

Rights and Responsibilities

General Rights

Legal and Moral Rights

- ***Legal rights***: recognized in law
 - Vary with place and time
 - May be too limited or too extensive
- ***Moral rights***: what ought to be recognized in law
 - Don't vary with time or place (much)
 - Allow for critique of legal system

Rights and Obligations

- A right corresponds to a perfect obligation
- X has a right that Y do A \Leftrightarrow
- Y has a perfect obligation to X to do A

General Rights

- Often we speak of a right to life, or to a fair trial, without saying who has the obligation
- Michael has a right to life \Leftrightarrow
- Others have a perfect obligation not to kill Michael \Rightarrow
- Others shouldn't kill Michael

General Rights

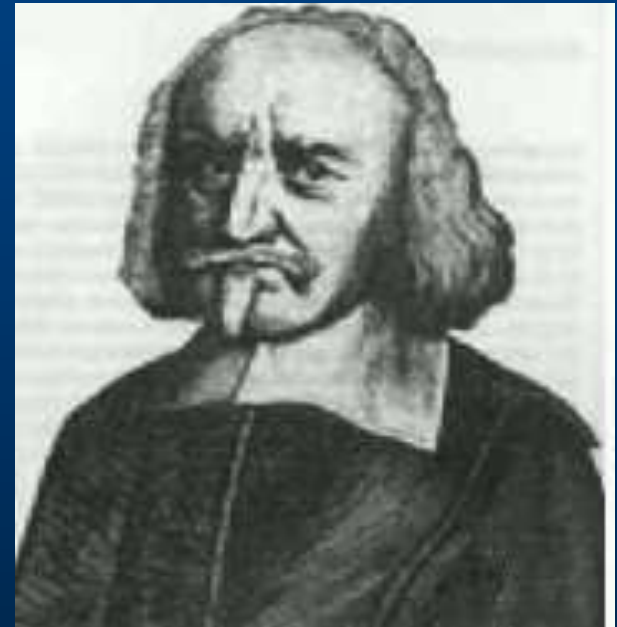
- X has a general right to A \Leftrightarrow
- Others have a perfect obligation not to interfere with X's A-ing \Rightarrow
- Others shouldn't interfere with X's A-ing
- If anyone interferes with X's A-ing, that is not only wrong but unjust

Examples: Bill of Rights

- ***Speech***: others shouldn't interfere with your speaking
- ***Assembly***: others shouldn't interfere with your gathering
- ***Exercise of religion***: others shouldn't interfere with your worshiping
- ***Arms***: others shouldn't interfere with your keeping and bearing arms

Thomas Hobbes (1588-1679)

- All general rights follow from a right to liberty
- Others shouldn't interfere with me
- Others shouldn't interfere with my doing what I want to do



Social Contract Theory

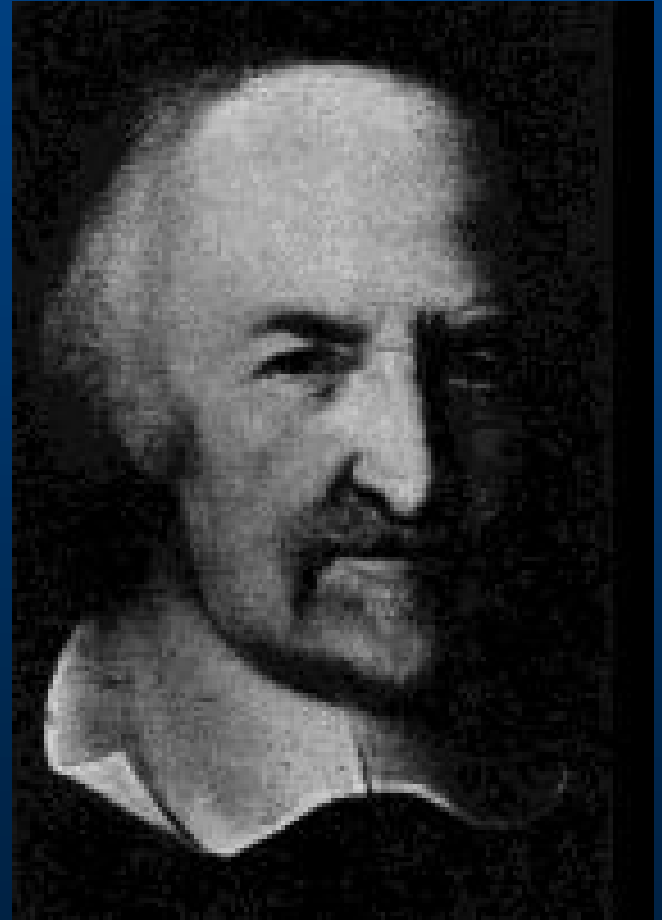
- **A government is legitimate if people would voluntarily submit to its authority**
- **Central idea: government (and its authority) are rational**

Social Contract Theory

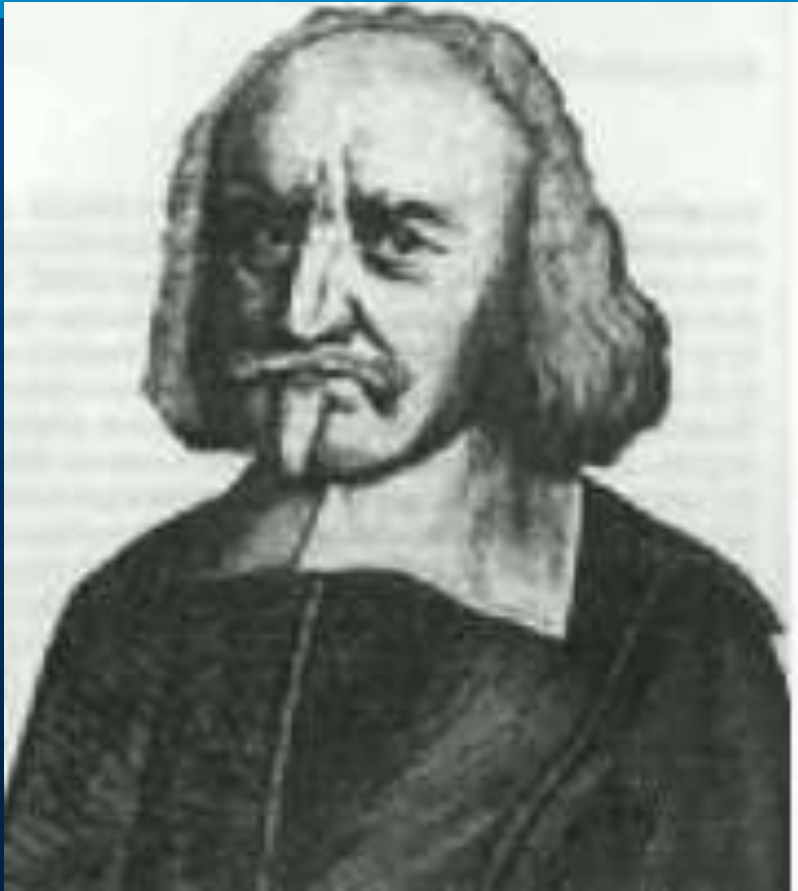
- **Imagine two situations:**
 - **Government (the state)**
 - **No government (the state of nature)**
- **Which would you choose?**

Thomas Hobbes

- You would choose government
- Life in the state of nature would be “solitary, poor, nasty, brutish, and short”



Hobbes's state of nature



- Equality of ability —>
- Equality of hope —>
- Conflict (most goods are private) —>
- War —>
- Poverty
- To escape this, we'd agree to a government

Hobbes's Social Contract

- You would give up

- Liberty

- To gain

- Security



Hobbes on Liberty and Rights

- You have a general right to liberty
- Liberty = the absence of external impediments
- Your right is *natural*, independent of government
- A right is a liberty to do or forbear
- This is weaker than a general right
- There are no positive rights

Hobbes's laws of nature

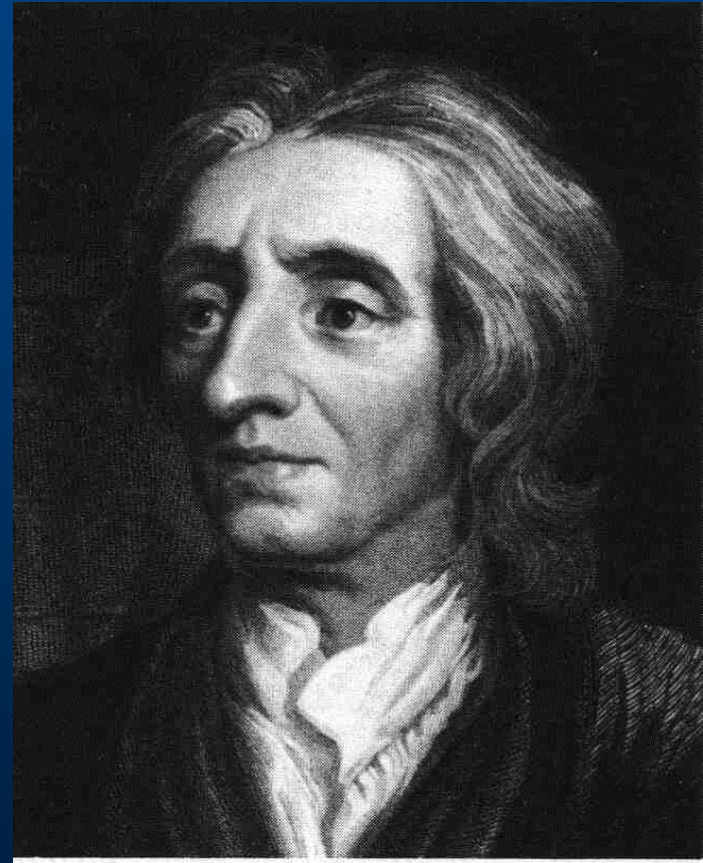
- **Natural law tradition: laws of nature are God-given laws ordering the universe**
- **Hobbes: laws of nature are rational principles of conduct**

Hobbes's laws of nature

- **Key laws**
 - **Seek peace**
 - **Defend yourself**
 - **Surrender some liberty for peace, keeping only as much as you will allow others against yourself**

John Locke

- **Rationality justifies government**
- **But also limits its authority**



Locke's state of nature

- Equality of power and jurisdiction
- Liberty, not license
- Law of nature: no one ought to harm another in his life, health, liberty, or possessions

Locke's state of nature

- You have natural rights in the state of nature:
 - Rights to life, health, liberty, and property
 - Right of self-preservation
 - Right to execute the law of nature
- Not a state of war

Locke's Social Contract

- Problem: finding an impartial arbitrator—who shall be judge?
- You would give up
 - Your right to execute the law of nature
 - You gain
 - Impartial judgment



Natural and social rights

- **Rights to life, health, liberty, and property are natural—you have them in the state of nature**
- **You do not give them up in the social contract**
- **You can't give them up**
- **Slavery would be wrong even if voluntary**

Voluntary Slavery

- Hobbes thinks you would give up liberty even to an absolute monarch
- But, for Locke, that would be like selling yourself into slavery
- You can't surrender your rights to life, liberty, and property
- But you can be placed under laws that limit them (taxation, punishment)

Locke on Rights

- All substantive rights are general rights
- They follow from your right to self-preservation => your rights to life, health, liberty, and property
- All positive rights are procedural—rights to a fair, speedy, public trial, to a trial by jury, to confront your accuser, etc.

Freedom under government

- **To have settled rules**
- **In common**
- **Made by a legislature duly erected**
- **To follow my will where the rule is silent**
- **Not to be subject to the arbitrary will of another**

Social Contract

Positive Rights

Positive Rights

- Some philosophers think there's another legitimate conception of rights
- X has a positive right to A \Leftrightarrow
- Others have a perfect obligation to enable X to A

Procedural positive rights

- Some less controversial positive rights are procedural— pertaining not to outcomes but to processes
- You have a right to a fair, speedy, public trial by jury \Leftrightarrow
- Others have a perfect obligation to enable you to have one

Substantive positive rights

- Substantive rights pertain to outcomes: Entitlements
- New Deal (Roosevelt): “The duty of the State toward the citizen is the duty of the servant to its master. . . . One of these duties of the State is that of caring for those of its citizens who find themselves the victims of such adverse circumstances as make them unable to obtain even the necessities for mere existence without the aid of others. . . .”



Substantive positive rights



- **“To these unfortunate citizens aid must be extended by governments, not as a matter of charity but as a matter of social duty.”**
- **“[No one should go] unfed, unclothed, or unsheltered.”**
- **For FDR, our duties to feed, clothe, and shelter others are perfect: not like charity, but matters of social justice**

Substantive Positive Rights

- **Alleged examples: People are entitled to:**
 - ***Housing***: others must enable you to have housing
 - ***Health care***: others must enable you to have health care
 - ***Employment***: others must enable you to have a job
 - ***Food***: others must enable you to have food

Positive vs. General Rights

- **Positive rights and general rights conflict with each other**
- **If you have a positive right to housing, then others must provide it for you, whether they want to or not**
- **Positive rights entail interference with the lives of others**

Positive vs. General Rights

- **Positive rights come at the expense of general rights**
- **Procedural: My right to a jury trial may limit your rights—you may have to serve on the jury**
- **Substantive: My right to a job may limit your rights—you might prefer not to hire me**

Jean-Jacques Rousseau



- The social contract justifies government
- But also limits it
- The limit is established by the general will
- General will = common good

Natural vs. Civil Rights

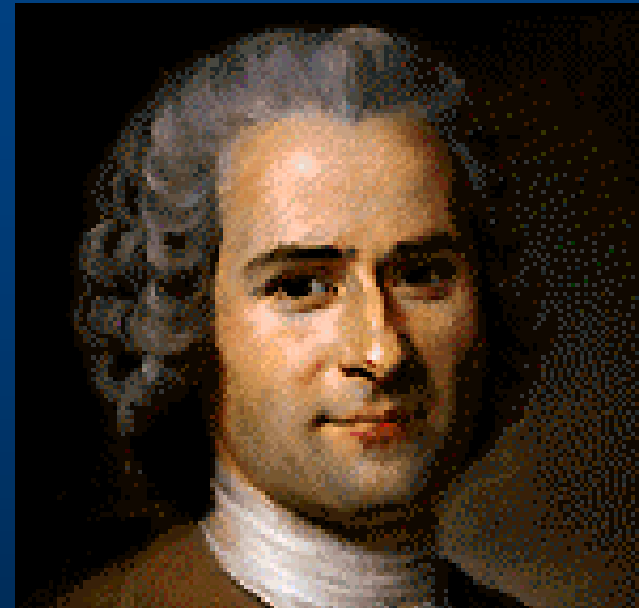
- **Locke: “Bottom-up” model**
 - Some rights are natural, independent of government
 - Government derives its power from the rights individuals consign to it

Natural vs. Civil Rights

- **Rousseau: “Top-down” model**
 - All rights are civil, dependent on government
 - Rights of individuals derive from government

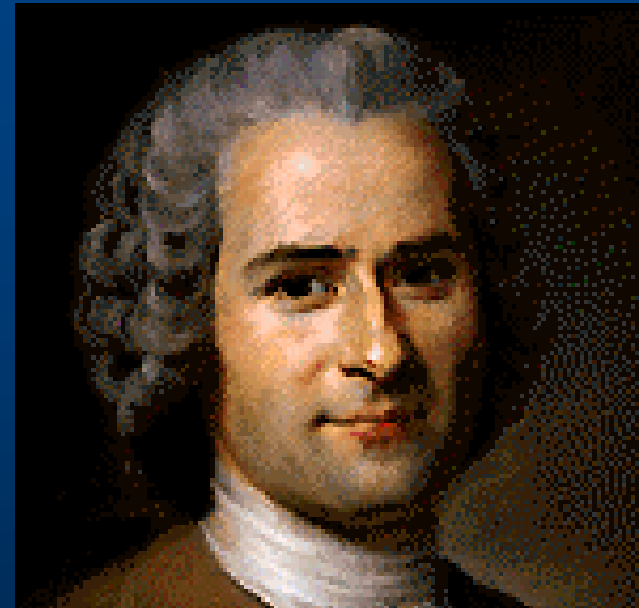
Rousseau's Social Contract

- You give up everything
- You get everything back
- What's the point?



Rousseau's Social Contract

- You give up everything willingly to the group
- You get back your fair share of the fruits of cooperation
- Force —> right;
possession —> property



Hobbes, Locke, Rousseau

- **General rights: Hobbes*, Locke*, Rousseau**
- **Procedural positive rights: Locke, Rousseau**
- **Substantive positive rights: Rousseau**
- *** some are natural rights**

Rights in Kant



A Kantian Account of Rights

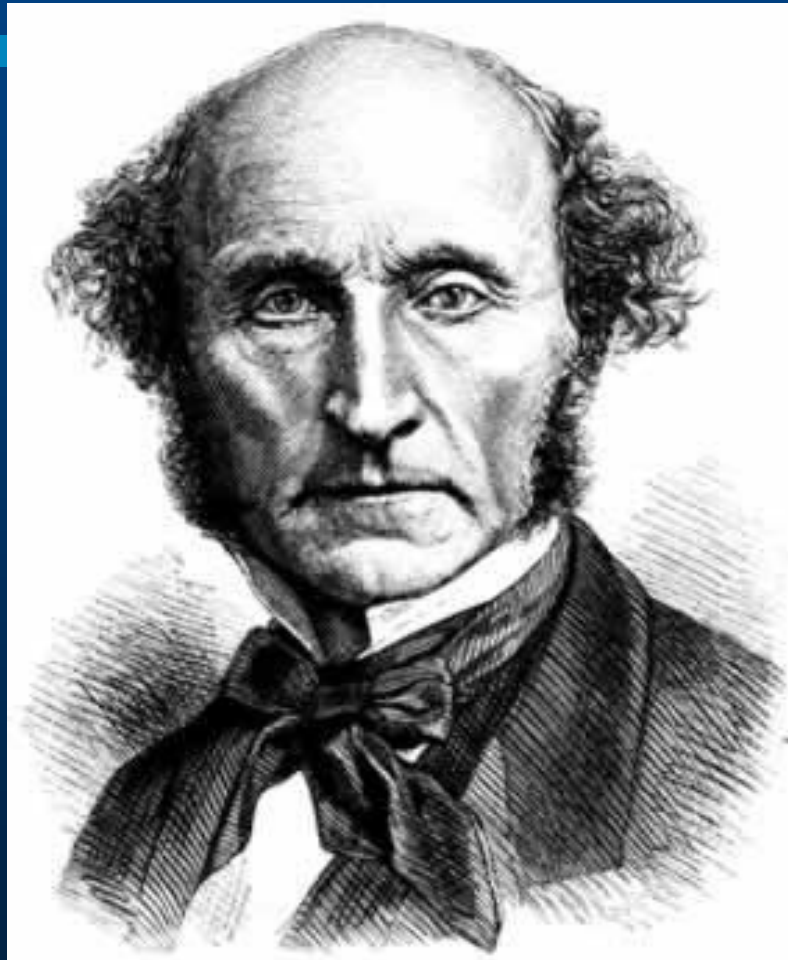
- What rights do people have?
- Categorical imperative: Treat everyone as an end, not merely as a means
- Everyone has a right to be treated as an end
- Everyone has a right to respect
- This yields some general rights: no one may use me

Kantian Arguments



- **Categorical imperative**
 - Act only on that maxim you can will to be universal law (don't make an exception for yourself)
 - Treat others as ends-in-themselves (don't use people)

Rights in Utilitarianism



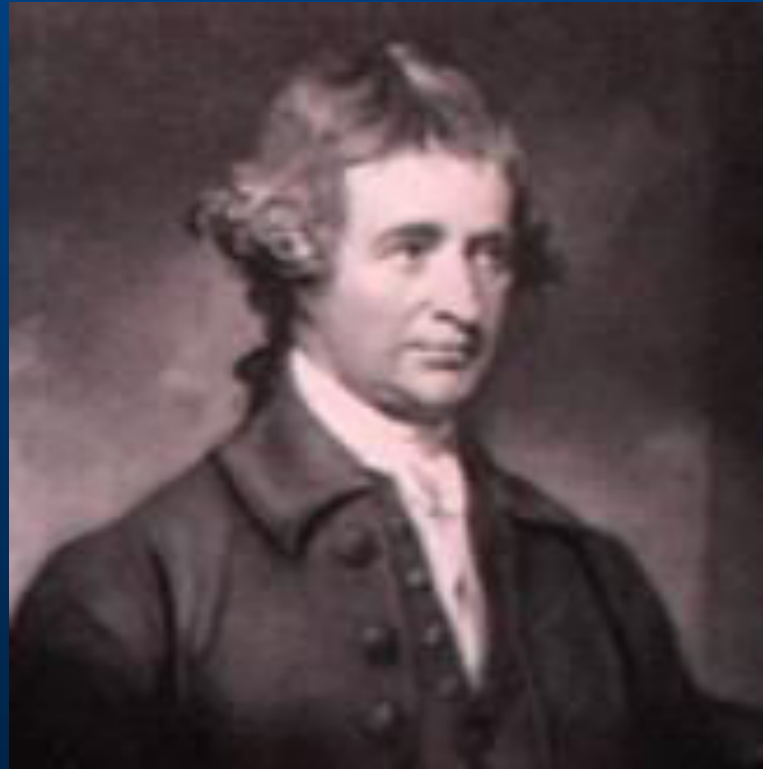
A Utilitarian Account of Rights

- A right is something society should protect my possession of (Mill)
- X has a right to A \Leftrightarrow
- Society ought to protect X's possession of A
- General rights: Society protects me from interference
- Positive rights: I have a right to protection
- Why should society protect my possession of something? Utility.

Utilitarianism and Rights

- A fetus has a right to life \Leftrightarrow
- Society ought to protect a fetus's possession of life \Leftrightarrow
- Protecting a fetus's life is for the best (maximizes utility)
- Is it best that we protect the fetus's life or the mother's choice?

Rights in Burke



Burke's Critique of Rights

- What rights do we have?
- How do we resolve conflicts between rights? Between rights and other moral considerations?
- No moral theory can answer these questions
- We work out answers in practice



Examples of rights conflicts



- **Abortion: fetus's right to life vs. mother's right to control her own body**
- **Capital punishment: prisoner's right to life vs. society's interest in protection and punishment**
- **Euthanasia: right to life vs. quality of life**
- **War on terrorism: civil liberties vs. national security**

Burke's Arguments

- **Complexity:** circumstances, human nature, and society are all intricate; we can't settle conflicts by an abstract rule
- **Experience:** we must learn to resolve conflicts through experience; politics is experimental, not *a priori*
- **Balance, Compromise:** we must balance competing goods, strike compromises between them

Burkean Arguments

- **Classic case of conflict of rights**
 - Fetus's right to life
 - Mother's right to liberty
- **There is no principled way of telling which takes precedence**
- **We must seek compromise,**
- **Reasoning by analogy**
- **On basis of experience**