argument together in a way that allows me to succinctly state the understanding of the social contract that I am proposing. The social contract is a deliberately contrived theoretical tool designed to expose the requirements of a political society. The focus of the inquiry may change from political obligation to the limit of state authority to the basic requirements of justice. The social contract is meant to replace tradition as the justificatory method with reason, and the conception of reason used dictates to a significant degree the solutions that will be found. The social contract seeks to provide moral justification to certain political

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<sup>428</sup> This assumes that while conceptions of rationality may conflict, they don't directly contradict each other at the theoretical level. If it is possible for conceptions of rationality to be contradictory, then these current comments are moot, and I return to my first point. This possibility is a subject of further research, as I mention below.

<sup>429</sup> I discuss this possibility further in my remarks on future research inquiry.

positions *via* the intuition that people are morally bound to follow the limitations to which an appropriately described person would agree. The social contract uses artifices that are purposefully created to provide this description, even though no such person exists. By understanding the social contract in terms of social artifices, many common objections to social contract theory are met. Furthermore, by understanding reason in terms of social reason, one can meet certain difficulties inherent in the concept of universal reason, while maintaining the continuity of the underpinning ideas as social artifices.

The final issue to consider in this section is whether this proposed understanding of the concept of the social contract avoids the charge of being inherently patriarchal. If it does, it shows that social contract theory itself is not inherently patriarchal. Again, the dominance approach argument maintains that there are elements of social contract theory that are both necessary to social contract theory and inherently patriarchal. These elements, the public/ private distinction and the use of individualism, are judged to be inherently patriarchal in part because of their reliance upon the concept of individualistic, universal reason. My proposed understanding of the concept of the social contract does not rely upon the concept of universal reason. Once the concept of universal reason is replaced, one can also understand the ideas of individualism and the public/ private distinction so that they are not inherently patriarchal due to that feature.

There are, as mentioned above, other feminist critiques of the public/ private distinction and abstract individualism. The non-reason based arguments also claim that abstract individualism and the public/ private distinction are inherently patriarchal. However, the use of the idea of social artifice effectively neutralizes these arguments.

One critique of abstract individualism, for example, claims that the idea is abstracted from male concerns and male modes of being. In order for this to be the case, however, there must be a difference between men and women for individualism to exploit. As I have discussed above, the use of social artifice and social reason avoids the difference debate. In my proposed understanding, the inclusion of people in the civil society does not depend upon their mode of being. Thus, women are not necessarily excluded from the set of reasoning people. Rather, individualism merely refers to a stylized person with limited features restricted to political questions only designed by all members of the reasoning communities.

I think many of the non-reason based criticisms of the public/ private distinction and abstract individualism depend at some level on there being a difference between men and women that is ignored or exploited through these ideas. I think that since my proposed understanding of the social contract does not itself depend either way on the existence or lack of differences between men and women, these sorts of criticisms lose much of their traction. The critic will have to provide an argument why a theory in which differences do not matter is patriarchal based upon alleged differences. I do not think such an argument is forthcoming.

Furthermore, if it turns out that there are differences between men and women, and these differences are such that women are excluded from qualifying as individuals due to these differences, then the critic still has another difficulty. In such a case, the differences between men and women would have to be such that the intuition behind using hypothetical cases to determine moral prescriptions did not apply to women. If it did apply, then there is nothing in principle objectionable with individualism; the

problem would be with the particular description. Thus, again, the idea of individualism would not be inherently patriarchal. I do not know what to say if one wishes to maintain that the differences between men and women are such that the intuition does not apply to women, except that their conception of moral inquiry would have to be quite different from those methods with which we are familiar.

It is clear where Pateman's argument that the social contract is inherently patriarchal is flawed. The reason she believes that the social contract is inherently patriarchal is because she thinks the ideas of abstract individualism and the public/ private distinction are inherently patriarchal. The theoretical support for this claim lies in the patriarchal nature of universal reason, which provides the link between the definition of women and their exclusion from the public sphere through the ideas of abstract individualism and the public/ private distinction. Pateman either does not recognize that this traditional understanding of reason can be abandoned in favor of a conception of reason that is not patriarchal or she does not think such a change can be both non-patriarchal and compatible with social contract theory.

I have argued that the use of social reason accomplishes both of these tasks, and thus relieves social contract theory of the charge of patriarchalism. There is no conceptual link between the concept of the social contract and men having political rights merely in virtue of being men. In addition, further arguments about the patriarchal nature of these ideas is avoided because my understanding of the concept of the social contract, like the dominance approach, does not take sides in the difference debate. It makes no claims about the nature of women or men. Doing so would expose my approach to the charge that it is sexist, regardless of which side it endorses, for if one holds that there are no

differences then women must be like men in order to qualify for the civil sphere and one holds that they are different one opens the door to justifying exclusion through those differences. Thus, remaining neutral in the difference debate allows me to avoid the other patriarchal arguments. My view only claims that there is a possible conception of the social contract that does not necessarily exclude women, whether or not they are the same or different from men. It is true that this way of viewing social contract theory allows that patriarchal societies could still exist and still create patriarchal social contracts. My approach to the social contract does not eliminate the possibility of sexism and sexual domination from political theory. I have merely shown that the necessary elements of social contract theory are not necessarily patriarchal, and thus concluded that the concept of the social contract theory itself is not inherently patriarchal.

Some may ask how my proposed understanding of the social contract is different than Rawls' theory. It can be pointed out that Rawls might not object to the idea of social reason, and I myself indicated that the creation of the social artifice of the political commons of the mind was similar to Rawls' notion of overlapping consensus. Despite these similarities, there is one fundamental difference. My view is not constructed on the assumption of fairness, or any other particular value, as the guiding idea for the social contract. It is easy to see how the value of fairness would be a primary value given the institutions whose intuitions Rawls is seeking to expose. These institutions, such as market dealings and equivalent rights with everyone else, have the values of fairness at their core, yet they are also the institutions that require the institution of women's subordination. This was the ground for asserting Rawls' theory is patriarchal, that it needed the story of women's exclusion to be consistent. As I discuss in the next section,



my view is not constrained by the values of existing institutions, and thus escapes the need for the story of women's exclusion. In short, Rawls' theory is patriarchal, and mine isn't necessarily so.<sup>430</sup>

This concludes my comments about my proposed understanding of the concept of the social contract. I have established my thesis by showing that my understanding of the concept of the social contract avoids the charge of being inherently patriarchal, and in so doing opens the possibility for a non-patriarchal conception of the social contract to be developed. This possibility, in turn, demonstrates that social contract theory is not inherently patriarchal. This is an improvement over the traditional necessarily patriarchal understandings of social contract theory insofar as it does not necessitate a patriarchal system, and thus allows the use of the powerful idea of the social contract within political theory without the stain of necessary sexism.

### *Uses of the Social Contract*

At the outset of my remarks I indicated that there are at least two second order questions that need to be addressed, with a third, linking issue: what is the value of a theory that permits sexist social contracts; is the social contract trivial due to the claim that as a contract it brings no new content to the political union; and can the social contract be used to combat sexism and other social ills or is it merely an indicator of prevailing attitudes found in the commons of the mind? The first question has been answered. A theory that permits a sexist social contract is better than a theory that

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<sup>430</sup> It should also be pointed out that Rawls is providing a conception of the social contract, while I am only providing an understanding of the concept of the social contract, so comparisons may be a little like comparing apples and oranges. I grant that it may be the case that Rawls would agree with my view of the concept, and that a given society could select his two principles using my concept of the social contract. Thus, we may not disagree about much, but be working at two different levels of abstraction.

necessitates a sexist social contract. I suppose a theory that did not permit sexist social contracts may be even better, but I don't think such a conception of the social contract, with its reliance upon what people find rational, is forthcoming. This leaves the other two questions.

As I have said above, one important use of social contract theory is to determine if certain political practices are consistent with the organizing principles of the society. A given social contract may show that an intended law violates the social contract, and thus is unjust based upon the society's own values and conception of political rationality. Yet this use is reflective in nature, and does not help answer the questions before us, for what if the sexism found in a social contract is fully justified by that society's political commons of the mind?

It is clear that the social contract reflects the commons of the mind that generates its conception of rationality. If the society were patriarchal, it would seem that the ensuing conception of rationality would be sexist as well. The social contract built upon that conception of rationality would then reflect those sexist attitudes. Thus, it seems at first glance that social contract theory is actually ill suited to bring about social change. Yet I think this judgment is premature.

It is true that one is not able to derive radical conclusions from the social contract because they will not meet the requirements of reason as determined by the political commons of the mind. For example, one cannot rationally conclude that the state should feed the hungry if the political commons of the mind does not sanction such a conclusion. The reason such a conclusion might not be supported is that conceptions of rationality that are brought together to create the political rationality do not support it. If they did,

then one can assume that such a common value would appear in the artifice of political rationality. Thus, the social contract is not a useful tool for social change in that sense because it will not provide radical prescriptions. Yet one can work to change the commons of the mind, perhaps through conscious-raising efforts and other approaches to get people to see things differently.

The standards of rationality that a particular society accepts can be rather fluid. This is to say that the requirements of rationality can change over time. If one can change the commons of the mind, if one can convince members of the community that sexism and racism are social evils, then, perhaps slowly, these convictions will become incorporated into the conception of rationality held by that community. Then, since the relationship between the conception of rationality and the social contract is one of supervenience, a relationship where there can be no change in the one without a corresponding change in the other, the change in the community will entail a change in the positions the social contract can justify. Thus, given a patriarchal society, a group of individuals who are opposed to patriarchy can lobby and work at convincing others of their position. If they are successful, slowly the population would start to endorse the change in the commons of the mind that permitted that patriarchy, and social change can result.

Once the commons of the mind of the people starts to change, the social contract can be used to justify the new conclusions, based on an offering of a revised political commons of the mind. This justification, in turn, helps solidify the new values in the commons of the mind. This kind of self-reinforcing justification is quite common. Consider the very idea of the social contract. Although it has a long history, even in Hobbes' time it was a radical notion. The social contract was offered as a new

justification of the state and justice, replacing tradition. The commons of the mind of Hobbes' readers must have been (perhaps just) able to follow his reasoning, for it wasn't dismissed to the trash heap of irrational ranting. Over time, however, the idea of the social contract has become firmly a part of our commons of the mind with respect to justifying the state, justice, or the other concerns to which we put it. It seems fairly rational to most people who consider it.<sup>431</sup> Therefore, even if a conception of the social contract does not permit radical conclusions at the outset, it can be used in that endeavor. Once a portion of the population recognizes the rationality of, say, anti-sexist positions, it can offer a revised social contract based upon a revised political commons of the mind, which can then be used to fortify these conclusions in the wider population.

There is, however, one fundamental idea that is embodied in the concept of the social contract that makes it more than a reflection of these artifices. It is the moral background condition that informs the entire project; if the appropriately described person would limit her freedom in certain ways, then such a limitation is justified for everyone. This idea is what the very idea of the social contract attempts to capture. It may be true that this idea must also be (perhaps deeply) in the commons of the mind, and thereby in the political conception of rationality. The social contract does not reflect this idea in the same way that it reflects the other values. The moral background condition is the social contract project. Perhaps it is unfortunate that the word 'contract' has been used to capture this idea; the main idea is of moral justification. This is why arguments that hinge upon the nature of contracts have not overwhelmed social contract theory. It is a moral project, dependent upon a conception of rationality, to replace traditional authority with a new

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<sup>431</sup> Naturally there are critics, but I think many of them tend to be entangled in the problems of consent, and the rest in the ideas of volunteerism and obligation. I don't think they give due weight to the force of the hypothetical argument.

justification for the rules and limits of political union. This is the idea that is not a mere reflection of the commons of the mind that social contracts bring to the political positions they justify. It is this idea that is the basis of social contract theory.

Yet this use of the social contract does not show that it brings anything more to the conception of political union than can be found in the political conception of rationality or the political commons of the mind. It also obscures additional difficulties. The use of social contract theory in this manner requires knowledge of what the actual political commons of the mind is. Without this information, we can't envision what our society should be like, nor can we determine if current practices violate our contract. Yet determining what the political commons of any society actually is would be a very difficult task. These problems suggest another challenge to my proposed understanding of the social contract: can it generate any political theory at all? Before one can reveal the prescriptions of the social contract, one must know what the particular political commons of the mind for that society is.

There is, however, another use for my proposed understanding of the social contract that lends itself both to actual societies and the issue of social change. With respect to actual societies, one can 'reverse engineer' from our current institutions what sort of political commons of the mind would endorse such institutions, and then determine whether such a commons of the mind is a position the society would openly endorse. This is similar to taking someone's actions or beliefs and showing them how those actions or beliefs imply further beliefs that the person would not endorse. Thus, to see if our social contract permits some activity, one needs to analyze what sort of political

commons would justify it and then try to determine how close our actual society could be to such a commons.

With respect to social change, the same process can be used on descriptions of utopias or alternative structures for society to determine what sort of political commons of the mind would create such a society. This would inform people how to change their current society to get it closer to the society they envision. Finally, this method could be used as a normal device to see if the justifications, as presented in a political commons of the mind, would be acceptable to a population with respect to certain practices of that population. To return to the example of a patriarchal society, if one determined what the structure of the political commons of the mind would have to be in order to permit a patriarchal social contract that justified the current conditions, one might find that the people of that society would not want to explicitly endorse or acknowledge as theirs that conception of rationality. In this way, once people are made aware of the implications of their institutions, perhaps they can be moved to change the society. Thus, while my understanding of the social contract doesn't generate any particular political theory, it still has interesting applications within political theory.

My final comments concern the future research potential of my proposed understanding of the social contract. There are two clear avenues of exploration. The first is to develop a non-sexist political conception of rationality.<sup>432</sup> Such a project involves describing the commons of the mind that is acceptable to the different groups in society on the one hand and is devoid of patriarchal overtones on the other. Once the commons of the mind and the corresponding conception of political rationality are generated, one would be in a position to take the next step and derive a conception of the

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<sup>432</sup> Additionally, one may include non-racist and opposition to other forms of subordination as well.

social contract from that conception of reason. This would provide a non-sexist social contract, and could be used, as indicated above, to highlight the injustice of sexism and thereby bring more people to adopt it as their own non-sexist commons of the mind.

A second area of inquiry is whether a global political commons of the mind can be generated. This project, much like Rawls' attempt to describe overlapping consensus between liberal and non-liberal systems of justice, seeks to find a political commons of the mind acceptable to all peoples. In principle this should be possible, for even within the types of societies discussed above, there are certainly some groups that do not have liberal value systems, but still can participate in the social contract. An example of this is the participation of religious groups in the greater political union. While they recognize that they are not able to shape the state to their preconceived idea, their participation in creating the political commons of the mind insures the social contract won't ignore their concerns either. If they cannot accept the political commons of the mind, then they do not participate in the social contract, and are thus outside of the society. The status of such a group is perhaps another avenue of inquiry.

### *Conclusion*

To conclude, the dominance approach criticism holds that every conception of the social contract is inherently patriarchal because of the use patriarchal ideas. If every possible conception is patriarchal, then the concept, described in terms of those necessary ideas that are patriarchal, must also be patriarchal. I have offered an understanding of the concept of the social contract, however, that is not inherently patriarchal. This concept involves using the ideas of social reason and social artifice to overcome the criticisms

that abstract individualism and the public/ private distinction, both necessary parts of the social contract, are inherently patriarchal. Since the concept is not patriarchal, it is premature to conclude that every conception of the social contract is so. I will allow that the social contracts examined by Pateman and others are all patriarchal, but this does not entail that every conception of the social contract is. Although I have not provided a conception of the social contract that isn't patriarchal, the fact that the concept of the social contract isn't inherently patriarchal indicates that such a social contract is possible.

The new understanding of the social contract opens avenues of further research, both in terms of developing social contracts that renounce traditional forms of subordination, and discovering the requirements of rationality that would enable such a social contract. Finally, the new understanding of the social contract as embodying social artifices and using social reason allows an opportunity to develop a global social contract that could conceivably be used to overcome subordination worldwide. Beyond these new avenues of research, the primary value of this project is that the morally empowering idea embodied by social contract theory is preserved. This powerful idea, that the justificatory ideas of our political structures ought to reflect people's moral role as directors of their own lives, has no equal in political philosophy.



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