

## INDIVIDUALISM AND THE PROBLEM OF POLITICAL AUTHORITY

### *Introduction*

The problem of political authority concerns whether the institutions, practices, and activities we commonly find governments comprised of have sound moral foundations. The question is whether even the best of human communities, with their myriad of official elements, possess moral underpinnings so that what they require of their members may be enforced by some of their members. Political authority is expected to lend moral support to giving orders or issuing commands or handing down directives to people, which they may be *made* to follow by some officials in the name of the public interest or as requirements of good community life.<sup>1</sup>

One problem often associated with political authority is the way certain people may acquire the power associated with it. Whether bona fide political authority or mere political power, it is of interest what it takes to obtain it in different societies. But this problem won't concern us here.<sup>2</sup>

Another problem of political authority is one we will be addressing, namely, whether it is possible to acquire and possess it at all, that is, whether such a category of authority can even be found and what would comprise it. Although we have some general notion of what political authority is and of whether it can exist at all, my objective here is to give one line of argument in its support, as well as to clarify its nature. In effect I hope to provide the right conception of political authority, insofar as the individualist political framework is the correct one regarding human community life.

### *Individualism*

Individualists hold, with Robert Nozick, that "Individuals have rights, and there are things no person or group may do to them [without violating their rights]," adding, again with Nozick, that "So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do."<sup>3</sup> Nonindividualists have little trouble defending the moral propriety of all manner of state activity with which members of a human community have to contend.<sup>4</sup> They don't need to worry much about thwarting the will of individuals; but this is not so for the individualist who shares Nozick's view of the primary political value of individual autonomy and liberty. Indeed, most individualists would spend time rejecting the idea of

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political authority. My purpose, however, is to show that political authority, once it is properly understood, is justified from within an individualist moral framework. I argue that persons should strive to live an excellent human life, and since doing this is impossible to virtually anyone outside the context of a good human community (conceived along individualist lines), they should, morally speaking, establish such a community. And because of the prudence and effectiveness of it, they should empower some of the members of the community to protect and preserve the principles of such community life.<sup>5</sup>

I do not rely here on either state of nature or hypothetical contract approaches for establishing political authority.<sup>6</sup> Instead I will invoke an ethical-teleological approach. I expect to find moral reasons for the propriety and possible emergence of political authority in human communities. Given the basic assumptions of almost all ethical or moral theories,<sup>7</sup> this should be the most suitable stance from which to consider whether political authority can exist. If, that is, human beings are both free to seek certain ends of their very own (the free will assumption) and capable of identifying standards in accordance with which they ought to make their choices (the objectivist assumption), then whether political authority can exist needs to be answered by reference to whether people should seek what it entails and whether they can attain it in accordance with moral standards. Without these assumptions, captured in the slogan "ought implies can," it is a sheer mystery how any binding principles, whether in ethics or in politics, could apply to human conduct and the development of human social institutions and practices.

#### *Chain of Command*

Normally, some people in human communities enforce certain edicts, prohibitions, rules, etc. For example, the police enforce the rule against trespass. They have legal authority to do so. In turn, those who issue the orders or commands which are being enforced also claim authority, and in this they lay claim to political authority. They maintain, implicitly at least, that in their official role they should issue, and members of the community should accept, such orders.

Whenever some "officer of the law" enforces some edict or command—forcing someone to act in certain ways or to desist from doing something, as in "Open up in the name of the law"—a chain of command extends far beyond the conspicuous uniformed individual. Usually the officer could refer to some source of the *legal* authority being exerted, so as to attempt legally to justify the frequently untoward enforcement involved, and perhaps even resisted by some member of the community. However, not just anyone, at any time, is justified in forcing another individual or group to do something in

ing some confrontation. It is when these sorts of challenges or protests are levelled that we are faced with what comes closest to a genuine questioning of political authority. The point of such challenges is that those who level them refuse to accept as justified the implicit or explicit claim of others to be acting rightly in enforcing on them any public policy.

The hallmark of political authority, where an individualist would balk most readily regarding granting it moral legitimacy, is that physical force and its threat may be used by those who possess it against those who do not, so as to secure the public interest. Those who possess political authority may order behavior and force the public to obey or comply with their orders. A system of laws which carries political authority within itself is, in turn, morally binding on members of a community and may be enforced by those who are in possession of political authority. The orders or laws involved must uniquely pertain to matters that are of concern to the members of the community in their role as such members and not as parents, students, plumbers, baseball stars, etc. We are concerned here with political authority, and politics concerns persons as members of organized human communities, that is, as citizens.<sup>8</sup> Perhaps politics, as in totalitarian social system, encompasses all aspects of human life; perhaps, as in an individualist one, it encompasses either very few or none. But whatever its scope, politics bears on people as members of human communities. Political authority, in turn involves morally justified delegated powers and their use vis-a-vis members of communities in their role as such members.

If anyone ever rightfully possesses political authority, a way to begin to ascertain this would be to see whether there are some provisions (or principles or rules) which could be justifiably imposed by force on others; whether these bear on their membership in human communities as such; and whether, as well as how, it is possible for someone in particular to be in a position to employ such force with moral justification.

#### *The Private Use of Force*

One occasion which seems to most of us, except to pacifists, to justify using force on unwilling others is self-defense. The principles one enforces in self-defense concern the definition of one's exclusive sphere of (private) authority—or to use a phrase from Nozick, one's "moral space." This enforcement seems morally justified at least for the person who is first and foremost responsible for securing the safety and well-being of the target of aggression, namely, oneself. In self-defense, then, it appears<sup>9</sup> a person may, from the moral point of view, use force against another.

But what is the proper relationship between the defensive use of force and some moral framework or system? Let me put the question differently. Although most people appreciate the difference between the force applied

scope personal authority ought to have, one needs to know what the moral task of every person as a person is. And here is where it is crucial to know whether egoism, altruism, utilitarianism or some other ethical system is right. If ethical egoism is correct, then political individualism rests on more than quicksand and it is no problem, really, to determine why self-defense is very often not only unobjectionable morally but indeed required.<sup>13</sup> Moreover, ethical egoism would best explain the common sense understanding about self-defense. When someone protects himself or herself and uses force in the process, the person is, within specified limits, acting in the capacity of self-enhancement, doing what every human being ought, morally, to do. It would be cowardly to do otherwise.

The private use of force is, then, morally proper for each person in the task of protecting himself or herself. Pacifism, the only serious negation of the moral propriety of self-defensive force, would have to be rejected to the extent ethical egoism is true.

#### *Principled Social Life Identified*

There is no doubt of the innumerable values to be attained from interacting with others. So, it would seem to be morally proper for everyone, in terms of classical egoism, to embark on social life, provided provisions are made to overcome the severe dangers also inherent in this task. Because human beings all possess the capacity to be evil, and because some of the evil they can do is of direct impact upon one's life, a morally responsible involvement in social life requires taking full account of that fact and making preparations for coping with it. Furthermore, the division of labor makes it possible in human communities to secure valuable services in especially competent ways. So from an egoistic standpoint one ought to seek the help of a heart specialist when suffering heart disease, not merely try some home-brewed medicine or go to some amateur for help, and one ought to establish a system of organized self-defense within the context of community life, not try to fend for oneself. Human beings should, because it is good for them as human beings, make provisions for coping justly and competently with the general fact of interpersonal evil, that is, for coping with violence.<sup>14</sup>

This is the point at which the sphere of politics emerges in human life. Socially organized self-defense requires the promulgation of the principles of good community life, the selection of experts specially prepared in methods for protecting and preserving these principles, and what can be called due process in law enforcement. We will consider in a moment the principle involved. We can now see that it is morally proper for human beings not just to embark upon social life. It is crucial however, also, to establish the appropriate type of organized self-defense—namely, proper principles of

natural rights theory. Still I believe that, based on the foregoing and on related reflections, we may accept that the individualist political framework amounts to the view that each person has the natural right to life, liberty, and property, which one ought to make provisions to protect and presume. Without the authority over one's life, one's conduct would be thwarted at its roots. Without the authority over the particular actions one will or will not embark upon, this same moral task is truncated virtually from the start. And without the authority to interact fruitfully, productively, creatively with nature—including other willing human beings—the moral task one has becomes divorced from one's *actual* values, needs, and prospects in one's existence.

#### *Authorizing Law Enforcement*

But how is the connection between the morally required task of protecting and preserving one's basic rights, and political authority to be established? That is, the institutionalized social process of government, carried out by select people for the sake of the public at large, needs to be grounded in morally acceptable considerations.

To put it plainly at first, only when the authority to govern—to engage in politics—has been obtained in a morally appropriate fashion, can it be justified. The authority must stand for a proper purpose. And to obtain the authority to govern (others) for this purpose, namely, in support of the maintenance of the individualist principles of community life, the appropriate manner is consent, that is, the choice to be involved in politics. In obtaining such authority it is, in short, necessary to respect fully everyone's basic human rights, even as the purpose of having this authority is the protection and preservation of such rights.

The morally proper procedure to be followed may first be appreciated from the following simple cases of authorizing either the use of permissible (i.e., self-defensive) force or, in connection with such authorization, the use of force against oneself: First, if George chooses to have himself defended by Susan and Susan chooses to defend George, and they agree to this mutual relationship, then if George is attacked (unjustifiably), Susan is authorized to carry out the suitable defensive actions. Note, however, that if George unjustifiably attacks (uses non-defensive force against) a third person or group, Susan is not authorized to assist him in light of their agreement, since George never possessed the authority to use force on such third parties or groups. George is at liberty,<sup>21</sup> from the moral point of view, to enter into an agreement or contract with Susan for a service George himself has a right to and should produce, e.g., self-defense. Second, George and Harry are at liberty, morally, to enter into an agreement with each other and with Fred for the

been given to such enforcement. In other words, political authority must, for an individualist, rest on the consent of those on whom it may be exercised. But it is also true that consent may be given in a variety of ways. In short, the choice to submit to a just government may be made in different, sometimes subtle ways.

This of course is a tricky matter and anarchists are correct to concern themselves with the introduction of such notions as tacit consent or implicit consent. Such ideas carry with them a hint of underhandedness and threaten to usher on to the scene of politics just exactly what the individualist framework demands to have excluded, namely subjugating the will of some persons to that of others.

So far it can be seen that the authorization of law enforcement, in case the laws are just—or, less restrictively, in case the system of laws is essentially just—could very possibly be based on individualist premises. Yet, for the present all we can accept is that such authorization would have to be explicit and sporadic. Politics, unlike such short term endeavors as tennis tournaments, is a very long-range project. Human communities rely on a set of stable well coordinated principles and numerous derived rules, as well as on the effective and just enforcement of these, in order to embark on all that constitutes human life. Political authority, in turn, would involve longevity, as well. Without durability, fruitful and morally decent human community life would be impossible and attempts to secure it, via the institution of political authority, such a life would be in constant violation of the very principles which are to protect and preserve its very prospects. Is there a way to have community life and political authority without this tragic result?

#### *Consenting to Just Government*

Would the idea of implicit consent thwart or help the task of defending an individualist conception of political authority? The most prominent contemporary advocate of individualist anarchism, Murray N. Rothbard, finds no great problem with the idea of implicit consent however, at least when it comes to one aspect of community life. In one of his discussions of the moral superiority of anarchism, Rothbard says that “the hallmark of an anarchist society is one where no man may legally compel someone who is not a convicted criminal to do anything. . . .”<sup>22</sup> But within this idea, as well as throughout discussions of criminal justice, we find imbedded in individualist thought the sanction of implicit consent. Clearly criminals cannot be said to have consented to their own conviction other than implicitly.

From an individualist, natural-rights viewpoint, a convicted criminal gives implicit consent to (become familiar with) the system of laws (and what flows from them) in terms of which he has been convicted, provided those

cluding politics. Clearly, there are things one should not consent to do such as embark upon bad business ventures, marry on pretext, participate in ruinous sports, etc. From the egoistic ethical viewpoint one cannot, morally, consent to doing such things. Of course, from the point of view of law it may still be appropriate to tolerate and even uphold, e.g., contracts, which should not have been entered into. This would hold if the law should not intrude on just any form of improper human interaction, as it surely should not, by most accounts.

But there are also courses of conduct and institutional arrangements to which it is impossible to consent, for trying to do so would be to pervert the very idea of consent. This was suggested earlier in connection with George's authorization of Susan to act in George's defense. Such authorization does not extend to acting aggressively in George's behalf. One cannot consent to something one has no basic right to do, nor to institutions which are in violation of basic rights. The expression "government by the consent of the governed" therefore cannot be interpreted to mean, "any type of government by consent of the governed, including tyranny." Although it might be thought that one can consent to anything, it is clear from the case of George and Susan that that is a mistake. And insofar as consenting to fascism or socialism or even the welfare state amounts to agreeing that something be done to others who have not themselves agreed to being so treated, it is impossible to rationally construe such decisions as any kind of consent.

The upshot of this line of analysis is that only those who accept the lifestyle of a hermit manage to accomplish what some take to be the necessary outcome of the individualist stance on political authority. Yes, not everyone may be subject to political authority, but the price of this is that one must live in total solitude, in isolation from human community life, or in a social situation where everyone has consented to fend only for himself in such matters as self-defense, retaliation in the face of aggression, punishment, etc. Furthermore, the consent to be governed need not be made explicitly but can be implied, even in ignorance of the consenting party. Someone may undertake to do something and fail to think of what is implied by that undertaking, and this is possible to do as a member of society. But there are also strict limits to what may be consented to, and from the individualist standpoint it is impossible to consent to something one has no right to decide upon, for example, another's life, liberty, or property. Nor can one consent to the authority of enforcing principles of community organization which are in violation of the rights to life, liberty, and property, for that would mean consenting for others without the authority to do so. To argue that one can consent to the violation of one's own rights is, as far as I am able to discern, confused. It would at best be a bad way of putting that some people have indeed

submit to the demand to defend the community in which one lives by one's own choice, just as such consent may seem to imply a consent to submit to taxation for governmental services. However, defending a country is possible by *hiring* people from home or abroad. Financing a country is also possible by *charging* for services provided by the legal system—e.g., via a system of contract fees, post facto charges for police services, etc.<sup>24</sup> Subpoenas, in cases where a citizen is the sole source of the indispensable information needed to foster justice, would seem to be justified, on ground of implicit consent. To choose to be part of a system of justice but refuse to aid it when one is *the only possible source of that justice* is a contradiction. But, of course, these matters deserve further treatment. I will leave off discussing them here, however, in order to attend briefly to one of the thorniest topics facing an individualist analysis of political authority, namely, whether government can claim exclusive political authority and how defections or secessions should be dealt with. This is indeed the very topic with which Nozick began his discussion of the justice of the minimal state and it is also the topic which has occupied the attention of numerous individualist theorists.

As to defections or secessions, my remarks on who can escape political authority already suggested that although it is possible to withdraw or secede from a just human community, it is *very difficult indeed virtually impossible* to do so without foregoing the task of living the good life.

As to the proper reply to the challenge concerning exclusivity, it needs to be noted first that the objective of political authority is, in large part, to avail members of a community of the opportunity to have conflicting claims alleging rights violations properly resolved. Unless something on the order of a court of *final* authority exists, this is in principle impossible in some cases, e.g., when different (systems of) courts end in conflicting resolutions of the same dispute (when one party is subject to one court's, the other to the other's jurisdiction). Under such circumstances the potential for out and out physical conflict is always present, somewhat on the order of what obtains in international relations (without goodwill and suitable treaties). Imbedded in the conception of political authority developed here is the requirement that however many different avenues toward the resolution of disputes concerning claims to rights violation may exist, a good human community can have only one final authority, having jurisdiction over a homogenous sphere of human occupancy, and commanding an enforcement agency with loyalty to no other final authority. (This matter would, of course, be one of the provisions in need of promulgation within a good human community.)

No system of justice that cannot be implemented for ordinary cases of human disputation can claim political authority over anyone. It would be a fraudulent claim that such a system even aims for justice when in principle it

best be understood. Finally, I have tried to indicate some of the ways the present perspective on political authority preserves the values of individualism despite contrary appearances, for example, in rejecting taxation, conscription, and other forms of force labor and expropriation of wealth as unjust and how it requires a homogenous jurisdiction for the implementation of the just system of laws in terms of which a community ought to be organized.<sup>27</sup>

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#### NOTES

1. Both "good human community" and "public interest" could refer to the same state of affairs when understood in certain ways.

2. Richard Taylor's paper in this issue of *The Monist* concerns this.

3. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. ix.

4. A good example is Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977). Dworkin never establishes government's authority to govern but merely specifies some checks on its rule.

5. Some may hold that this conclusion presupposes very strong premises for this argument. But the argument actually rests on considerations involving the value of the division of labor, etc., besides the ethical egoist premises given here.

6. State-of-nature arguments assume persons are *driven* into community life, with no moral choice present as to whether to do so, and contract theories tend to leave open the issue of whether it is morally right to enter the pertinent contract in the first place. See my "Contract as the Basis of Norm," *The Journal of Libertarian Studies* (forthcoming).

7. These are, incidentally, contained, implicitly, in the familiar slogan: "Ought implies can."

8. See Tibor R. Machan, "Rational Choice and Public Affairs," *Theory and Decision*, 12 (September 1980): 229-58.

9. I say "appears" because I haven't yet argued that self-defense is morally justified and even required for everyone.

10. For more see Ayn Rand, *The Virtue of Selfishness* (New York: Signet Books, 1964).

11. See Tibor R. Machan, "Recent Work in Ethical Egoism," *American Philosophical Quarterly*, 16 (January 1979): 1-15.

12. See Douglas Rasmussen, "Essentialism, Values and Rights," in T. R. Machan, ed., *The Libertarian Reader* (Totowa, NJ: Rowman and Littlefield, 1982), pp. 37-52.

13. Sometimes self-sacrifice, as commonly understood, could be called for on ethical egoist grounds, e.g., when some rationally, egoistically chosen commitment implies its necessity. An egoist could join the military where such sacrifice would be appropriate.

16. "Hume and the Social Contract," *Philosophical Quarterly*, 28 (1978): 132–48.

17. "In Defense of the Consent Theory of Political Obligation and Authority," *Ethics*, 87 (1977): 260–71.

18. Promise or consent has not come off if an attempt to perform such an act does not succeed and, therefore, fails to create the right and obligation normally created by such an act.

19. *MPPO*, p. 58.

20. *Ibid.*, p. 80.

21. *Ibid.*, p. 96.

the context of any system of laws, whether in a democracy, a republic, a monarchy, socialism, or capitalism. For instance, not just anyone is justified in forcing another, or threatening to force another if no compliance is forthcoming, to go along to police headquarters. One's next door neighbor usually has no recourse to such measures, mainly because no legal justification exists for any putative authority to bring someone in (except where citizen's arrests are at issue, provided procedures are followed).

Nor could just anyone appoint police officers, spell out the rules they must follow as they carry out their police work, instruct police officers as to their duties and their jurisdiction, etc. And those who hire the police might also have to come by their own role through specific procedures. In a democracy, for example, such people are usually elected by some appropriately held electoral process. In such a system the authority of the police to make arrests, etc., would ultimately derive, through the elected officials, from the decision of members of a politically active majority of the population. In short, the authority to enforce public policy is obtained from the bulk of the people, in the last analysis, based in part on the alleged propriety of the democratic process. This may or may not amount to a proper method of acquiring political authority, but it exemplifies one familiar contender to how that might properly be done, namely, through limited consent of the majority of the governed.

#### *Challenging the Links*

Claims to authority may be challenged on all fronts. In the arena of politics and law one who resists compliance might simply wish to refuse so as to do something else. But it is also possible to resist for other reasons. One might believe the officers made a mistake. One might deny their (implicit) claim to being officers of the law. One might also deny that they have proper jurisdiction over oneself, and thus challenge political authority directly.

Civil rights protestors refused to accept that officers of the law acted properly by removing protestors as they carried out their "sit ins" at segregated facilities. Whether the resistance is peaceful or violent, a challenge of legal authority is very possibly its basis, but it could go considerably further, of course. When native Americans, American Indians, reject the authority of the Bureau of Indian Affairs of the U.S. Department of the Interior, they do not protest some specific edict, nor the claims of the officials to be bona fide officials, nor again the legal authority of the agency. Instead they maintain that the institution of that authority is itself unfounded, morally illegitimate. When the Black Panthers fought the police in the late 1960s, they or their leaders often argued on TV talk shows that they wholeheartedly disputed the moral authority of the officers of "white America's law," regardless of the wisdom or lack thereof of the particular matter at hand dur-

against a boxer by his opponent in the ring and the same by some thug, why, if at all, should we at least as individualists regard the former justifiable and the latter morally wrong? I will here merely suggest the answer within the general field of ethics I wish to draw upon.

Ethics is concerned with trying to answer the question "How should I act or conduct myself as I live my life?" The right answer to this question would be the initial step toward discovering whether the use of force on others might sometimes be morally justified.<sup>10</sup> *Classical* egoism is, I hold, the best answer to the question raised in ethics. The term "classical" applies so as to give notice about the lack of affinity between the conception of the ego or individual underlying this ethics versus the conception of the ego inherited from Thomas Hobbes, a nominalist or anti-realist concerning human nature, a conception often regarded as necessarily connected with egoism. Classical egoism as an ethical position takes self-interest to be objective and necessarily connected with the nature of the self involved, that is, with human nature. As to whether this ethical position overcomes the standard suspicions about egoism, voiced for example by John Rawls, I cannot discuss here. I take it that it does and have so argued elsewhere.<sup>11</sup>

The classical egoist holds that the primary ethical task for each person is the fullest development of himself or herself as a living human being *and* as the individual that he or she is. This view ties values to life and moral values to human life. The valuation of human life for every individual amounts, in turn, to the valuation of the particular human life over which the person has direct responsibility, namely, oneself. Since a person's pursuit of values, and first and foremost his or her life as a human being, is a matter of choice, this pursuit is a moral task. Ultimately, it comes to the fulfillment of the chosen responsibility to enhancing oneself to the fullest, as dictated by human nature and one's own individual identity.<sup>12</sup> What bearing does all this have on politics?

Many individualists will defend a natural rights position, which upholds exclusive personal authority over one's life, thus setting the groundwork for self-defense and a limited conception of politics. This strategy, however, misses the fact that natural rights themselves require a moral or ethical foundation. Why should a person and not others or society or the majority have authority over that person's life? One answer that may be given is that morality involves choice, so whatever moral position is true, one needs personal authority over one's life so as to have a chance at being a good human being, to have a chance at moral excellence, whether in terms of hedonism, altruism or whatever other true moral system. But this begs the question concerning whether the life of a person is for that person or perhaps for the state or God or family or some other agent(s) to try to perfect. To establish what

politics and law, including the proper methods of law enforcement and of selecting those law makers and enforcers.

For individualists there are two factors which constitute the basis for the suitable conditions of good human community life: (1) One's moral task or responsibility to govern one's life properly and successfully (i.e., to lead a happy life), and (2) the need for a determination of wherein each person's sphere of authority (regarding the former task) lies within a community of other human beings (also expected to be facing such a task).<sup>15</sup> These factors, pertaining to the moral nature of human life, ground the theory of natural rights referred to by Nozick at the outset of this discussion. Freedom and independence, as Locke observed, characterize the moral nature of a human being and accordingly certain social conditions are morally right or required for persons as they live in human communities. As Ayn Rand explains the point,

'Rights' are a moral concept—the concept that provides the logical transition from the principles guiding an individual's actions to the principles guiding his relationship with others—the concept that preserves and protects individual morality in a social context—the link between the moral code of a man and the legal code of a society, between ethics and politics.<sup>16</sup>

These basic rights, e.g., to life, liberty, and property, are natural because they "are conditions of existence required by man's *nature* for his *proper* survival."<sup>17</sup>

Of course, just what basic rights human beings possess—indeed whether they possess any and in what sense they might—cannot be debated here. The sort of natural rights we find in John Locke's political theory and in theories which have built upon and refined it rest on a conception of the individual as free and independent and on ethics which requires persons to pursue their self-interests as they make use of this freedom and independence. It is not one of Marx's many mistakes to have associated the doctrine of the rights of man with egoism when he noted that "none of the so-called rights of man goes beyond egoistic man, man as he is in civil society, namely an individual withdrawn behind his private interests and whims and separated from the community."<sup>18</sup> But Marx was mistaken in construing the separation of man from man embedded in the Lockean approach to presuppose a view whereby "a man [must be] treated as an isolated monad."<sup>19</sup> The only respect in which the classical egoist and the Lockean natural rights positions require man to be separated from man is in the respect of each person's moral life, that is, in that each person must take responsibility for his or her actions within some range of possible behavior he or she might engage in.<sup>20</sup>

A detailed examination of the connection between classical egoism and natural rights cannot be carried out here. Nor can I demonstrate the truth of

purpose of having Fred adjudicate some possible and probable future dispute between George and Harry as well as to enforce the verdict by force, according to standards to justice—i.e., so that in the adjudication and enforcement processes no one's rights will be violated.

I have already noted the worth of these sorts of arrangements from the egoistic-individualist moral framework. The single case of hiring a body or security guard shows the value of the sort of agreement entered into by George and Susan. We can also point to the ordinary circumstances of athletic competitions to highlight the value of such agreements as that between George, Harry, and Fred. In their reflective, dispassionate moments, when they are presumably focused on long-range and overriding values, athletes clearly appreciate such factors as impartial judgment, accuracy, and consistency concerning matters of rule violation. They know that they themselves are less likely to be focused on these factors than would be an independent, impartial referee hired for that purpose. So as to facilitate competition, it is prudent to elect persons with special training for such tasks as watching whether anyone is violating the rules of the game. All this should motivate them, as athletes, to designate referees to exercise full authority during competition as regards observance of the rules, even though the athletes know very well, also, that when a referee makes a particular judgment regarding who has violated some rule, the implicated party might protest bitterly. (John McEnroe comes to mind here, for anyone who is familiar with contemporary tennis. And the Olympics is replete with protests.) The initial consent based on prudent sportsmanship, to carry on within the framework at hand commits the athletes to live with the arrangements, despite objecting to and violating them now and then.

The athletic competition analogy is inadequate, however, since in such cases the consent given is usually explicit and players can always withdraw in protest. Nor is there authorization of the use of physical force in implementing the rules; in cases of violent protest the law is called upon, not the referee. The situation of human community life is different. As the individualist anarchist will readily remind us, many who are subject to the governing principles of human community life, even when these are indeed the just principles, have not given their consent. Nor have they given their consent to having the rules enforced by the persons who would be enforcing them. These considerations appear to speak most forcefully against the possibility of ever justifying political authority within the framework of an individualist ethical-political theory. And it is in order to answer these and related concerns that a fairly full blown theory is necessary.

It is true that, strictly speaking, individualism does not sanction any enforcement of rules or laws upon a person when no consent by that person has

laws are objectively just. From this perspective interacting with others rationally and morally commits a person to observing that they possess basic rights and are morally free and even responsible to defend these rights. The following points from Eric Mack will make the matter clear:

Let us suppose that Smith is acting, pursuing certain goals. In the course of these actions, Jones is used [i.e., Jones is made a victim of Smith's actions]. That is, as a result of the actions performed by Smith (not necessarily actions that are in Smith's interest) some portion of Jones' life is consumed. Smith acts in a way that would be justified only if that portion of Jones' life were at his disposal, in the same sense that an unclaimed natural resource might be at Smith's disposal. It is this sort of action, action wherein Jones is used, treated as a natural resource at the actor's disposal, that I claim are actions done as if it is not the case that Jones ought to act in his own interest. These are the actions that cannot be justified with the egoistic principle.<sup>23</sup>

Interactions with persons entails moral as well as other conditions. If, in turn, someone attacks another, that act carries with it, as a matter of the logic of aggression, the implication that from a rational standpoint the victim may and often should retaliate. And if that victim is a citizen of a legal system, such aggressive action also carries with it the implication that the system's just response has to be accepted by the aggressor.

In order to see whether this analysis is convincing, we should examine whether less drastic cases of implicit consent are at least plausible. Suppose that someone takes a teaching job but will not administer tests, correct papers, read up on recent findings in one's field, etc., but when questioned we are told that all that had been agreed to was that there will be some teaching done. Suppose again, that one is put up at a friend's home but when using the bathroom is told that, well, the agreement was to provide a place to stay but no mention was made of using the bathroom. These and related cases suggest the sense in which one can implicitly consent to do something which one has not explicitly agreed to do.

In general, if to embark upon a task it is contextually necessary also to perform some other tasks or accept some other responsibilities, then one who has agreed to do the former in explicit terms is committed to the latter implicitly. For living among other human beings this general idea implies that in the process of interacting with others one is morally unjustified in treating them as if they were natural resources, available for us without permission, as well as that if one breaches this moral conclusion, one may be acted against in certain ways either by one's victim or by properly designated third parties.

Consent, then, is possible both implicitly and explicitly. Yet there are discernible standards governing the scope of consent in all sorts of cases, in-

exercised their right to liberty by agreeing not to do certain things, for example, not to behave in a way that would otherwise be construed as self-defense, protecting one's property, etc. Granting others permission to one's life, actions, or belongings is just one of the ways one may exercise one's rights.

### *Some Critical Rebuttals*

To the charge that the notion of implicit consent within the individualist framework gives away the very principles that individualism wishes to uphold, the answer is that it does not because consent, whether explicit or implicit, has its limits. One may by consent establish a just government. One cannot establish by consent unjust governments, for one has no right to act unjustly.

But there may still be a concern with this idea simply because it appears that in the case of consenting to be governed, one would be allowing an implicit consent to carry so much weight that one of us could be construed as having the responsibility to appreciate what all we are consenting to when we are said by this analysis to offer this consent. And strictly speaking this is right. The entire weight of even the perfectly just political system cannot be said to be accepted by the mere agreement to interact with human beings in an organized community. What needs to be noted is that while there are limits on what may be consented to, there are also requirements to be met so as to earn the consent of others. A legal system needs, for example, to be publicized. Its basic (and perhaps its less obvious) features need to be promulgated so that those who have consented to live by such a system could learn of its provisions without a great deal of difficulty—or could learn how to find out what they need to know when they need to know it.

What one gives consent to then in interacting with others in an organized human community is not so much the actual full system of laws and its myriad implications, procedures, etc., but the willingness to find out what the system requires of one as the need arises. Ignorance of the law then would be no excuse. In complex social life it is laws that guide interpersonal conduct, and as one chooses to interact with those party to such life, one accepts the responsibility to learn the laws which make this life possible. (Some of this underlies the idea that education should involve civic studies!)

Given an individualist conception of social life, one may pose certain challenges in light of the above discussion. Could political authority extend to the institutions of conscription, taxation, subpoenas, etc.? I won't answer these questions in detail but I will suggest what I take to be the correct approach to handling them. Conscription and taxation do not qualify as measures which are implicitly consented by the governed. At first blush it may appear that consenting to be governed must surely imply a consent to

cannot reach it. This is, thus, a necessary feature of a good human community, namely, that its political authority be undivided. (But this says nothing of such prudent measures as a political system which embodies a balance of powers.)

I have elsewhere confronted explicitly the arguments for so-called anarcho-libertarianism or individualist anarchism, so the above will have to suffice as an answer for now.<sup>25</sup> I must, however, mention here something about second or third-best circumstances and how the present theory applies to them.

When we live in communities of the type we are familiar with, namely ones of which it would be absurd to say that they avail us with bona fide, proper political authority in their regimes and systems of law, how do we apply the finding of the present discussion? The most sensible way to think about this is to make the distinction between acting from obligation versus acting in compliance. Those parts of the system to which we should have given consent, had we had the opportunity to do so explicitly, may be regarded as parts which we implicitly consent to by our presence and various activities.<sup>26</sup> These parts we have an obligation to respect and if we fail to do so we are rightfully punished for that. On the other hand we may also find it prudent to comply with numerous features of existing systems because failure to do so would land us in jail, however unjustly. Not all cases of injustice can and should be fought directly—sometimes pamphleteering, as shown by revolutionary Americans and dissident Russians, is all that can be done in the way of resistance. At other times outright rebellion is the best choice of conduct. And there are grey areas, as well. But one does not buy into a whole system even when one does buy into parts of it, even if one tolerates or does not openly challenge some pretty awful parts.

### *Conclusion*

There are numerous other issues which could be touched on here, but I believe I have now carried the argument of the individualist in support of a certain conception of political authority far enough so that we can consider its basic ingredients. I have tried to show that it is possible to provide individualist, ethical egoistically-based moral justification for the existence and exercise of political authority. I have maintained that the motivation to live a morally good human life makes the choice to live among others in an organized community a sound one, and I have argued that once that choice is made, it implies (because of the requirements and opportunities associated with such community life) consent to the adherence of certain principles and the obedience of certain powers who are established to protect and preserve those principles. I have also indicated how the limits of those powers would

14. The manner in which this kind of reasoning should be understood as a species of egoism which does not result in the sort of problems usually found in egoistic accounts of social life may be gleaned from Jesse Kalin, "Two Kinds of Moral Reasoning," *Canadian Journal of Philosophy*, 5 (March 1975), and David L. Norton, *Personal Destinies: A Philosophy of Ethical Individualism* (Princeton: Princeton University Press, 1976). I am especially appreciative of Norton's idea of "consequent sociality" for purposes of a full development of this point.

15. It is at this point that the concern for private property rights expressed by individualists and totally neglected by collectivists might be best appreciated. How can a person act morally if there is no sphere or territory or domain of individual authority or if none is acknowledged in the legal system of a good human community?

16. Ayn Rand, "Man's Rights," in *Capitalism: The Unknown Ideal* (New York: Signet Books, 1967), p. 320.

17. *Ibid.*

18. Karl Marx, *Selected Writings* (Oxford: Oxford University Press, 1977), p. 53.

19. *Ibid.*

20. This is what underlies the view that persons are neither guilty or innocent collectively but only individually.

21. I mean by "being at liberty morally" that no basic prohibition exists against this kind of conduct, although on some occasions one could be doing the morally wrong thing to engage in it.

22. Murray N. Rothbard, "Society Without a State," in *The Libertarian Reader*, p. 60.

23. Eric Mack, "Egoism and Rights," *The Personalist*, 54 (Winter 1973): 30.

24. See Tibor R. Machan, "Dissolving the Problem of Public Goods," in *The Libertarian Reader* (cited in n12, above), pp. 201–08.

25. See Tibor R. Machan, *Human Rights and Human Liberties* (Chicago: Nelson-Hall, 1975).

26. For a more detailed discussion of this point see J. Roger Lee, "The Arrest and Punishment of Criminals," in *The Libertarian Reader* (cited in n12, above), pp. 88–89.

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