SOCIAL CONTRACT

LOCKE
HUME
ROUSSEAU

with an
Introduction by
Sir
ERNEST
BARKER

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ESSAYS BY

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natural and inherent right of property, not created by the recognition and guarantee of a community, but existing before the community; whereas Hobbes — really more radical (and similar, in this respect, to Rousseau) — holds that property, like all other rights of the subject, is the creation of government, and subject, as such, to the control of its creator. Again there is also a right of punishment — indeed there is a double right: 'there are two distinct rights, the one of punishing the crime, for restraint and preventing the like offence, which . . . is in everybody, the other of taking reparation, which belongs only to the injured party' (§ 11). Such a right of punishment is the necessary corollary of the right of property; but the difficulty of such a pre-political condition as Locke describes is that it is really political. Locke's state of nature, with its régime of recognized rights, is already a political society.

He seeks to meet this difficulty, and to distinguish the state of nature from a state of organized society, by noting the imperfections present in a state of nature. When men are judges in their own case, as in such a state they are, three imperfections ensue — partial judgments; inadequate force for the execution of judgments; and variety in the judgments passed by different men in similar cases. There are therefore three things needed to remedy these imperfections — a judicature to administer law impartially; an executive to enforce the decisions of the judicature; and a legislature to lay down a uniform rule of judgment (§§ 124–6). In order to secure these remedies, men 'give up every one his single power of punishing [not, as Hobbes argued, *all* their powers, and certainly not their power over property] to be exercised by such alone as shall be appointed to it amongst them [that is to say, an executive], and by such rules as the community, or those authorized by them to that purpose, shall agree on [in other words, a legislature, composed either of the people itself or of its representatives]' (§ 127). But while Hobbes had conceived of the contract of surrender, by which a society is formed, as one with the institution of government, Locke distinguishes two separate acts. By the first, men having 'consented to make one

community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest' (§ 95).[10] By the second, 'the majority' resolve 'upon the placing of the supreme power, which is the legislative' (§ 132); and here we may note Locke's exaltation — somewhat qualified, as will presently appear, in his later argument — of the supremacy of the legislative power. But from the first he regards the legislative, even if it be the supreme power, as 'limited to the public good of the society' (§ 132). It is 'only a *fiduciary* power to act for certain ends,' and 'there remains still in the people a supreme power [another and higher 'supreme power'] to remove or alter the legislative, when they find the legislative act contrary to the *trust* reposed in them' (§ 149).

Here, in the conception of trust, Locke is drawing on the English law of equity, as he had previously drawn (and generally draws) on the different and yet cognate idea of a general Law of Nature. But before we pursue the idea of trust, there is something to be said about Locke's general conception of the powers of government — not only the legislative, but also the other powers. We have seen that his account of the imperfections of the state of nature suggests three remedies for those imperfections, and that these three remedies would appear to be an executive, a judicial, and a legislative power. Actually, however, he proceeds to argue in terms of *two* powers rather than three. These two are (1) the legislative, and (2) the executive, which would seem to include the judicial and to be mainly concerned with the internal problem of dispensing justice under the laws promulgated by the legislative. He notes of the former that 'there is no need that the legislative should be always in being,' and of the latter that 'it is necessary there should be a power always in being which should see to the execution of the laws'; and he concludes that on this ground — the discontinuity of the one, and the continuity of the other — 'the legislative and the executive power come

10. Locke's enunciation of the majority principle and his defense of that principle in §§ 96–9 is a notable, if imperfect, study of a fundamental problem.

often to be separated' (§§ 143–4).[11] But Locke has a third power still to produce (so that, in the event, he speaks after all in terms of *three* powers); and he calls this power by the name of the 'federative' — in other words the power that makes *foedera*, or treaties, and is thus concerned with external relations. We must not, however, lay too much stress on this new distinction which produces a 'federative' power in addition to the executive. These two powers, 'though . . . really distinct in themselves . . . are hardly to be separated,' and 'are almost always united.' We may thus come to two conclusions about Locke's conception of the powers of governments. The first is that though, like Montesquieu, he speaks of three powers, his three powers (the legislative, executive, and 'federative') are different from the three powers distinguished by Montesquieu; and it was Montesquieu who first established the executive, legislative, and judicial powers as the current classification. The second is that though Locke incidentally speaks of the legislative and the executive as 'coming often to be separated,' he does not emphasize their separation (and still less that of the judicial power); and he generally seems to regard sovereignty — so far as he has any theory of sovereignty (a problem still to be discussed) — as something unitary.

We may now return to the conception of trust, and to its bearing on Locke's general theory of contract. Early in 1689 — the year before the publication of the *Two Treatises* — even the House of Lords, as a part of the Convention Parliament, had agreed by 55 votes to 46 that there was an original contract between the king and the people; and the practical consequences drawn from that premise had been (1) the parliamentary deposition (euphemistically termed 'abdication') of the king, (2) a vacancy of the throne, and (3) the parliamentary institution of a new king — or, more exactly, of a new king and queen (William and Mary) reigning conjointly. Locke accepted and justified the consequences; but he did not accept the premise. He did not, like Parliament, think in terms

11. This would appear to be as far as Locke goes in the direction of any doctrine of 'separation of powers.'

his person all the persons (that is to say the rights, or rather the powers) of his subjects, first makes them one person or body politic in himself. Locke regards the incorporation of a society as something internal, and as consisting in the voluntary coherence of its members; Hobbes regards it as something external, and as consisting in the cohesive force applied by the head to the members. For Hobbes, there can be no corporation apart from the head; for Locke, there can be a corporate society even without a trustee. There is some warrant in the statute book after 1689 for Locke's view. 'The Public,' apart from the king and without the king, is treated in law as a corporate body responsible for the national debt. The king, as Charles II had shown at the time of the Stop of the Exchequer (1672), was not a punctual debtor; and though he might be trustee for the community, the community itself commended itself most as a responsible body to anxious creditors. The community, under the style of 'the Public,' accordingly becomes enough of a corporation to borrow from its members and pay them their interest: it even enters into financial transactions with the East India Company.[14]

2. On the other hand, Locke has no clear view of the nature or residence of sovereignty. He speaks at one time of the supreme power of the people, or in other words the community; he speaks at another of the supreme power of the legislative — which may, it is true, be the community, but may also be a body of representatives appointed by the community; and in still another context he remarks that 'where . . . the executive is vested in a single person who has also a share in the legislative, then that single person, in a very tolerable sense, may also be called the supreme power' (§ 151). 'Under *which* king, Bezonian,' one is tempted to ask — community; legislative; or single person? Locke has no certain answer. His thought turns less on sovereignty than on the rights of the individual and the limits set by those rights to the sovereign, whoever he may be. Behind these rights, as their

14. Maitland, Introduction to Gierke's *Political Theories of the Middle Age*, p. xxxvi.

stay and pillar, stands the majesty of Natural Law; and we may almost say that the ultimate control, or final sovereign, is neither the legislative nor even the community behind the legislative, but a system of Natural Law upholding natural rights. When the community acts, in the last resort, in some rare and great event of oppression, as master of its own fate, it acts in the name, and on behalf, of this final majesty.

3. There is, however, an anticipation in Locke's *Second Treatise* of Rousseau's idea of the permanent and permanently acting sovereignty of the community. In one passage, already quoted, he speaks of the rules of law agreed on *either* by the community *or* by those authorized by them to that purpose (§ 127); and in another and more explicit passage he suggests that 'the majority having . . . the whole power of the community naturally in them, may employ all that power in making laws for the community . . . and executing those laws by officers of their own appointing; and then the form of the government is a perfect democracy' (§ 132). But though he attains the idea of the permanent and permanently acting sovereignty of the community, Locke does not press the idea. He stands on the whole for the Whig grandees, entrenched in the House of Lords and influencing the House of Commons. He leaves the supreme power in the hands of the king in parliament (but it is to be a reformed parliament, and in §§ 157–8 he has a notable passage on the crying need of parliamentary reform); and he conceives the ultimate power of the community (or shall we say 'penultimate,' remembering that Natural Law is the last and farthest ultimate?) as only emerging when the legislative has to be removed or altered for acting contrary to the trust (§ 149) — when government is dissolved, and the people are at liberty to provide for themselves (§ 220) — when supreme power 'upon the forfeiture of their rulers . . . reverts to the society, and the people have a right to act as supreme' (§ 243). It is 'rarely, rarely' that the will of the community acts — only on those rare occasions when government is dissolved and revolution requires its remedy. Bosanquet has justly argued in his *Philosophical*

which principally engaged their attention. But Vattel, if he devoted three of the four books of his treatise to 'the nation considered in its relation to others,' devoted the first of the four to 'the nation considered in itself,' by which he meant a theory of the State and of society generally. Rousseau would appear to have intended to follow the same design. The four books which now form the *Du Contrat Social* were intended, like Vattel's first book, to contain an account of 'the nation considered in itself'; but they were to be followed, as we learn from a concluding sentence, by an account of 'the nation considered in its relation to others,' or, in other words, by a theory of *le droit des gens*. 'After laying down the true principles of *droit politique*,' Rousseau wrote, 'and attempting to establish the State on its basis, it will remain for us to consolidate it by its external relations, and that will comprise *le droit des gens*.' But he found the theme too vast; and his treatise *Du Contrat Social* is a propylaeum which leads into nothing further.[18]

We may thus attach Rousseau to the School of Natural Law; but we must also dissociate him from it. It is a significant thing that the first draft of the *Contrat Social* contained a long chapter, originally entitled 'Du droit naturel et de la Société générale,' which was meant to refute the idea of natural law. It is also a significant thing, and suggestive of an oscillating mind, that the whole of this chapter is omitted in the final draft and the printed version. Where did Rousseau actually stand in regard to the idea of natural law? He hardly knew. On the one hand he needed it — for how could there be a legal thing like a contract of society unless there were a natural law in terms and under the sanction of which a contract could be made? — and he also found it in his authorities. On the other hand he disliked it; and he felt in his bones that the nation

18. In his *Confessions* Rousseau speaks of having conceived the design of a general work on *Institutions politiques* (external as well as internal?) as early as 1744, when he was a secretary to the French Ambassador in Venice, and of having detached the *Contrat Social* from what he had written of this work and 'resolved to burn all the rest.' See C. E. Vaughan's edition, vol. ii, pp. 1–2, and vol. i, p. 438, n. 1.

School of Natural Law; and while the springs of the past flow into his teaching, the springs of the future also issue from it.[20]

This was the general setting, and the general influence, of the *Contrat Social*. A book so Janus-like can easily be interpreted in opposite senses. For a long time, and by most thinkers (as well as by the general public), it was interpreted as a paean on individualism. Its first sentence was a sufficient cue: 'man was born free, and everywhere he is in chains.' (But read only a few pages farther, and you will find, at the end of the first paragraph of the eighth chapter, that 'man ought to bless without ceasing the happy moment' — the moment of the social contract — which snatched him forever from the state of nature in which he was born, and 'turned a stupid and limited animal into an intelligent being and a man.' The pendulum swings rapidly.) But there were other excuses than a cursory reading of the opening words of the *Contrat Social* to justify this line of interpretation. Though the argument of the *Contrat Social*, if studied more closely, shows a rapid transition from an initial individualism towards collectivism, the earlier discourse on the *Origin and Foundations of Inequality*, which was written for, but failed to win, a prize offered by the Academy of Dijon, was more of a single piece, more purely a gospel of return to nature, and more of a paean on individualism. But it is not what Rousseau wrote before the *Contrat Social* — it is rather what followed after, in the days of the French Revolution — which explains the individualistic and emotional explanation of the philosophy of the *Contrat Social*, as a gospel of return to nature and the natural rights of man. It was easy to interpret the revolutionary *Declaration des Droits de l'Homme et du Citoyen*, first drafted in 1789, as a doctrine suckled on the milk of Rousseau; and when that was once done, it was easy to take the converse step, and to interpret Rousseau in the light of the *Declaration*, on the principle that he could best be known by the fruits supposed to be his. Actually, the influence of Rousseau's teaching on the French Revolution was far less

20. Quoted from the writer's introduction to his translation of Gierke's *Natural Law and the Theory of Society*, p. xlv.

had been given, about 1760, to an English writer in Cambridge, or a German writer in the University of Halle, and he had been told to express them to the best of his ability. Would the English writer have set the Cam on fire — let alone the Thames? Or the German the Saale — let alone the Rhine?

IV

Locke and Rousseau, if in different ways and different degrees, accepted the idea of the social contract: Hume, more historically minded, and more conservative in his convictions, was its critic. His skeptical intellect led him to approach political theories — the theory of divine right as well as the theory of social contract, but more especially the latter — with a touch of acid realism, which was mingled with a half-ironical suavity. 'There is something,' he seems to say, 'in your different theories; but less, much less, than you think.'

The essay 'Of the original contract' was first published (along with an essay 'Of passive obedience' and a suggestive essay 'Of national characters') in the new edition of *Essays Moral and Political* which appeared in 1748. It starts from the proposition that the theory of divine right and that of original contract are both the constructions of a party — a proposition which implies that they were built by the English Whigs and Tories, and built in the course of the last hundred years. The proposition may be disputed. Both theories have a wider range than England; and both go back to the Middle Ages, or even earlier. When Hume ends his essay by noting that 'scarce any man, till very lately, ever imagined that government was founded on compact,' and makes this an argument for concluding that 'it is certain that it cannot, in general, have any such foundation,' he is on erroneous ground.

Leaving this error on one side, we may proceed to ask what sort of contract Hume has in his mind. It would appear to be the contract of government, and not the contract of society — the original contract between the king and the people which had been approved by the Convention Parliament in 1689. It

is a contract 'by which the subjects have tacitly reserved the power of resisting their sovereign, whenever they find themselves aggrieved by that authority with which they have, for certain purposes, voluntarily entrusted him.' This theory of contract stands opposed to the other theory which makes authority a divine commission — not a popular trust — and, as such, sacred and inviolate. Both theories, to Hume, have some truth; but neither is wholly true. He has little to say of the theory of divine right, except that, by the same logic by which it covers the sovereign power, it must equally cover every petty jurisdiction, and 'a constable, therefore, no less than a king, acts by a divine commission.' His real theme is the theory of original contract; and here he allows that government, 'if we trace it to its first origin in the woods and deserts,' certainly *originated* in consent — but he equally denies that in the world of today it *exists* by consent. The original contract has long been obliterated by a thousand changes of government: almost all governments now existing are founded on usurpation, or conquest, or both. There may still be some rare disorderly popular elections of government; if there are, they are to be deprecated; and in any case the English Revolution of 1688 was not one of them — 'it was only the majority of seven hundred who determined that change [in Hume's view, merely a change of the succession] for near ten millions.' The most that can be allowed is that the consent of the people is *one* just foundation of government; but 'it has very seldom had place in any degree, and never almost in its full extent.' To suppose *all* government based on consent is to suppose 'all men possessed of so perfect an understanding as always to know their own interests' — 'but this state of perfection is likewise much superior to human nature.' And if you take refuge in the argument that at any rate there is tacit consent, or implied consent, and support your argument by saying that a man gives such consent merely by staying in a country when he could leave it if he so desired — well, the answer is that there is no consent, of any sort, unless there is freedom of choice, and there is ac-

tually no such freedom. Why, you cannot even emigrate without permission if the prince chooses so to ordain.

Hitherto the argument of Hume has rested on an appeal to the evidence of history and the observation of facts. In the second part of the essay he attempts a more philosophical refutation of the idea of contract. Distinguishing the moral duties to which we are instinctively impelled (such as pity for the unfortunate) from those to which we are impelled by a sense of obligation 'when we consider the necessities of human society,' he proceeds to consider three duties which belong to the latter category. There is justice, or a regard to the property of others; there is fidelity, or the observance of promises; there is the political or civil duty of allegiance. These duties flow, he argues, *and flow independently*, from the sense of obligation imposed by the necessities of human society. Why base allegiance on fidelity, as the contractarians do when they refer the duties of subjects (and with them the duties of sovereigns) to the foundation of observance of promises supposed to be expressed in a contract? We must keep allegiance and fidelity separate. 'The obligation to allegiance being of like force and authority with the obligation to fidelity, we gain nothing by resolving the one into the other. The general interests or necessities of society are sufficient to establish both.'

The answer which Hume thus gives to the problem of political obligation may be briefly summarized. 'Obey the powers that be. It is true that they are ordained by usurpation, or force, or both; but you must none the less pay them obedience for the simple reason that society could not otherwise subsist.' It is hardly a satisfactory answer. There is something, after all, in the idea of fidelity which goes deeper than the idea of allegiance, and which is really the basis of allegiance. There is such a thing (to use Burke's phrase) as an 'engagement or pact of the constitution,' [24] which demands the fidelity both of rulers and subjects; under which both equally stand; and to which both are equally bound. What is the proof of this en-

24. The reader is referred to the argument at the end of the first section, pp. xiii–xiv.

As it is impossible for the human race to subsist, at least in any comfortable or secure state, without the protection of government, this institution must certainly have been intended by that beneficent Being, who means the good of all his creatures: and as it has universally, in fact, taken place, in all countries, and all ages, we may conclude, with still greater certainty, that it was intended by that omniscient Being who can never be deceived by any event or operation. But since he gave rise to it, not by any particular or miraculous interposition, but by his concealed and universal efficacy, a sovereign cannot, properly speaking, be called his vicegerent in any other sense than every power or force, being derived from him, may be said to act by his commission. Whatever actually happens is comprehended in the general plan or intention of Providence; nor has the greatest and most lawful prince any more reason, upon that account, to plead a peculiar sacredness or inviolable authority, than an inferior magistrate, or even an usurper, or even a robber and a pirate. The same Divine Superintendent, who, for wise purposes, invested a Titus or a Trajan with authority, did also, for purposes no doubt equally wise, though unknown, bestow power on a Borgia or an Angria. The same causes, which gave rise to the sovereign power in every state, established likewise every petty jurisdiction in it, and every limited authority. A constable, therefore, no less than a king, acts by a divine commission, and possesses an indefeasible right.

When we consider how nearly equal all men are in their bodily force, and even in their mental powers and faculties, till cultivated by education, we must necessarily allow, that nothing but their own consent could, at first, associate them together, and subject them to any authority. The people, if we trace government to its first origin in the woods and deserts, are the source of all power and jurisdiction, and voluntarily, for the sake of peace and order, abandoned their native liberty, and received laws from their equal and companion. The conditions upon which they were willing to

submit, were either expressed, or were so clear and obvious, that it might well be esteemed superfluous to express them. If this, then, be meant by the *original contract*, it cannot be denied, that all government is, at first, founded on a contract, and that the most ancient rude combinations of mankind were formed chiefly by that principle. In vain are we asked in what records this charter of our liberties is registered. It was not written on parchment, nor yet on leaves or barks of trees. It preceded the use of writing, and all the other civilized arts of life. But we trace it plainly in the nature of man, and in the equality, or something approaching equality, which we find in all the individuals of that species. The force, which now prevails, and which is founded on fleets and armies, is plainly political, and derived from authority, the effect of established government. A man's natural force consists only in the vigour of his limbs, and the firmness of his courage; which could never subject multitudes to the command of one. Nothing but their own consent, and their sense of the advantages resulting from peace and order, could have had that influence.

Yet even this consent was long very imperfect, and could not be the basis of a regular administration. The chieftain, who had probably acquired his influence during the continuance of war, ruled more by persuasion than command; and till he could employ force to reduce the refractory and disobedient, the society could scarcely be said to have attained a state of civil government. No compact or agreement, it is evident, was expressly formed for general submission; an idea far beyond the comprehension of savages: each exertion of authority in the chieftain must have been particular, and called forth by the present exigencies of the case: the sensible utility, resulting from his interposition, made these exertions become daily more frequent; and their frequency gradually produced an habitual, and, if you please to call it so, a voluntary, and therefore precarious, acquiescence in the people.

But philosophers, who have embraced a party (if that be

not a contradiction in terms), are not contented with these concessions. They assert, not only that government in its earliest infancy arose from consent, or rather the voluntary acquiescence of the people; but also that, even at present, when it has attained its full maturity, it rests on no other foundation. They affirm, that all men are still born equal, and owe allegiance to no prince or government, unless bound by the obligation and sanction of a *promise*. And as no man, without some equivalent, would forego the advantages of his native liberty, and subject himself to the will of another, this promise is always understood to be conditional, and imposes on him no obligation, unless he meet with justice and protection from his sovereign. These advantages the sovereign promises him in return; and if he fail in the execution, he has broken, on his part, the articles of engagement, and has thereby freed his subject from all obligations to allegiance. Such, according to these philosophers, is the foundation of authority in every government, and such the right of resistance possessed by every subject.

But would these reasoners look abroad into the world, they would meet with nothing that, in the least, corresponds to their ideas, or can warrant so refined and philosophical a system. On the contrary, we find every where princes who claim their subjects as their property, and assert their independent right of sovereignty, from conquest or succession. We find also every where subjects who acknowledge this right in their prince, and suppose themselves born under obligations of obedience to a certain sovereign, as much as under the ties of reverence and duty to certain parents. These connexions are always conceived to be equally independent of our consent, in Persia and China; in France and Spain; and even in Holland and England, wherever the doctrines above-mentioned have not been carefully inculcated. Obedience or subjection becomes so familiar, that most men never make any inquiry about its origin or cause, more than about the principle of gravity, resistance, or the most universal laws of nature. Or if curiosity ever move them; as soon

as they learn that they themselves and their ancestors have, for several ages, or from time immemorial, been subject to such a form of government or such a family, they immediately acquiesce, and acknowledge their obligation to allegiance. Were you to preach, in most parts of the world, that political connexions are founded altogether on voluntary consent or a mutual promise, the magistrate would soon imprison you as seditious for loosening the ties of obedience; if your friends did not before shut you up as delirious, for advancing such absurdities. It is strange that an act of the mind, which every individual is supposed to have formed, and after he came to the use of reason too, otherwise it could have no authority; that this act, I say, should be so much unknown to all of them, that over the face of the whole earth, there scarcely remain any traces or memory of it.

But the contract, on which government is founded, is said to be the *original contract*; and consequently may be supposed too old to fall under the knowledge of the present generation. If the agreement, by which savage men first associated and conjoined their force, be here meant, this is acknowledged to be real; but being so ancient, and being obliterated by a thousand changes of government and princes, it cannot now be supposed to retain any authority. If we would say any thing to the purpose, we must assert that every particular government which is lawful, and which imposes any duty of allegiance on the subject, was, at first, founded on consent and a voluntary compact. But, besides that this supposes the consent of the fathers to bind the children, even to the most remote generations (which republican writers will never allow), besides this, I say, it is not justified by history or experience in any age or country of the world.

Almost all the governments which exist at present, or of which there remains any record in story, have been founded originally, either on usurpation or conquest, or both, without any pretence of a fair consent or voluntary subjection of the people. When an artful and bold man is placed at the

head of an army or faction, it is often easy for him, by employing, sometimes violence, sometimes false pretences, to establish his dominion over a people a hundred times more numerous than his partisans. He allows no such open communication, that his enemies can know, with certainty, their number or force. He gives them no leisure to assemble together in a body to oppose him. Even all those who are the instruments of his usurpation may wish his fall; but their ignorance of each other's intention keeps them in awe, and is the sole cause of his security. By such arts as these many governments have been established; and this is all the *original contract* which they have to boast of.

The face of the earth is continually changing, by the increase of small kingdoms into great empires, by the dissolution of great empires into smaller kingdoms, by the planting of colonies, by the migration of tribes. Is there any thing discoverable in all these events but force and violence? Where is the mutual agreement or voluntary association so much talked of?

Even the smoothest way by which a nation may receive a foreign master, by marriage or a will, is not extremely honourable for the people; but supposes them to be disposed of, like a dowry or a legacy, according to the pleasure or interest of their rulers.

But where no force interposes, and election takes place; what is this election so highly vaunted? It is either the combination of a few great men, who decide for the whole, and will allow of no opposition; or it is the fury of a multitude, that follow a seditious ringleader, who is not known, perhaps, to a dozen among them, and who owes his advancement merely to his own impudence, or to the momentary caprice of his fellows.

Are these disorderly elections, which are rare too, of such mighty authority as to be the only lawful foundation of all government and allegiance?

In reality, there is not a more terrible event than a total

of allegiance were to be taken from the latter, a total anarchy must have place in human society, and a final period at once be put to every government.

Suppose that an usurper, after having banished his lawful prince and royal family, should establish his dominion for ten or a dozen years in any country, and should preserve so exact a discipline in his troops, and so regular a disposition in his garrisons that no insurrection had ever been raised, or even murmur heard against his administration: can it be asserted that the people, who in their hearts abhor his treason, have tacitly consented to his authority, and promised him allegiance, merely because, from necessity, they live under his dominion? Suppose again their native prince restored, by means of an army, which he levies in foreign countries: they receive him with joy and exultation, and shew plainly with what reluctance they had submitted to any other yoke. I may now ask, upon what foundation the prince's title stands? Not on popular consent surely: for though the people willingly acquiesce in his authority, they never imagine that their consent made him sovereign. They consent; because they apprehend him to be already by birth, their lawful sovereign. And as to that tacit consent, which may now be inferred from their living under his dominion, this is no more than what they formerly gave to the tyrant and usurper.

When we assert, that all lawful government arises from the consent of the people, we certainly do them a great deal more honour than they deserve, or even expect and desire from us. After the Roman dominions became too unwieldy for the republic to govern them, the people over the whole known world were extremely grateful to Augustus for that authority which, by violence, he had established over them; and they shewed an equal disposition to submit to the successor whom he left them by his last will and testament. It was afterwards their misfortune, that there never was, in one family, any long regular succession; but that their line of princes was continually broken, either by private assassinations or public rebellions. The *prætorian* bands, on the failure of every family, set up one emperor; the legions in the East a second; those in Germany, perhaps a third; and the sword alone could decide the controversy. The condition of the people in that mighty monarchy was to be lamented, not because the choice of the emperor was never left to them, for that was impracticable, but because they never fell under any succession of masters who might regularly follow each other. As to the violence, and wars, and bloodshed, occasioned by every new settlement, these were not blameable, because they were inevitable.

The house of Lancaster ruled in this island about sixty years; yet the partisans of the white rose seemed daily to multiply in England. The present establishment has taken place during a still longer period. Have all views of right in another family been utterly extinguished, even though scarce any man now alive had arrived at the years of discretion when it was expelled, or could have consented to its dominion, or have promised it allegiance? — a sufficient indication, surely, of the general sentiment of mankind on this head. For we blame not the partisans of the abdicated family merely on account of the long time during which they have preserved their imaginary loyalty. We blame them for adhering to a family which we affirm has been justly expelled, and which, from the moment the new settlement took place, had forfeited all title to authority.

But would we have a more regular, at least a more philosophical, refutation of this principle of an original contract, or popular consent, perhaps the following observations may suffice.

All *moral* duties may be divided into two kinds. The *first* are those to which men are impelled by a natural instinct or immediate propensity which operates on them, independent of all ideas of obligation, and of all views either to public or private utility. Of this nature are love of children, gratitude to benefactors, pity to the unfortunate. When we reflect on the advantage which results to society from such humane

instincts, we pay them the just tribute of moral approbation and esteem: but the person actuated by them feels their power and influence antecedent to any such reflection.

The *second* kind of moral duties are such as are not supported by any original instinct of nature, but are performed entirely from a sense of obligation, when we consider the necessities of human society, and the impossibility of supporting it, if these duties were neglected. It is thus *justice*, or a regard to the property of others, *fidelity*, or the observance of promises, become obligatory, and acquire an authority over mankind. For as it is evident that every man loves himself better than any other person, he is naturally impelled to extend his acquisitions as much as possible; and nothing can restrain him in this propensity but reflection and experience, by which he learns the pernicious effects of that license, and the total dissolution of society which must ensue from it. His original inclination, therefore, or instinct, is here checked and restrained by a subsequent judgment or observation.

The case is precisely the same with the political or civil duty of *allegiance* as with the natural duties of justice and fidelity. Our primary instincts lead us either to indulge ourselves in unlimited freedom, or to seek dominion over others; and it is reflection only which engages us to sacrifice such strong passions to the interests of peace and public order. A small degree of experience and observation suffices to teach us, that society cannot possibly be maintained without the authority of magistrates, and that this authority must soon fall into contempt where exact obedience is not paid to it. The observation of these general and obvious interests is the source of all allegiance, and of that moral obligation which we attribute to it.

What necessity, therefore, is there to found the duty of *allegiance* or obedience to magistrates on that of *fidelity* or a regard to promises, and to suppose, that it is the consent of each individual which subjects him to government, when it appears that both allegiance and fidelity stand precisely on the same foundation, and are both submitted to by mankind,

on account of the apparent interests and necessities of human society? We are bound to obey our sovereign, it is said, because we have given a tacit promise to that purpose. But why are we bound to observe our promise? It must here be asserted, that the commerce and intercourse of mankind, which are of such mighty advantage, can have no security where men pay no regard to their engagements. In like manner, may it be said that men could not live at all in society, at least in a civilized society, without laws, and magistrates, and judges, to prevent the encroachments of the strong upon the weak, of the violent upon the just and equitable. The obligation to allegiance being of like force and authority with the obligation to fidelity, we gain nothing by resolving the one into the other. The general interests or necessities of society are sufficient to establish both.

If the reason be asked of that obedience, which we are bound to pay to government, I readily answer, *Because society could not otherwise subsist*; and this answer is clear and intelligible to all mankind. Your answer is, *Because we should keep our word.* But besides, that no body, till trained in a philosophical system, can either comprehend or relish this answer; besides this, I say, you find yourself embarrassed when it is asked, *Why we are bound to keep our word?* Nor can you give any answer but what would, immediately, without any circuit, have accounted for our obligation to allegiance.

But *to whom is allegiance due? And who is our lawful sovereign?* This question is often the most difficult of any, and liable to infinite discussions. When people are so happy that they can answer, *Our present sovereign, who inherits, in a direct line, from ancestors that have governed us for many ages,* this answer admits of no reply, even though historians, in tracing up to the remotest antiquity the origin of that royal family, may find, as commonly happens, that its first authority was derived from usurpation and violence. It is confessed that private justice, or the abstinence from the properties of others, is a most cardinal virtue. Yet reason tells us that there is no property in durable objects, such as lands or

gation, which binds us to government, is the interest and necessities of society; and this obligation is very strong. The determination of it to this or that particular prince, or form of government, is frequently more uncertain and dubious. Present possession has considerable authority in these cases, and greater than in private property; because of the disorders which attend all revolutions and changes of government.

We shall only observe, before we conclude, that though an appeal to general opinion may justly, in the speculative sciences of metaphysics, natural philosophy, or astronomy, be deemed unfair and inconclusive, yet in all questions with regard to morals, as well as criticism, there is really no other standard, by which any controversy can ever be decided. And nothing is a clearer proof, that a theory of this kind is erroneous, than to find, that it leads to paradoxes repugnant to the common sentiments of mankind, and to the practice and opinion of all nations and all ages. The doctrine, which founds all lawful government on an *original contract*, or consent of the people, is plainly of this kind; nor has the most noted of its partisans, in prosecution of it, scrupled to affirm, *that absolute monarchy is inconsistent with civil society, and so can be no form of civil government at all;*[3] and *that the supreme power in a state cannot take from any man, by taxes and impositions, any part of his property, without his own consent or that of his representatives.*[4] What authority any moral reasoning can have, which leads into opinions so wide of the general practice of mankind, in every place but this single kingdom, it is easy to determine.

The only passage I meet with in antiquity, where the ob-

mounted the throne, says he, by the same arts which have ever been employed by all conquerors and usurpers. He got his title, indeed, recognized by the states after he had put himself in possession: but is this a choice or contract? The Comte de Boulainvilliers, we may observe, was a noted republican; but being a man of learning, and very conversant in history, he knew that the people were almost never consulted in these revolutions and new establishments, and that time alone bestowed right and authority on what was commonly at first founded on force and violence. See *État de la France*, vol. iii.

3. See Locke on Government, chap. vii. § 90.
4. Ibid., chap. xi. §§ 138, 139, 140.