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## THE PERSON AS SIGNATORY: CONTRACTARIAN SOCIAL THEORY AT WORK IN SUBURBIA

*Michael J. Monahan*

Political life can be understood as a manifestation of competing notions of what it means to be *human*. In other words, a political point of view can be understood as an implicit understanding of what separates human beings, as political agents, from non-political forms of life (which may include all or some animals, or even in some cases *homo sapiens* who lack certain mental and/or moral capacities) or mere objects. A given political view will also have something to say about the relationship between particular political agents, and the relation between *humanity*, in this normative sense, and non-humans. I would like to look closely at what I take to be the dominant understanding of “the human”—namely “contractarian” conceptions of social/political life—paying special attention to the *symbolic* representation of this understanding.

In referring to social theories and ways of interacting as “contractarian”, I mean to capture a general belief or set of beliefs, rather than any particular philosophical theory. Specifically, I take any understanding of social interaction which uses an *exchange of “goods”* (material goods and/or “non-material goods”) as the principal model of social/political explanation and analysis to be “contractarian” in this sense. This view finds its clearest expression, *perhaps, in the economic context. The dominant economic thinking, which stands in the tradition of Adam Smith<sup>1</sup>, provides a view in which one is an economic agent to the*

extent that one is able to engage in the exchange of goods and services generally.<sup>2</sup> Smith's description of the human "propensity to truck, barter, and exchange one thing for another"<sup>3</sup> is first and foremost a description of a *contractual* interaction in the very sense understood by Thomas Hobbes.<sup>4</sup> Outside the realm of "pure" economics, this exchange of goods may become somewhat more abstract, we may speak of *exchanging* "rights" for "security," or the *distribution* of "opportunity," but the basic model remains intact whether one is performing a market analysis or justifying a legal sanction. Human interaction, according to this way of thinking, can always be understood in terms of an exchange of goods, and questions of justice are largely, if not solely, a matter of the distribution of those goods and the contracts (implicit or explicit) which govern that distribution. Thus, this weaker, more general definition of "contractarian" would apply not only to "social contract theorists" from Hobbes and Locke through Rawls and Gauthier, but also to much of the received opinion regarding human social interaction both in academia generally, and in more mainstream "popular" discourse.

Having conquered the realms of economic, legal, and political theory (or at least the "legitimate" varieties of these theories), the social contract is forging into the more mundane territory of basic human interaction on the immediate level of the relations between family and friends. In other words, "the contract" has become the dominant *symbolic* tool by which we make sense of our relationship to the larger polity, to other individuals, and ultimately to ourselves. "Persons" are being replaced by "signatories". I will explore the effects of this symbol for human interaction by looking closely at a particular example—that of the "Home Owners Association". By drawing out the implications of this phenomenon, and appealing to the critique of this view of human interaction offered in Hegel's *Philosophy of Right*, I will argue that the notion of the contract is an impoverished way to symbolically capture human relations, and ultimately serves not only to cripple our understanding of those relations, but also leads to a similarly impoverished understanding of self and agency.

The advent of the "Home-Owners Association" (HOA) can be seen as paradigmatic of the rise of contractarian representations of humanity. An HOA is an institution designed primarily to protect the property value of a corresponding housing development. The centerpiece for any given HOA is its body of Codes, Covenants, and Restrictions (CC&R's), which is a set of rules and reg-

ulations governing the home-owner's use of his/her property. The CC&R's dictate the types of landscaping one may use, where one may park one's vehicles, the colors of paint one may use on one's exterior, and so on. Membership in the HOA is mandatory upon the purchase of a home within the area governed by that HOA, and a monthly membership fee is assessed. The fee covers the administrative costs of the association, as well as the upkeep of common areas within the "community". The Association is administered by a committee elected by the membership, and regular meetings are held to decide the allocation of resources and assess penalties for violation of the CC&R's. Often an HOA will in turn be part of a larger HOA. In Las Vegas, Nevada, for example, the large "master-planned community" of Summerlin has three main HOA's, each one consisting of dozens of smaller individual HOA's. Once one has purchased a home within one of these communities, and thereby joined one or more HOA's, one is bound by the CC&R's of the appropriate HOA's. Failure to abide by the CC&R's can result in substantial fees, and failure to pay the assigned fees can result in a lien being placed upon one's property. The political and economic ramifications of this phenomenon are significant and worthy of exploration,<sup>5</sup> but the present concern is with the ways in which HOA's make implicit assumptions and characterizations of what it means to be human.

In other words, how does the HOA affect the individual's *experience* of her relation to her fellow members, to non-members, and ultimately to herself? Or, put yet differently, how does the HOA alter her *consciousness* of the *humanity* of those around her as well as her own? The question, then, is ultimately one of a *phenomenology* of the HOA. Phenomenology, as the term is being employed here, can best be understood as "reflective thought upon what can be called objects of thought . . . or, better yet, objects of consciousness."<sup>6</sup> The task, then, is to reflect upon the way in which one's consciousness of one's place in the social world is influenced by membership in an HOA. The specific example provided below should be understood as only the most general characterization of HOA's.<sup>7</sup> Surely these particular examples are not common to *all* individual HOA's. The basic structure and content of the rules governing home-owners is very nearly universal, but the strictness of their enforcement varies (this variation in enforcement actually can serve to strengthen some of my criticism, as will become evident below). The generality of my use of examples does not pose an immediate problem, however. As mentioned above, the primary focus of this project of reflection will

be the way in which our understanding of the human comes to be mediated by the symbolic schema of the *contract*, and this basic schema remains intact regardless of the variations in enforcement.

One of the primary experiences upon entering an HOA-governed area (the common word for this is a "community," but for reasons which will become apparent later, I will refrain from using this term) is that of isolation. If we look at any typical suburb, we will see a collection of discreet, self-contained units. Individual, single-family dwellings, separated by some amount (however small) of yard, and usually a fence. Pair this with individual vehicular transportation, and the lack of a central cultural or community meeting place, and there is little reason or even opportunity for people to interact. Still, children will often meet each other (usually at school) and begin to form connections between households, which can start to enable home-owners to develop relationships with those who live near them. The geography of the suburb supports a strong sense of isolation, but through the mediation of children, this experience is occasionally overcome.

Once we add an HOA to this context, however, things change. The document which governs the HOA, the CC&R's, usually has clear rules regulating the levels of noise and the kinds of activity, that can take place within sight of other members of the HOA. Some of the most frequent complaints (and any given complaint can, and often does, ultimately lead to a fine) result from the activities of children. What is more, the complaint is always lodged against the owner of the house at which the violation of the CC&R's takes place. Thus, it is not in any given home-owner's interests to have children anywhere near the house, and certainly not in significant numbers. If home-owner A's children violate the CC&R's at home-owner B's house, then B will be cited for the violation. To be sure, children might congregate in small numbers, provided they remain indoors, but this provides little opportunity for the kinds of interaction required to establish connection between parents, and so any relationship between home-owners remains vicarious at best.

Indeed, not only is the gathering of children discouraged by the typical HOA, but any kind of public display of human activity (with the exception of yard-work<sup>8</sup>) can be a cause for complaint, and a possible violation of the CC&R's. By way of example, a family moved into a home governed by an HOA in Las Vegas. This family had the habit of spending their evenings sitting in the

front yard. Many of us from small towns are familiar with this practice. It is a way to make oneself available to see passersby and be seen by them—it is in many ways an invitation to *interact* with others. Within a month, a half-dozen different complaints had been lodged against this family, and at the next general meeting, they were held in violation of the CC&R's.<sup>9</sup> They were, in effect, forbidden to sit in their front yard. What this points to is the fact that members of an HOA are often effectively compelled to shut themselves away in their homes out of the sight of those who live near them. There is indeed a concerted effort to remove, as much as possible, any evidence of human occupancy. In many CC&R's, it is forbidden to park in one's driveway, and certainly not allowed to park in the street. One's car is kept in one's garage, the door of which must be kept closed. Thus, it is possible for one to come and go from one's house without ever having to be directly visible to others.

All of this adds up to an effort to enforce a kind of isolation upon the individual home-owners. The implicit goal of the CC&R's is to limit interaction between home owners outside of general meetings, at which time all interaction is mediated directly by the HOA contract. Thus, the implied ideal state is one in which each individual member experiences his or her home-life as if he or she were the only person living in the area.<sup>10</sup> Ideally, one should be able to glimpse one's neighbors within a given week only rarely, and never be compelled actually to interact with them. At the same time that one is compelled to keep, as much as possible, to oneself, one is also encouraged to keep an eye out for infractions committed by others. The CC&R's, after all, are designed to preserve property values and maintain the beauty and order of the area, and so it is important that each member report violations of the CC&R's such that the appropriate steps may be taken. Thus, each member finds him or herself in a rather ironic position. He or she is encouraged to attend, as much as possible, to the activities of his or her neighbors so as to preserve the general sense of *isolation* of all members. In other words, one watches others closely, so that nothing occurs which might jeopardize one's sense of being alone. One watches so as to ensure that no one is seen.

This focus upon isolation is directly linked to the way in which *contractual* mediation of human relations operates. It is part of the logic of the contract that each signatory operates as an atomistic individual in the pursuit of his or her self-interest. At the foundation of any contractarian social interaction is a thorough-

going ontological atomism. Indeed, were it not for this fundamental atomism, there would be no need for a contract to bind us together in the first place. In the case of the HOA, we see this ontology taken to its logical conclusion. By viewing ones relationship with others in terms of a contract, one finds oneself enmeshed in a system of rules and expectations which encourages one to live this underlying atomism to the fullest. Yet in order to best achieve and maintain this isolation we must enter into a contract designed for that purpose—our isolation requires a certain (admittedly limited) degree of interaction. Once again, a strong sense of irony emerges. In order even to approximate our ideals of individualism, we must interact with others not only initially, but constantly.

What is particularly curious about this interaction is that it is always seeking to disguise itself from its participants. There is interaction, but it is always at a distance, highly mediated, and diffuse. One receives a “friendly reminder” in the mail regarding the length of one’s grass. Failure to comply with this reminder results in the receipt of a notification of violation of the CC&R’s. Even if one brings this matter before a meeting of the board, the interaction presents itself as occurring between the home-owner and the contract of the CC&R’s, rather than between the home-owner and his or her neighbors. Legitimate appeal may only be made to “the rules,” whether or not they were broken, and what the appropriate punishment ought to be if they were. In other words, the interaction required to maintain the sense of isolation preserved by the CC&R’s is always cloaked in the language and symbolism of the *contract*, such that it appears to the participants as anything but actual interaction in any meaningful sense of the term. There is no attempt to understand the position of one’s interlocutors, no appeal to empathy or sympathy. Indeed, such appeals and attempts violate the spirit, if not the letter, of the contract, by generating an atmosphere of “prejudice” or “bias.” Thus, while interaction takes place, and remains necessary for the preservation of individualism, that interaction is mediated by the contract in such a way as to obfuscate much of its underlying significance.

At the same time, this effort on the part of the CC&R’s to keep the various home-owners out of sight takes the form of a kind of enforced homogeneity. Bearing in mind that all landscaping and home-improvements are strictly controlled by the CC&R’s in order to secure the “beauty” of the area and thereby maintain and increase property value, we find that the result is a marked

similarity between one house and another. Lawns must be uniformly green,<sup>11</sup> satellite dishes must be tucked discreetly into corners, and so on. No changes may be made which will make a particular property "stand out" from the others. In short, any thing which significantly *individuates* a given house is strictly *discouraged*. The aesthetic underlying the sense of "property value" being here protected is one which is fundamentally characterized by uniformity.

This points to yet another irony. In the context of the effort to preserve the integrity of the *individual* from incursion from what is understood as *external*, it comes about that the individual, as a *particular* social agent, all but disappears. Within the atomistic understanding of agency underlying the contractual schema, the presence of property which "stands out" in some way is understood as a threat to the stability of one's status as an individual. Since property which distinguishes itself in this way forces one to confront the presence of another agent (since the property stands as a kind of vicarious reflection of the personality of the owner), and that other agent is understood as fundamentally *external*, then the presence of the offending property becomes a literal *incursion* into the sanctity of one's private realm. Regardless of the aesthetic merits of a given individuating feature, it must be an "eyesore" inasmuch as it is a threat to the isolated individualism of the other home-owners. Thus one finds that the pursuit of individual integrity (*individualism*) ultimately erases one's *individuality*. A kind of strong homogeneity results, in which each individual is more or less secure in his or her property, provided of course that individual does nothing which sets him or her apart from others.

This is one point at which the aforementioned variations in the strictness of enforcement of the CC&R's can become an important issue. There exist, to be sure, some HOA-governed areas which are hardly different from any "normal" suburb. This is usually a result of very lax enforcement of the existing CC&R's. However, regardless of whether in fact they *are* being enforced, that the rules remain intact, though dormant, is nevertheless important. This means that at any time they can be brought out and employed against those who are understood as a *threat* to the property value of the "community." This point can be best illuminated through appeal to race. Historically, it was possible, until very recently, to place racially restrictive "covenants" (which were frequently supported by the Federal Housing Authority) upon property which prevented that property from being sold to non-



whites (including, often, Jews).<sup>12</sup> While these kinds of explicit restrictions are no longer legal, there remain more subtle ways to maintain *de facto* racial segregation. Beyond the “invisible hand” of market forces, which go a long way toward maintaining segregation of housing, there are more direct instruments such as CC&R’s. Even in HOA’s where the CC&R’s remain largely unenforced, if a new home-owner appears to his or her neighbors to be “suspicious,” “unreliable,” “shiftless,” or even “dangerous,” that that new home-owner will be the object of disproportionate scrutiny. Rules and restrictions which may have been historically dormant may be employed to neutralize the new “threat” to the security and property value of the neighborhood. Thus, even though there are variations in the enforcement of the CC&R’s, there is a sense in which, given the prevailing dominance of racist understandings of who counts as a “desirable” neighbor,<sup>13</sup> and the underlying drive toward homogeneity (purity) within the “community,” even the less-strict HOA’s serve to support this underlying atomism—one’s status as an isolated individual is protected so long as one conforms to behavioral (and racial) norms.

All of these effects upon the behavior and experiences of the membership brought about by an HOA engenders a fundamental shift in the relations between individuals not only within the area governed by the CC&R’s, but also between those individuals and the “outside” world. One’s relation to other members of the HOA is above all mediated by and interpreted according to the “contract” which constitutes HOA membership. One may certainly take an interest in the behavior of fellow HOA members, but only in terms of the extent to which they successfully uphold the terms of the contract (obey the CC&R’s). In fact, if one is to be a more or less ideal signatory, one should endeavor to *avoid* coming to know other members in too great a degree of intimacy, for this might cause one to show favoritism or bias in the enforcement of the CC&R’s. As already discussed, members are related strictly by means of the HOA contract, and any familiarity above and beyond this formal level stands as a threat to the integrity of that contract. The isolation of the agent, therefore, goes beyond the purely geographic and becomes an implicit restraint upon the formation of anything beyond the most casual of relationships with fellow HOA members.

Lastly, though certainly not least in import or significance, the HOA greatly influences and conditions the way in which individual members come to understand *themselves* as agents. Primarily, it serves to reinforce the understanding of oneself as an isolated

individual unit which happens to share loose, and purely formal, bonds with other similar atomistic units. Of course, since the contract serves primarily to protect this isolation, any attempt to transcend this assumed atomism must be understood as at least suspect, if not explicitly hostile. As mentioned above, most of one's interaction with other members takes place either by means of surveillance to ensure the enforcement of the CC&R's, or at the regular general meetings, at which time one is typically judging the guilt of others, or defending oneself against the accusations of others. This quickly fosters an atmosphere of suspicion among the membership such that any attempt to transcend this basic contractual relationship is typically understood to be either an attempt to uncover hidden violations on the one hand, or to overlook particular violations on the other. Ultimately, however, the individual member is urged to understand herself as alone in the world, surrounded by similarly lone agents who are indifferent to one's well-being at best, or downright hostile at worst. The primary goal must then be to secure one's own position as much as possible on the one hand, and weaken the position of those who stand to do one harm on the other. The sole outlet for "political" agency is by means of the contract, and the primary goal of the contract is the preservation of individualism. The HOA thus generates a kind of self-fulfilling prophecy. In assuming isolated, atomistic, radically self-interested political agents, the HOA contract produces rules which foster an attitude of atomism, isolation, and self-interest.

One way to illustrate this shift in the relationship between members is by looking more closely at the term "neighbor." On the one hand, there is a kind of descriptive, geographical sense of the term, which connotes nothing more than a certain proximity of domicile. One's "neighbors" in this sense are simply those who live within a certain area, and in this way one may have neighbors whom one has never seen or met. Without doubt, the members of an HOA are neighbors in this sense. Yet on the other hand, there is also a prescriptive, normative sense of the term, which connotes a certain interest in the well being of others, or at least a mutual respect or regard. Indeed, the concept of "neighborly" behavior makes little, if any, sense in the purely descriptive context, and refers explicitly to the idea that there is some norm for behavior between neighbors which transcends simple spatial-relations. "Good neighbors" will lend cups of sugar or power tools, will collect the mail while one is away, and generally make gestures of good will and congeniality. Within the con-

text of an HOA, it may be said that one's *neighbors* in the descriptive sense, are seldom *neighbors* in the normative sense.

Think, for example, of the way in which disputes might be settled among neighbors in the normative sense of the term. The "good" neighbor does not respond to disputes by immediately phoning the police, or writing his/her congress member, or pouring sugar in the offender's gas tank. To do so would indeed be taken as a demonstration of one's "badness" as a neighbor. Rather, what is expected is that the neighbor will raise his/her complaint with the offender in order to reach some sort of amicable accommodation. If the offender is also a "good" neighbor, then he/she will likewise attempt to reach an agreement. Again, if the offender instead simply walks away, or slams the door, or produces a firearm, this would be understood as the behavior of a "bad" neighbor. In short, the effort to resolve the conflict, provided both parties are "good" neighbors, will be cooperative, in the sense that each must come to some better understanding of the position of the other, and work to find some way to best accommodate both of their interests. Thus, in order for this effort to succeed, each party must in some way become more familiar with the habits and interests of the other—the neighbor has to become more well known *as a person*.

This points toward an important shift in the *symbolic* representation of our relation to others. The idea of the "neighbor," in the normative sense of the term, suggests a way of interacting with others which required at least a tentative move beyond the abstract notion of a bearer of rights and toward an understanding of the other as a fully-fledged individual *agent*, whose interests and goals one ought to respect **not** because of any kind of contractual agreement, but rather because one has come to *recognize* the importance and integrity of that agent *as such*. One comes to see the way in which one's neighbors, inasmuch as they are all situated in the same social context, are at the same time reflections of and conditioning factors in one's own status as a neighbor. Our shared interests are not the result of some formal or informal *contract*, but rather a matter of this shared social context which generates and conditions our interests in the same way that it conditions and renders possible our ability to *individuate* ourselves.

What, then, is one to make of the phenomenon of the HOA? Given the effective hegemony of contractarian understandings of social life it exemplifies, and the degree to which this dominance has been increasing in recent years, it is worthwhile to take a seri-

ous look at its implicit assumptions, and its possible strengths and weaknesses. Hegel is a particularly fruitful figure with whom to take up this endeavor, for several reasons. First, his views influence, or at least lurk in the background, of many subsequent critiques,<sup>14</sup> and so a clear understanding of Hegel can be critical to any fruitful employment of those more recent critiques. Second, he is not simply dismissive of contractarian views, but places them in a larger context which highlights their weaknesses, to be sure, but also their strengths. Lastly, his analysis of contractarian social theory is situated in an attempt to shed light upon the understanding of what it means to be a *human* agent, and how we might achieve a full and robust expression of that humanity. In the interests of brevity, I will limit my exegesis to the discussion of those ways of thinking I have labeled “contractarian” offered in the *Philosophy of Right*—specifically, I will focus upon Hegel’s critique of the notions of self and freedom which lie at the heart of contract-based conceptions of humanity and human interaction.<sup>15</sup>

The bulk of Hegel’s discussion of contract takes place in the “Abstract Right” section of the *Philosophy of Right*. The abstractness of right referenced here lies in the fact that in this moment of the dialectic, the understanding of the human agent, and social interaction, is more or less “formal”, in the sense that an attempt is made to reduce the political agent to a “universal” abstraction, as opposed to a “particular” and concrete individual.<sup>16</sup> That is, the agent is conceived of as being a self-contained, immediately given social *unit* which is “abstracted” from every “contingent” feature by which we normally distinguish between particular individuals. One’s status as a political agent is given prior to any concrete details about that person’s life. Indeed, a standard claim of liberal political theory is that such “contingent” details about a person’s life are, or at least ought to be, politically irrelevant. This is in many ways the entire point of Rawls’ “veil of ignorance,” which invites us to *abstract* from the world of the here and now, and posit ourselves as more or less featureless political units. Hobbes’ state of nature serves much the same purpose, positing an “original position” in which all agents are more or less equal, and the resulting social contract may be based upon the rational decisions of these relatively featureless nascent political actors. The social/political world, within this context, thus takes the form of a limitation and mediation of the interaction between these abstracted individual units.

If we understand the human agent in terms of an abstract political unit without any “contingent” historical, social, or psycho-

logical features, then our understanding of the "self," for any given agent, is reduced to what is effectively a mathematical point. If what it means to be a political agent is to be capable of possessing property, or a bearer of rights, *and nothing more*, then indeed the very notion of political agency is reduced to a kind of literal *emptiness*. To be an agent is simply to be a vessel capable of holding or bearing certain important elements. Thus, what distinguishes one agent from another is merely a matter of the various elements which come to fill this vessel.<sup>17</sup> What is more, since the self is reduced to this notion of a content-less vessel, it follows that all else is *external* and *other*.<sup>18</sup> This includes not only those things which one may come to possess, but also other agents, as well as those historical, political, and psychological features of our own which have been deemed irrelevant. Again, reflecting upon the basic assumptions of classical contract theory makes this point more clearly. In the pre-social "original position" (whether it be an actual part of history, as Hobbes seems to suggest, or an hypothetical construct, as with Rawls), the nascent political agents exist as individual atoms, working furiously to acquire those "goods" needed to satisfy their desires. When at last these agents come to realize that their constant competition might be doing more harm than good, they begin to engage in the exchange of those goods they have acquired. This is the contract. In other words, "I" exist only as a bearer of rights and property, and my only means of interaction and relation to other agents is through the exchange of those rights and property, mediated by an implicit or explicit contract. All of those features which serve to distinguish the agent as an individual are pushed to the periphery and rendered "external," such that only the pure, atomistic political unit remains in the analysis.

Along with this notion of self as an abstracted individual bearer of rights comes a corresponding notion of freedom, and it is here that Hegel commences his critique. He states: "The freedom of the will, according to this determination, is *arbitrariness*, in which the following two factors are contained: free reflection, which abstracts from everything, and dependence on an inwardly or externally given content and material."<sup>19</sup> The problem with this notion of freedom, for Hegel, is that it leads to an idea of freedom based upon *contingency*, and a conception of self based upon *contradiction*.<sup>20</sup> This means on one hand that in holding that freedom lies in "doing what one pleases" (arbitrariness), it follows that for any *particular* action one should take, or thing one should claim (as property), that such action or possession should

be at any given time purely contingent—it should be the case that one can just as easily refute the action, or rid oneself of the object. The “free” will, in this sense, is something which has no substantive connection to any particular *content* of willing. In other words, in order for any given decision or action to be considered free in this sense, it must be the case that the *content* of that decision or action be understood as more or less incidental and contingent.

At the same time, this contingency means that for any given subject, the content of that subject’s will (expressed through action) remains fundamentally *external*. Since the arbitrary content is contingent or incidental to the subject as such, a hard distinction is maintained between the subject and that particular content of the subject’s will. By way of an (rather trivial) example, suppose one chooses to wear a certain kind of shoe. But if that choice is free, in this sense, then it must be the case that one could, just as easily, *not* so choose. Thus the particular content of the decision is rendered contingent. One asserts one’s desire to wear the shoe, but at the same time asserts that this desire is in no way determinate of one’s *self* or in any way limits one’s freedom (as arbitrariness)—and therein lies the contradiction. For each choice—each act of will—requires some determinate, particular content. But in order to affirm the contingency of this content, one must also posit the particular determination as fundamentally *not mine*. One may “freely” choose one’s shoes, to follow the example, but the shoes in no way reflect upon one’s identity—the choice is thereby contradicted, and rendered “external.” The contradiction lies in that fact that for each act of willing, which is fundamentally an act of affirmation (“*I will this*”), there must be a corresponding negation (“but this in no way fixes or limits my *agency*”). Each choice or action is thus *mine* and simultaneously *not mine*.

This way of understanding freedom and the self, for Hegel, is ultimately self defeating. If it is taken to be the case that the standard for freedom is a content-less, abstracted, atomistic “I,” such that this subject is free to the degree that it is unfettered by “external” boundaries, forces, and compulsions, then it follows that any content, any determination of the will, necessarily results in a decrease in freedom, since it erects certain boundaries around the subject.<sup>21</sup> If the ideal free agent is understood as a radically undetermined subject with the *potential* for virtually any decision or action, then any *actual* decision or action must be understood as at least partially undermining that freedom. That is,

every act of will, inasmuch as it requires some determinate content to the will, contradicts the espoused ideal of a content-less subject.<sup>22</sup> Thus, Hegel suggests that there is a kind of internal inconsistency or contradiction lurking behind the notion of freedom and the subject which lays the groundwork for contractarianism.

The contradictions at the heart of this picture of the subject go even deeper, however. The espoused ideal is the radically undetermined, content-less subject—the universal, abstracted “I,” in Hegel’s own terminology. Hegel argues that this ideal, if followed to its logical conclusion, ultimately yields a nonsensical demand upon the subject. For the demand to be *without* determination, is, when compared to all forms of determination, in itself a fully *determined* position.<sup>23</sup> The injunction to avoid all positive content and particularity as contrary to freedom in itself places a clear and specific restraint upon the agent—namely, *do not will*. Just as any concrete act of will, any determination or particularity, closes off certain potentialities and possibilities for future action, the desire to avoid all determination and particularity effectively closes off, or at least renders odious, *all* concrete acts of will save one: will nothing. But inasmuch as the willing of nothing requires a determined stance on the part of the subject, it constitutes an internal contradiction.

By way of an admittedly extreme example, imagine a person who takes this ideal of freedom to its logical conclusion and holds that any determination, since it places restrictions upon her abstracted subjectivity, is contrary to her espoused ideal. She avoids any political or social affiliation, since formal group-membership usually carries with it certain performative, or at least ideological, obligations. Indeed, she may refuse, or at least avoid, most sorts of social interaction, since these often lead to feelings of obligation and commitment, both of which undermine her “integrity” as an atomistic individual. She must also avoid appeal or reference to linguistic, cultural, racial, gender, national, or historical background or context, since all of these serve to impose “external” expectations and interpretations upon her pure, undetermined subjectivity. And so on. When taken to its logical conclusion, our hypothetical adherent to this view of self and freedom must effectively isolate herself from the “outside” world, spending as much time as possible alone, avoiding any activity which might somehow add positive content to her understanding of self, and thereby undermine her “freedom.” She will, effectively, incarcerate herself in order to preserve what she takes to be her

liberty. This is the contradiction Hegel sees operating in this understanding of self and freedom. Seldom do people actually carry this notion so far, but we need not stretch our observational capacities to find more ordinary manifestations of this paradigm all around us.

Contractarian social and political theories, inasmuch as Hegel takes them to rest upon these basic notions of self and freedom, are likewise doomed to contradiction. Hegel does not dismiss contract theories outright, however. He takes the emphasis upon individuality to be an improvement over tradition-bound or theocratic forms of political organization. Unlike such traditional autocratic social structures, which tend toward the complete dissolution of the individual in the larger polity, the advent of modern political theory, which emphasizes the freedom of the individual, makes it possible for *both* the individual and the larger polity to more fully express themselves. The institution of the contract, focusing as it does upon the agent as an individual acting in accordance with his or her individual desires, provides the context in which the agent is able to develop and express herself *as an individual*, which in turn strengthens and diversifies the polity as a whole.<sup>24</sup>

Furthermore, Hegel holds that genuine human agency and genuine freedom are a matter of seeing oneself reflected in the larger whole, and seeing the larger whole reflected in oneself. Thus, rather than understanding the agent as an atomistic bearer of rights and property, such that the "external" world stands over and against one's understanding of self, Hegel urges us to see the social world as the *context* which renders our agency possible in the first place.<sup>25</sup> Rather than positing self-contained individual units which come together to form social structures, he thinks of individuals arising through a process of *individuation* from a larger (and in a certain sense logically prior) social organism. What makes one an individual is a matter of the relationship one holds to other agents, to larger social institutions, and so on. The *individualism* engendered by contractarian models of social interaction, however, fosters an understanding of agency which attempts to avoid connection with this larger context, and in so doing posits a self which is a featureless abstraction. All particular features which distinguish a given agent from another come to be marginalized as "merely contingent" and ultimately irrelevant. In other words, *individualism* undermines *individuality*.

The problems for contract theory arise, according to Hegel, when its ideals and modes of understanding are taken too far.<sup>26</sup> The exchange of property and the modes of self-expression and



self-development which it engenders ought to be a *part* of a healthy society, but this should be only a relatively minor moment in a larger context of cooperation and full participation in institutions which exist above and beyond the abstracted individual. If this moment of individualism and contractual interaction comes to be the *sole* model for understanding human agency and social being, then it is hardly an improvement on the traditional and autocratic societies it replaced. This contractual *moment* is only constructive, Hegel believes, when it is embedded in a larger social context to which it remains *subordinate*. A healthy society requires well-developed individual agents, but when those individual agents become the sole end of social interaction, then not only with the larger social whole be adversely impacted, by the individual agents themselves will suffer from the crippling of the social context within which they are situated.

One way to flesh-out Hegel's criticism here is by focusing upon the way in which contract theory invites a particular way of conceptualizing "the human." Specifically, it is important to look at the kinds of symbols it employs to capture and reinforce this particular view of humanity. Again it is helpful to look at the economic model. To be a "consumer" or a "producer" or an "employer" is a matter of one's ability to assume a particular role in a contractual relationship. At the same time, social contract theory, from Hobbes to Rawls to Gauthier, can in many ways be understood as applying an economic model to the political world. The relation between the citizen and the state—the contract in question—is a matter of an exchange of certain goods between mutually consenting (at least hypothetically) parties. I surrender some of my natural rights to the state in exchange for security. And just as one's status as an economic agent is a matter of one's ability to engage in economic transactions, so is one's status as a political agent, within the context of social contract theory, a matter of one's ability to enter into contractual arrangements. In the end, we arrive at a new symbol of the human agent—the "signatory". What makes us human is our ability to enter into contracts, since human interaction takes place only by means of various implicit and explicit contracts. That is, since each political unit exists primarily as an abstracted bearer of rights and/or property, it is *only* through an exchange of rights and/or property that these units are able to interact. Conversely, those who are not, for whatever reason, signatories of the various contracts which govern our behavior are outside the bounds *humanity* itself, in the sense that all rights, duties, obligations, and protections are based in the con-

tract, and those outside of the contract have no rights which *genuine* or *full* humans are bound to respect.<sup>27</sup>

It should be possible at this point to see how Hegel's critique reflects upon the example provided by the HOA. The basic assumptions of contractarianism generate an understanding of humanity and human interaction that necessitates the formation of formal contracts governing that interaction. If all human interaction is ultimately understood as characterized by contractual relations, there emerges a drive to spell out contractual relations governing all human interactions. It thus becomes *necessary* to formulate concrete rules and restrictions which mediate the interaction of individuals who happen to share adjacent property. Once rules and norms for behavior based upon this model begin to take hold, they condition one's understanding of self and one's place in the larger world such that the original assumptions begin to appear true. Given one's role as subject to and an enforcer of the CC&R's, one "naturally" begins to behave in a way which approximates the ideal agent in the contractarian schema. But lurking in the background there is a constant tension. For the behavior required within this model, as we have seen, is fraught with ironic and often contradictory patterns. In the Orwellian world of the HOA, to be a true individual one must eradicate individuality. To be free one must be effectively isolated from the rest of the world. Human "relationships" are characterized by a basic lack of familiarity or intimacy. In short, the preservation of one's integrity as an "agent" requires the mortification of one's sense of *self* and the crippling of one's ability to take seriously the goals and interests of others on the most basic—most *human*—level.

And this leads to the heart of Hegel's critique of the social contract. For the symbolism of contractarian social theories fails in any but the most superficial of ways to capture the significance of what it means to be *human*. A "signatory" to a contract is a featureless abstraction. What makes one a signatory is nothing more than one's possession of some "good" which can be exchanged for some other good. Indeed, contracts are frequently entered into by artificial "persons", such as corporations, which exist only by virtue of their capacity to "own" assets. That fact that contracts hold actual human beings and corporations to be social and moral equals goes a long way toward pointing out exactly why contract theories cannot adequately capture what it means to be human. The failure of this symbolism is by no means accidental, for contractarian theories strip human agents of much of what

makes us *agents* in the first place. Our *relationships* to other persons, to larger social contexts, and to ourselves as parts of this larger context, are all rendered "external" by the notion of the contract, and in their place we are left with empty, featureless vessels—bearers of rights and property.<sup>28</sup>

The proper response to this failure of contractarian symbols and understandings of humanity is not simply some nostalgic return to "good old days." Rather, if we listen to Hegel, what is needed is an effort to preserve what is valuable in contractarian thinking, while limiting or expunging its excesses. This purpose may be served by a revisiting of older symbols, such as that of the "neighbor," but this return to older symbols must never be naively or uncritically undertaken. Neighborhoods, even in the normative sense, can be prone to episodes of xenophobia, reactionary isolationism, and naïve conformity to tradition and "respectability." A healthy respect for individuality is a welcome respite from some of these more odious tendencies. It may be, to maintain this particular context, that a return to the symbol of the "neighbor" may be just as unsatisfying as the symbol of the "signatory," though surely in different ways. But if we pay attention to what was positive in each, what best represented a more critically engaged and sophisticated understanding of humanity, we may begin to move toward a means of symbolizing the human which avoids some of the pitfalls of its predecessors. The first task, and most important in the short term, is to draw attention to the failures of contractarian symbolism, in all of its forms and contexts. Its hegemony must be called into question at every turn, but without falling into the trap or outright and naïve dismissal. As long as its assumptions regarding humanity remain unchallenged, and are understood as "human nature," our status as human beings, and our relationship to the world around us, will continue to worsen.

In the final passage of Frantz Fanon's *Wretched of the Earth*, he urges us to "turn over a new leaf, [to] work out new concepts, and try to set afoot a new man."<sup>29</sup> One important part of this monumental task will be exactly the sort of re-symbolizing of the human toward which I have gestured here. The "new concepts" should bring humanity out from behind the uniform fences and well-manicured lawns which preserve the illusion of isolation from the rest of the world. Our new symbolism must enable us to see and recognize those who have been, and continue to be, excluded from our "social contract," not only in our own cities, but in every corner of the globe. Inasmuch as the atomistic sym-

bolism of the social contract serves to obfuscate the reality of human misery and oppression, and our own role in the maintenance of that oppression, an important task will be the transcendence of that symbolism, and the setting afoot of a new understanding of *human* being.

## NOTES

<sup>1</sup>I would certainly include what has come to be known as “neoliberalism” in this tradition, though it has come to have far less in common with the classical theories of Smith than many of its proponents would have us believe.

<sup>2</sup>See Herman E. Daly and John B. Cobb, Jr., *For the Common Good*, Beacon Press, Boston, 1989, pp. 85-96

<sup>3</sup>Smith, Adam, *Wealth of Nations*, Oxford: Clarendon Press, 1880

<sup>4</sup>Hobbes, Thomas, *Leviathan—Parts I and II*, Macmillan Publishing Company, New York, 1985 p. 112

<sup>5</sup>By way of a quick example, many Home-Owners Associations (HOA's) not only devote resources to the upkeep of the physical grounds of the “common” property (clubhouses, streets, swimming pools, exercise facilities), but also employ private security—empowered not only to maintain a perimeter through which only residents and their guests may pass, but also to assess fines for speeding, disorderliness, etc. In effect, this sets up a community which is technically part of a larger city, but which has little need for city services. Thus, they are relatively isolated and protected from the problems of the city, and this no doubt affects their voting patterns and their understanding of how the city's resources should be allocated. Returning to Las Vegas, virtually all new housing is part of a system of HOA's, which means that those who are able to afford property in these new developments, and therefore a large part of the city's tax base, are less and less interested in supporting vital services. Thus there are huge and affluent Master-Planned Communities to the Northwest and Southeast of Vegas with private security and well-maintained streets, while the city itself is finding it very difficult to address the problems of public education, homelessness, crime, and transportation

<sup>6</sup>Gordon, Lewis, *Existential Africana*, Routledge, New York, 2000, p. 73

<sup>7</sup>This is in many ways limited to HOA's established in new housing developments. There are HOA's for example, established to preserve historical neighborhoods, which generates rules and a dynamic of interaction between the home-owners which are in certain ways importantly different from my examples. There is no enforcement of homogeneity, for example. Again, what is important is not the universality (or lack thereof) of my description of HOA's, but rather the general approach toward humanity that this description embodies.

<sup>8</sup>Of course, it is best if the yard work is hired out, rather than performed by the actual home owner. HOA's will often arrange to provide discounts to members through a particular company. What is interesting about this, and related to this investigation, is the racial dynamic of this practice. If we think of the kind of “invisibility” often associated with the presence of non-whites, and the fact that grounds-keeping is a kind of labor often performed by non-whites, then having one's yard-work contracted out in this way is a means of ensuring that nobody will “see” it being done.

<sup>9</sup>Once it is decided that a given family is “trouble”, they are of course afforded special attention by those around them, and are thereby liable to be cited for

further violations of the CC&R's. The family in the above example experienced exactly this sort of scrutiny, and were found in violation of some regulation or other nearly every month. Within a year after moving in, this family left. It is not known for certain, but is probably a safe guess that their move was at least in part motivated by the constant harassment of the HOA.

<sup>10</sup>As online shopping becomes more simple, and more popular, we can see how this effective isolation is becoming more and more complete. At present, it becomes necessary, upon occasion, to interact with others, but technology will soon make that interaction strictly optional.

<sup>11</sup>This requirement often holds even in the deserts of Nevada and Arizona, which obviously requires massive depletion of water resources. This alone speaks volumes about the kind of relations HOA's establish with those who are outside of the Association proper. The needs of the larger polity are clearly secondary to the demands of property value.

<sup>12</sup>For information on restrictive covenants, including extensive references, consult the following online resources:

<http://tigger.uic.edu/~wplotk1/deeds/>

<http://faculty.econ.northwestern.edu/faculty/ferrie/wksp/covenant.pdf>

<http://www.lihistory.com/specsec/hselevrac.htm>

<sup>13</sup>For extended discussion of the continuing segregation in the U.S., see Hacker, Andrew, *Two Nations*, Ballantine Books, New York, 1992; and Massey, Douglas S., and Denton, Nancy A., *American Apartheid*, Harvard University Press, Cambridge, Mass., 1993

<sup>14</sup>This list would include Marx, and thus all Marxists, at least indirectly, and also Sartre, as well as Dewey, and through him, Rorty.

<sup>15</sup>Hegel, G. W. F., *Elements of the Philosophy of Right*, Cambridge University Press, 1991

<sup>16</sup>Hegel, *Philosophy of Right*, sections 33-34

<sup>17</sup>*ibid.*, section 104

<sup>18</sup>*ibid.*, section 39

<sup>19</sup>*ibid.*, section 15

<sup>20</sup>*ibid.*

<sup>21</sup>Working in this model, it could certainly be the case that the *aggregate* freedom could be increased by a given choice or action. By choosing to escape from a cell, for instance, one could be understood as increasing one's freedom. But this misses the point. Even the decision to escape from incarceration must close off *some* possibility for decision or action (in this case, the decision to remain incarcerated), and this fact alone is sufficient for Hegel's purposes.

<sup>22</sup>*Philosophy of Right*, section 4

<sup>23</sup>*ibid.*, section 34

<sup>24</sup>*ibid.*, sections 182-187

<sup>25</sup>*ibid.*, section 33

<sup>26</sup>*ibid.*, section 75

<sup>27</sup>For more on this exclusionary phenomenon in social contract theories, see Carol Pateman's *The Sexual Contract* (Stanford: Stanford University Press, 1988) and Charles Mills' *The Racial Contract* (Ithaca: Cornell University Press, 1997).

<sup>28</sup>In the end, the only means we are left by which to correct this omission is by attempting, as best as we are able, to fill this vessel with as much "goods" as we can. Thus, one may make a strong case that consumerism is directly related to the rise of the contractarian understanding of self and the social world.

<sup>29</sup>Fanon, Frantz, *The Wretched of the Earth*, Grove Press, New York, 1963, p. 316.