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Individualism as Principle: Its Emergence, Institutionalization, and Contradictions[†]

ADAM B. SELIGMAN*

INTRODUCTION

There can by now be little doubt that the idea of civil society has become an overused concept in the past decade. Indeed, just as the slogan arose in Eastern Europe in the 1980s as a cudgel to batter the totalitarian state, it has emerged in the 1990s in Western Europe and in the United States as a method by which critics of the existing political order press home their claims. Interestingly, in a way which should be a warning to us all, the idea of civil society is used by political groups and thinkers on both the right and the left. And though in Europe, in general, it is most often the province of the left, in the United States it has been appropriated by both groups to advance their political agendas.

Thus, for right of center thinkers, as well as for libertarians, the quest for civil society is taken to mean a mandate to deconstruct many of the powers of the state and replace them with intermediary institutions based on social voluntarism. For many liberals, civil society is identified with social movements, also existing beyond the state. Many of the former refuse to recognize that voluntary organizations can be of a particularly nasty nature and based on primordial or ascriptive principles of membership and participation that put to shame the very foundations of any idea of civil society. Similarly the latter are blind to the fact that the Achilles heel of any social movement is its institutionalization which—one way or the other—must be through the state and its legal, and coercive, apparatus. In the meantime, both communitarians and liberals continue to couch the idea of civil society in their own terms, invest it with their own meanings, and make of it what they will. Right, left, and center, north, south, east, and west, civil society is identified with everything from multiparty systems and the rights of citizenship to individual voluntarism and the spirit of community.¹

That any concept could be invested with such varied and often contradictory meanings should make us suspect its usefulness within the social sciences, if not in politics. One way to ensure this concept's usefulness, I suggest, would be to distance it from its normative moorings in political philosophy and

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1. See generally AMITAI ETZIONI, *THE SPIRIT OF COMMUNITY: RIGHTS, RESPONSIBILITIES, AND THE COMMUNITARIAN AGENDA* (1993); VLADIMIR TISMANEAU, *REINVENTING POLITICS: EASTERN EUROPE FROM STALIN TO HAVEL* (1992); Edward Schils, *Was ist eine Civil Society?*, in *EUROPA UND DIE CIVIL SOCIETY* 13-51 (Krzysztof Michalski ed., 1991).

recontextualize it within a somewhat different frame of meanings. To that end I suggest that we view any idea of civil society as embracing that concept of the individual which has provided the precontractual principle upon which modern conceptions of rights, obligations, solidarity, and trust are based.

What, however, is the meaning of the precontractual? In current scholarship it is understood as the principles of generalized exchange or unconditionalities in society which regulate the workings of the market. It is, in S.N. Eisenstadt's terms, those "limitations to the free exchange of resources in social interaction, and the concomitant structuring of the flow of resources and social relations in ways that differ from 'free' (market or power) exchange."² This structuring takes different forms, but primarily it takes the form of the creation of public goods, and the public distribution of private goods—both of which allocate resources according to criteria other than those of pure market exchange. These principles provide that "symbolic credit" upon which all interaction, even the most instrumental, turns—providing that "social capital" that is central to economic well-being.

The principles upon which these unconditionalities are founded can be many: they can be predicated on ascriptive ties of kinship, or the familiarity of dense social networks—as, for example, among rotating credit associations—or they can be based, as suggested by Durkheim, on a civic consciousness predicated on the mutual recognition of the agency and autonomy of the individual as the source of the moral order. This last model was that posited by Durkheim as being at the heart of modern, organic forms of the conscious collective.³

What Durkheim posited and what has—to different extents—in fact come to characterize the terms of solidarity in the West, has been the positing of the individual agent and his, and increasingly her, autonomy, as the unconditional principle of generalized exchange that regulates and structures the flow of resources in society. This has been manifest in myriad and contradictory forms. First is the very development of contract law, and the freeing of the contract from restrictions and encumbrances in the heyday of laissez-faire capitalism—expressly privileging the autonomy and freedom of choice of the contracting parties. It is, however, also manifest in the wealth of entitlements that today in fact restrict the very workings of contract. These entitlements, such as minimum wage regulations, child labor laws, and even affirmative action criteria, are aimed, of course, at ensuring a certain minimum of human dignity to the contracting individuals, regardless of market pressures.

Be this as it may, the point at issue here is the close connection between any idea of civil society and the very existence of a private realm revolving around the autonomous individual as agent and moral locus of the social order. For constitutive of civil-society is not only some sense of a shared public (as I believe all would agree), but also the very existence of the private. It is after all

2. S.N. EISENSTADT, *POWER, TRUST AND MEANING: ESSAYS IN SOCIOLOGICAL THEORY AND ANALYSIS* 212-13 (1995).

3. See EMILE DURKHEIM, *PROFESSIONAL ETHICS AND CIVIC MORALS* (1958); EMILE DURKHEIM, *Individualism and the Intellectuals*, in EMILE DURKHEIM ON MORALITY AND SOCIETY (Robert N. Bellah ed., 1973).

the very existence of a free and equal citizenry—of the autonomous, agentic individual—that makes civil society possible at all. The public space of interaction is a public space only in so far as it is distinguished from those social actors who enter it as private individuals. Where there is no private sphere, there is, concomitantly, no public one—both must exist to make sense of either one.

It is, I wish to claim, this moral valuation of the individual that has, since the seventeenth century, come to define our very ideas of the private realm as well as our evaluation of it in respect to those realms deemed more public in nature. In fact, the moral or ethical elevation of the private arena—as that arena where virtue, morality, and conscience are realized—over the public arena emerged concomitantly with the growing Western realization of individual agency and autonomy.

Evidence of this is, indeed, inherent in all the papers which comprise this Symposium. The idea of the individual as moral absolute informs, to a greater or lesser extent, the arguments of all of our authors. After all, when Marvin Becker is describing the “right of minorities” in the politics of Benjamin Constant, or the “principle of independence” of John Millar, or indeed, clarifying that civil society is predicated on the conversion of parties of principle to parties of interest, to what is he implicitly referring if not to the organization of societal interests, rights, and responsibilities in terms of individual social actors rather than collective and often primordially or ascriptively defined groups? It is precisely that idea of a politics of interest as defining civil society which points, I believe, to the centrality of the idea of the individual within civil society in two salient ways: first, as the central or “principled” focus of politics (abrogating the need for competing “principles,” hence leaving politics as the province of interest alone; the issue of principles, or perhaps of ultimate principles, having been resolved); second, as providing the focus for the organization of the division of labor in modern societies, which was of course precisely what was at the center of Marx’s critique.

The self-same focus appears most markedly in Professor Judith Failer’s fascinating analysis of the Satmar Hasidim and the case of the *Board of Education of Kiryas Joel v. Grumet*⁴ where she explicitly queries the wisdom of granting enclave group status to groups in our society organized around principles *other than* individual autonomy, freedom, and equality. The crux of Failer’s whole argument turns, after all, on the nature of civic membership in the polity and what she terms the antidemocratic nature of the Satmar forms of communal organization. The issue at stake, however, is not really one of democracy. After all, if the Satmars elected their Rebbe once every four years by popular mandate but in all other respects remained the same, it is hard to believe that Failer would change her critique. No, the issue at stake is not the organization of the political community—democratic, oligarchic, hierarchic, or whatever—but the nature of its constitutive elements. For Failer, as for most modern scholars, this constitutive component is the individual self, decidedly not “caste” groupings; while for the Satmars the relevant political community is those to whom they are tied by blood, belief, and crucially, by the shared

4. Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet, 114 S. Ct. 2481 (1994).

acceptance of the laws of the Halakha. For Failer this gives the Satmar child “a false image of who is in the political community.” False or not, it is decidedly an image of political community and membership based on principles other than the autonomous individual agent which stands at the core of Failer’s notions, and most of our own notions, of political community. The Satmar or any Halakhic man’s or woman’s existence is, however, of a different order. Enmeshed as that existence is in the intricately ordered laws of the Halakha, that existence is communal in focus and, while hard for moderns to comprehend, is immediately perceived as antithetical to our ideas of the constitutive *nomos* of political community—hence Failer’s argument against granting the Satmars enclave status. Enclave groups can be accepted when, whatever their differences, they adhere to the fundamental organizing principles of our politics—to which the Satmars decidedly do not—principles which ultimately turn on the integrity, autonomy, and moral valuation of the individual self.

Moreover, it is this idea of the individual which plays such a critical role in the moral conception of any idea of civil society, as shown in Professor Stephen Conrad’s paper. Conrad reminds us, through the example of James Wilson, just how much the early modern ideal of civil society drew on natural law doctrines—here, of Cicero—and ultimately of the search for the basis of society in individual human nature. That split between virtue and civility—or civic rectitude or honesty—which Conrad analyzes as crucial to Wilson’s ideas of both civil society and gender identity, turns in no small measure on the valuation of the private individual—here the individual woman—as the model form of political life beyond the collectively defined webs of public personhood.

And, of course, it is precisely in this perceived split of public and private selves that we begin to approach the core of current concerns and debates, most significantly between liberal and communitarian positions. A good feel for this tension, for what is essentially a debate over the nature of the self, can be found in Professor Susan Williams’s critique of civil society from a feminist perspective. For, in essence, what is Williams’s paper if not an inquiry into the nature of the self? It is not feminism, nor even civil society, which stands at the core of her concerns, but the self, the individual, and the nature of individual autonomy. While one could argue with Williams over her account of the self as self-narration, or wish to explore further the tension between her ideas about autonomy and her recognition that such autonomy can only exist within a context of a broader community to which we respond and with which we engage in a process of mutual recognition, one cannot doubt the centrality of the idea of the individual to her whole project. The tension, if not contradiction, between her search for an autonomous self beyond any “constitutive community” and her recognition, very much akin to the Scottish moralists, and especially to Adam Smith’s idea of the third party observer,⁵ that such autonomy is realized within a matrix of group affiliations, is itself a reflection of broader tensions and contradictions that have, for some time now, defined our reigning debates in political and moral philosophy. These debates ultimately turn on our own deeply

5. See ADAM SMITH, *THE THEORY OF MORAL SENTIMENTS* 110, 134-35 (D.D. Raphael & A.L. Macfie eds., Clarendon Press 1976) (1759).

rooted "methodological individualism" as standing at the core of our political conceptions.

These conceptions are essentially those of Western liberalism as it developed from the writings of Hobbes and Locke in the seventeenth century.⁶ The sharp turn away from the Aristotelian conception of human nature to a conception which privileges individual responsibility and agency beyond any metaphysically assured community of interests, stands, after all, at the root of what Alasdair MacIntyre has termed the "[e]nlightenment project" of modernity,⁷ and, as such, stands at the core of modernity's social categories as well.

I shall devote the following pages to an explication of this idea of the individual as social category. In so doing I will follow two distinct, if interrelated, lines of inquiry. The first will be an inquiry into the role of individualism as the unconditional principle of generalized exchange upon which the organization of the social division of labor is based. The second will be a more historically oriented inquiry into how the very idea of the individual as autonomous moral agent emerged in the West to play such a salient role in political, economic, and moral discourse.

I. INDIVIDUALISM AS PRINCIPLE OF GENERALIZED EXCHANGE

An understanding of the first inquiry, that is, into individualism as the principle of generalized exchange, is perhaps best approached through a brief exploration of the development of contract law, which progressed together with the transformation of economies based on reciprocity and redistribution to those based on self-regulating markets.⁸ Not surprisingly, contract law as such did not exist in early, relatively undifferentiated societies.⁹ As P.S. Atiyah has noted, "[since] the law of contract does enable people to impose obligations on themselves, such a body of law naturally presupposes a society and a legal system in which people have the right to choose what obligations they wish to assume."¹⁰ This process of change saw the gradual freeing of the contract from its symbolic encumbrances and thus saw the emergent idea of freedom of contract. This process of change also saw the creation of legal equality out of the "privileges of monopolistically closed organizations,"¹¹ the transformation of the

6. For these perspectives on liberalism, see STEPHEN DARWALL, *THE BRITISH MORALISTS AND THE INTERNAL 'OUGHT' 1640-1740* (1995); PIERRE MANENT, *AN INTELLECTUAL HISTORY OF LIBERALISM* (Rebecca Balinski trans., 1994).

7. ALASDAIR C. MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* 6 (1988).

8. See KARL POLANYI, *THE GREAT TRANSFORMATION* (1944). We may note here as well that the workings of unconditionalities and principles of generalized exchange are very different in economies of reciprocity and redistribution than in those of self-regulating markets. Since these workings are more immediately visible in the former cases, it is the former where anthropologists and others have most often isolated the dynamics of these workings.

9. See HENRY S. MAINE, *ANCIENT LAW* 295-354 (Beacon Press 1963) (1861).

10. P.S. ATIYAH, *AN INTRODUCTION TO THE LAW OF CONTRACT* 2 (5th ed. 1995).

11. 2 MAX WEBER, *ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY* 698 (Guenther Roth & Claus Wittich eds., Ephraim Fischhoff et al. trans., 1978).

loan from an “interest-free form of emergency aid among brothers”¹² to a form of credit, the development of tort law, the enforceability of obligations through contract, and the creation of the “juristic person.”¹³ At the root of these developments stood two crucial sets of privileges:

The first is constituted by the so-called freedoms, i.e., situations of simple protection against certain types of interference by third parties, especially state officials, within the sphere of legally permitted conduct; instances are freedom of movement, freedom of conscience or freedom of disposition over property. The second type of privilege is that which grants to an individual autonomy to regulate his relations with others by his own transactions. Freedom of contract, for example, exists exactly to the extent to which such autonomy is recognized by the legal order. There exists, of course, an intimate connection between the expansion of the market and the expanding measure of contractual freedom or, in other words, the scope of arrangements which are guaranteed as valid by the legal order or, in again different terms, the relative significance within the total legal order of those rules which authorize such transactional dispositions. In an economy where self-sufficiency prevails and exchange is lacking, the function of the law will naturally be otherwise; it will mainly define and delimit a person’s non-economic relations and privileges with regard to other persons in accordance, not with economic considerations, but with the person’s origin, education, or social status.¹⁴

If we take law—and in this case the law of contract—to represent the unconditional aspects of exchange, we see in this quote the very specific type of unconditionality that characterized capitalist expansion in the West based on the agentic freedom of the individual.¹⁵ For hidden within these two privileges is a recognition of the basic freedom of the individual, where the “juridico-economic position of the individual . . . is determined [in part] . . . by contracts concluded by him or for him in his name”¹⁶—a point that, of course, stood at the center of Marx’s critique of capitalism.¹⁷ Simmel in fact focused our attention on this connection of individual freedom in the very origins of market economies based on monetary transactions when he noted:

The lord of the manor who can demand a quantity of beer or poultry or honey from a serf thereby determines the activity of the latter in a certain direction. But the moment he imposes merely a money levy the peasant is free, in so far as he can decide whether to keep bees or cattle or anything else.¹⁸

The growth and development of this process, of self-regarding capitalism, saw the transformation of “clan comradeship to [a] universal society” of impersonal relations where the principle of private interest rather than those of group

12. *Id.* at 677.

13. *Id.* at 706.

14. *Id.* at 668 (emphasis omitted).

15. For this understanding of law see 27 ERIC VOEGELIN, *THE NATURE OF LAW AND RELATED LEGAL WRITINGS* (1991).

16. WEBER, *supra* note 11, at 669.

17. In England this principle was expressed in the singular reluctance to restrict the “freedom of contract” with any encumbrances. ATIYAH, *supra* note 10, at 12.

18. GEORG SIMMEL, *THE PHILOSOPHY OF MONEY* 286 (David Frisby ed., Tom Bottomore & David Frisby trans., 1990).

solidarities came to serve as the unconditional principle of generalized exchange.¹⁹ Thus, the oft-noted “disembedment of economics from politics” is not really a disembedment or uncoupling at all. Rather, it is a transformation in the nature of politics; in essence, it is a transformation in the nature of those unconditional principles of market exchange from those predicated on kinship familiarity to those predicated on the recognition of the autonomy and freedom of the individual. Rather than the kin-based group, the individual becomes the new locus of exchange relations such that the shared evaluations which define market exchange are no longer those of kin-based familiarity but of the individual himself—for most of this period, decidedly of the individual himself, and not herself.

It was this individual who more and more came to be thought of as the profit-maximizing individual of current exchange theory and upon whose promises reliance or confidence could be seen to rest—at least according to nineteenth-century utilitarian theory.²⁰ It was this transformation that P.S. Atiyah has, in several writings, noted in the development of contract law within the English common law tradition. It is reflected perhaps first and foremost in the English aversion to “principle”; this aversion is often termed the pragmatism of the English legal tradition, but is, to large extent, the hesitation to impose ideas or principles of public order on contracting parties. In a sense, therefore, it is a most unqualified acceptance of the idea of the free agency of the individual as an unconditional principle of market exchange.²¹ This idea of the individual as what may be termed the “unconditional locus of exchange” was, as Atiyah has pointed out, a development that progressed gradually from the seventeenth century to the nineteenth. The nineteenth-century, classical liberal, laissez-faire doctrine indeed saw that the mutual respect “for the person, property, and choices of others” was what in fact made cooperation—that is, social order—possible.²²

It is this moral idea of the individual and of the cooperation arising from individual choice which has been institutionalized both in the legal rights of the individual and in the idea of his liability to such an extent that—and to take only the case of English common law—existing limitations on the negotiability of contracts are limited to guaranteeing the free agency of the contracting parties. Thus, the English common law gives rise to rules against securing acceptance by duress, fraud, sharp dealing, negligent statement, and innocent misrepresentation, and rules requiring disclosure.²³ This principle is exemplified in the legal idea of caveat emptor, which frees party *A* in a contract from informing party *B* about future conditions that party *B* may have an interest in knowing of and incorporating into the contract. Caveat emptor stresses the free choice of the contracting parties and the responsibility each has to attend to his or her own

19. BENJAMIN NELSON, *THE IDEA OF USURY* 136 (2d ed. 1969).

20. See P.S. ATIYAH, *PROMISES, MORALS AND LAW* 29-86 (1981).

21. See P.S. ATIYAH, *PRAGMATISM AND THEORY IN ENGLISH LAW* 18-27 (1987).

22. See P.S. ATIYAH, *The Liberal Theory of Contract*, in *ESSAYS ON CONTRACT* 121, 122 (1986).

23. David Campbell, *The Relational Constitution of Discrete Contract* 5 (1995) (unpublished manuscript, on file with the School of Financial Studies and Law, Sheffield Hallam University).

interests. It is, by the way, a principle whose emergence dates, not surprisingly, to the early seventeenth century.²⁴ Behind such forms of regulation is of course the development of capitalism and the transformation of economic life from “communal, limited and conditional ownership, to modern individual and absolute ownership.”²⁵ This new sense of property and its relation to the new terms of unconditionality regulating economic exchange was perhaps best expressed by Louis Dumont when he noted:

[I]t is in the guise of possession or property that individualism raises its head, knocks down any remnant of social submission and ideal hierarchy in society, and installs itself on the throne thus made vacant. . . . [E]conomics as a “philosophical category” represents the acme of individualism and as such tends to be paramount in our universe.²⁶

England led the way in this development of capitalism; indeed, as early as the thirteenth century England was already characterized by “rampant individualists, highly mobile both geographically and socially, economically ‘rational,’ market-oriented and acquisitive, ego-centred in kinship and social life.”²⁷ Thus, in England, the shattering of kinship bonds—most especially in property relations as manifest in the early development of the freedom of the testator—led to a society “constituted of autonomous, equal, units, namely separate individuals, and that such individuals are more important, ultimately, than any larger constituent group. . . . [This shift in society was] reflected in the concept of individual private property, in the political and legal liberty of the individual, in the idea of the individual’s direct communication with God.”²⁸ Our interest here is not in entering into the debate over the origins or timing of such development, but only to establish the well-known connection between capitalism and individualism which, however, also implies the transformation of the unconditionalities at work in society—an aspect of this development that is perhaps less remarked upon.

Within this transformation the very nature of contracts came to be regulated by new principles, which were at the still-unarticulated heart of Pollack’s and Maitland’s own understanding of contractual law when they noted that:

In the really feudal centuries men could do by a contract, by the formal contract of vassalage or commendation, many things that can not be done now-a-days. They could contract to stand by each other in warfare “against all men who can live and die”; they could (as Domesday Book says) “go with their land” to any lord whom they pleased; they could make the relation between king and subject look like the outcome of agreement; the law of contract threatened to swallow up all public law. Those were the golden days of “free,” if “formal,” contract. The idea that men can fix their rights and

24. 8 W.S. HOLDSWORTH, A HISTORY OF ENGLISH LAW 68-69 (1926); cf. P.S. ATIYAH, THE RISE AND FALL OF FREEDOM OF CONTRACT 464-79 (1979) (discussing the later growth of the caveat emptor doctrine throughout the late eighteenth and early nineteenth centuries).

25. ALAN MACFARLANE, THE ORIGINS OF ENGLISH INDIVIDUALISM: THE FAMILY, PROPERTY AND SOCIAL TRANSITION 58 (1978).

26. LOUIS DUMONT, FROM MANDEVILLE TO MARX: THE GENESIS AND TRIUMPH OF ECONOMIC IDEOLOGY 53-54 (1977).

27. MACFARLANE, *supra* note 25, at 163.

28. *Id.* at 5.

duties by agreement is in its early days an unruly, anarchical idea. If there is to be any law at all, contract must be taught to know its place.²⁹

Contract law found its "place" by establishing legal rights and entitlements which recognize the legal autonomy—or freedom of will—of the individual. Indeed, contract recognizes the moral principles of the individual as value and makes of that value a restriction on certain types of contracts.³⁰ We may in fact note that the whole development of contract law saw its slow emergence from a substantive principle—that is, from being merely "evidential" to the aspect of "considerations" which defined pre-natural-law ideas of contract—to a principle of substantive justice itself where "[t]he rule of the market place is thus equated with the Rule of Law."³¹ It was contract as a principle of substantive justice that served as the classic nineteenth-century laissez-faire idea of contract law; its centrality to our understanding of individualism as arising from the principles of individual agency and economic unconditionality, or, restated, principles of generalized exchange, is such that it is worth quoting Atiyah at length on this theme:

The autonomy of the free choice of private parties to make their own contracts on their own terms was the central feature of classical contract law. Its influence is to be found in every corner of contract law. . . . [T]he importance attached to free choice, and to the idea that a contract was a vehicle for giving effect to the will of the parties, had a profound effect on the very functions of contract law, as it was perceived by the Courts. The primary function of law came to be seen as purely facultative, and the function of the Court was merely to resolve a dispute by working out the implications of what the parties had already chosen to do. The idea that the Court had an independent role to play as a forum for the adjustment of rights, or the settlement of disputes, was plainly inconsistent with this new approach.³²

At this point I well realize that I may be accused by even the most generous reader of having spent his or her time beating the proverbial dead horse. The connection between capitalism and the emergence of individualism is well known and there would seem to be little point reiterating this well-known argument. The point of the foregoing exercise, however, was to highlight the fact that what this correlation implies is a transformation in the terms of generalized exchange, of the unconditionalities regulating social and economic life, from those based on the familiarity of group relations to those based on some form of individual agency and autonomy, and hence, to a new morality oriented towards the self-regarding acts of the individual engaged in market exchange. In fact this new morality served as the basis of that revaluation of values that defines modernity. As pointed out by Dumont, this revaluation of morality recognized the "emancipation" of economic actors "from the general or common run of morality, but it is accompanied by the recognition that economic action is by itself oriented

29. 2 FREDERICK POLLOCK & FREDERIC W. MAITLAND, HISTORY OF ENGLISH LAW 233 (Cambridge Univ. Press 1968) (1898).

30. See ATIYAH, *supra* note 24, at 260-63.

31. *Id.* at 402. See *generally id.* at 14-167 (discussing the development of contract law).

32. *Id.* at 408.

toward the good, that it has a special moral character of its own."³³ This moral character is itself constituted by the fact that:

[E]ach subject defines his conduct by reference only to his own interest, and society is no more than the mechanism—or the Invisible Hand—by which interests harmonize. . . . In other terms, the transition from traditional morality to utilitarian ethics (when fully accomplished) represents the expulsion of the only and last form under which, in the modern world, the social whole still constrained individual conduct: the individual is free, his last chains have fallen from him.³⁴

Bernard Mandeville first remarked on the logic of this new morality in which “Millions endeavoring to supply Each other’s Lust and Vanity”³⁵ leads to a situation where “every Part was full of Vice, yet the whole Mass a Paradise.”³⁶ Thus, and in avowed contrast to the idea of sociability proposed by the Scottish moralists, who were following on the lead of the Earl of Shaftesbury, Mandeville’s *bête noire*, Mandeville posits any “natural Propensity to Friendship and love of Company” as nothing more than occasions “to strengthen our Interest.”³⁷ Indeed, in Mandeville’s work, the self-regarding individual of economic theory makes his first appearance in the author’s assertion that “The imaginary Notions that Men may be Virtuous without Self-denial are a vast Inlet to Hypocrisy.”³⁸ Virtue, or Dumont’s “common run of morality,” is antithetical to economic interests whose realization nevertheless “makes of the whole Mass a Paradise.”³⁹

Behind this “Paradise” is a vision of morality based on the self-regarding individual and no longer on those of shared ethical universes. As Mandeville took pains to point out:

In the Works of Nature, Worth and Excellency are uncertain and even in Humane Creatures what is beautiful in one Country is not so in another. How whimsical is the Florist in his Choice! Sometimes the Tulip, sometimes the Auricula, and at other times the Carnation shall engross his Esteem. . . . In Morals there is no greater Certainty.⁴⁰

In such a world, where shared “strong evaluations” (to borrow a term of Charles Taylor) based on familiarity are increasingly difficult to assume:

Man centers every thing in himself, and neither loves nor hates, but for his own Sake. [A new moral basis is posited in which e]very Individual is a little World by itself, and all Creatures, as far as their Understanding and Abilities will let them, endeavour to make that Self happy: This in all of them is the continual Labour, and seems to be the whole Design of Life. Hence it follows, that in the Choice of Things Men must be determin’d by the Perception they have of Happiness; and no Person can commit or set about

33. DUMONT, *supra* note 26, at 61 (emphasis omitted).

34. *Id.* at 75.

35. 1 BERNARD MANDEVILLE, *THE FABLE OF THE BEES: PRIVATE VICIES, PUBLIC BENEFITS* 18 (photo. reprint 1988) (1924).

36. *Id.* at 24.

37. *Id.* at 343.

38. *Id.* at 331.

39. *Id.* at 24.

40. *Id.* at 327-30.

an Action, which at that then present time seems not be the best to him. The shared world of communal life—and thus mutual expectations—is shattered and replaced by the morality of self-regarding individual acts.⁴¹

Crucial from our own perspective, however, is the manner in which the autonomous nature of these individual acts were institutionalized. For, as noted above, the very freedom of contract and the guaranteeing of the personal autonomy of contracting parties which was enshrined in mid-nineteenth-century contractual law was, with time, circumscribed by restrictions and the privileging of the autonomy of the parties made more and more subject to principles of public order. These restrictions on contract are, it needs to be stressed, themselves consequent on the very institutionalization of the idea of the individual within the polity. The more that rights and entitlements are given institutional form, the more these rights and entitlements circumscribe the “free” workings of the contract.

Note the seeming contradiction here—for we will have need to refer to it again at the end of our analysis. In the nineteenth century the principles of generalized exchange guaranteed the freedom of contract while in the twentieth century, the very same principles limited such freedom by providing for the rights and entitlements of working people, extending the social dimension of citizenship beyond the gentleman class, which of course affirmative action laws also do for other groups. Thus, the greater *institutionalization* of the idea of individuals as sources of the moral order—within the workings of the society and the economy—led to restrictions on that very personal autonomy of individuals—the contracting parties—that had, in the mid-nineteenth century, represented the idea of society’s unconditionalities par excellence.

These issues, we may note, arise again and again in Atiyah’s influential study of contract law, *The Rise and Fall of Freedom of Contract*.⁴² Thus, he shows how in classic nineteenth-century liberal theory public trust in the “performance” of promises and the “fidelity” to promises did indeed rest on private trust:

It was an important principle of social life amongst “gentlemen”; it was an important commercial principle, for businessmen had to rely on the promises of others; it was an important principle of social behaviour and discipline for the public, who had to learn that once arrangements had been made, they must be observed; it was an important principle of justice too, for justice required that every man be given his due, and what was more obviously due than what had been promised?⁴³

However, Atiyah also demonstrates how by the end of the century these principles had changed and freedom of contract and the autonomy of contracting parties had become more and more subject to public restraints. These restraints rested on new principles of distributive justice which came to subject the contract to more and more qualifications. Interestingly, these new arguments were legitimized by principles of marginal utility—£100 to a millionaire was worth less than £10 to a working man. This, I believe, illustrates how these new arguments continued to invoke the same unconditionalities of the moral idea of

41. 2 *id.* at 178.

42. ATIYAH, *supra* note 24.

43. *Id.* at 353.

the individual as value, only now the arguments were formulated in more generalized social and societal terms and, crucially, institutionalized to a greater extent within the workings of economic life.⁴⁴

Having established the centrality of the idea of the individual to the principled organization of society, and thus having established the first aim of our inquiry, it would seem only proper to attempt an explanation of its emergence in what I will claim was a particular interweaving of structural factors within the development of Western Christendom. It is a brief sketch of those developments that I wish to present here.

II. THE EMERGENCE OF INDIVIDUAL IDENTITIES

The very idea of the morally autonomous individual arose, I would argue, very much as a "Durkheimian" social fact out of the growth and proliferation of those social identities that came to characterize polities and societies in Western Europe. Moreover, while some notion of the individual and of the private sphere as separate from the group exists in all societies, there is little doubt that there is a particular type of individualism which sees in the individual the locus of the moral and political orders, the fount of agency and intentionality, and a transcendental subject invested with transcendent rights. We associate this vision of individualism with Western European civilization—that is, that civilization that developed from the Judeo-Christian and Greco-Roman foundations. This is a relatively unique phenomenon. It is, moreover, one which came to invest the private sphere of individual conscience with a unique and moral priority.

While the uniqueness of this phenomenon has been commented upon by scholars ranging from Max Weber and Marcel Mauss down to contemporaries such as Charles Taylor and, in a very different mode, Louis Dumont,⁴⁵ I would like to open up some new perspectives on existing traditions and understanding of Western individualism and its concomitant ideas of the private sphere as realm of value. To a great extent, the existing traditions see Western individualism as rooted, in one form or another, in the soteriological assumptions of Christian belief. That is to say, the very positing of a monotheistic creator God and—especially within Christendom—the "personal" relation of the "individual" to the Godhead are, to a large extent, the foundation of our notions of individualism and of the transcendental subject. At present I am concerned with specifying neither the precise origin of such beliefs, whether in the Jewish idea of creation in the image of God or in Christian doctrines of grace, nor the varieties of their development and transformation, for instance, in Kantian ideas of the transcendental subject. All those aware of this tradition of soteriological

44. See generally *id.* at 607-12 (discussing marginal utility).

45. See generally LOUIS DUMONT, *ESSAYS ON INDIVIDUALISM: MODERN IDEOLOGY IN ANTHROPOLOGICAL PERSPECTIVE* (1986); CHARLES TAYLOR, *SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY* (1989); WEBER, *supra* note 11, at 1204; Marcel Mauss, *A Category of the Human Mind: The Notion of Person, the Notion of Self*, in *THE CATEGORY OF THE PERSON: ANTHROPOLOGY, PHILOSOPHY, HISTORY* 1-25 (Michael Carrithers et al. eds. & W.D. Halls trans., 1985). All the above works generally discuss the relation between individuals and society within Western thought, and particularly within classical liberalism.

thought can easily delimit its contours. What I am interested in exploring, however, is the notion that it is not only in the soteriological doctrines of Christianity that the origin of modern individualism is to be found, but also in the specific differentiation, division, and definition of social roles that it brought to the cultural, political, social, and economic arenas that are perhaps at the core of our own understanding of the individual.⁴⁶

Let us, for argument's sake, take only three historical periods that have, in the past, been seen as critical points in the development of Western ideas of the individual: late antiquity, the Renaissance of the twelfth century, and the Protestant Reformation. All have been identified with the development of Christian individualism through the refinement of Christian salvational doctrines. Is it not possible that the individualism that we identify with these eras is an outcome not solely of the changing content—soteriology—of religious civilization, but of its changing form, in the nature of group affiliations?⁴⁷ Thus, while late antiquity is the period of the emergence of Christianity as a world historical religion with its own salvational dogma of grace, it is also the period of the emergence of a whole new set of roles and role definitions identified with Christianity (as, for example, in the transformation of sexual relations from a public matter to the private concern of the individuals).⁴⁸ This was, after all, the central dynamic behind the replacement of kinship identities with membership in a sacramental community.⁴⁹ Similarly, the positing of the City of God provided a most central counterfactual reality from which the City of Man could be judged, negated, or affirmed. It injected a dimension between social reality and ontological reality—through, of course, the redefinition of the latter in terms of transcendence—that gave to the former an instability and negotiability not hitherto existent.⁵⁰ However, the argument I wish to make is that perhaps it is less in transcendence itself, and more in the radical breaking and making of social bonds that accompanied it, that the origins of Christian individualism is to be found.

The development of early Christianity saw, after all, the construction of a new “moral community” of believers differentiated from the societies in which they lived and united by bonds of exclusive communal fellowship.⁵¹ These groups of early Christians, scattered across the Roman Empire, were united by social ties of a charismatic nature. Cutting across existing solidarities of kith and kin, the

46. See generally ROSE L. COSER, *IN DEFENSE OF MODERNITY: ROLE COMPLEXITY AND INDIVIDUAL AUTONOMY* (1991) (discussing this perspective of the link between society, societal mores, and concepts of the nature of the individual).

47. See I ERNEST TROELTSCH, *THE SOCIAL TEACHINGS OF THE CHRISTIAN CHURCHES* 38-89 (Olive Wyon trans., 1939).

48. See PETER BROWN, *THE BODY AND SOCIETY: MEN, WOMEN AND SEXUAL RENUNCIATION IN EARLY CHRISTIANITY* (1988) (discussing the shifting perspective of religiously inspired celibacy in the early Christian Church).

49. On this shift from familial to religious association, see PETER BROWN, *THE MAKING OF LATE ANTIQUITY* (1978).

50. DUMONT, *supra* note 45, at 23-59.

51. See BROWN, *supra* note 49, at 56-77; CHARLES N. COCHRANE, *CHRISTIANITY AND CLASSICAL CULTURE: A STUDY OF THOUGHT AND ACTION FROM AUGUSTUS TO AUGUSTINE* (1940).

message of the early Church was one of a social solidarity rooted only in a shared experience of the sacred. In the words of Saint Paul: "There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus."⁵²

Early Christianity thus presented an alternative locus of social identity and of community that was rooted in the experience of grace. The bond established between communal members was one rooted not in primordial givens, but in an immediate connection to the fount of transcendental order. The new locus of communal solidarity and of the moral order was epitomized in Saint Paul's rejection of the "ascriptive confines of Jewish ethical monotheism."⁵³ This redefinition of the terms of community in the experience of grace and a direct relation to the source of cosmic order and salvation—and not in legal prescriptions or primordial networks—allows us to speak of the early Christian ties of community as essentially a reformulation of existing roles and role definitions within the social world of late antiquity.

These new roles were those of members of a new corporate body—the Church—which subjected the *nova creature* to the new laws of regenerate man. What this new *congregatio fidelium* implied, however, was precisely a transformation of the terms of the *fidelis*:

[N]ow subjected, as far as his social and public life went, to the law as it was given to him, not the law as it was made by him. The consequences of the incorporation was that his *fidelitas*, his faithfulness, consisted precisely in his obeying the law of those who were instituted over him by divinity.⁵⁴

The very absorption of the individual in and by the new corporation of the Church was thus a transformation of those social bonds, roles, and role-expectations that had hitherto defined the social world.

We may note a similar emergence of role differentiation and the development of individual identities, especially in the refinement of ideas of conscience and agency which characterized what has been termed the Renaissance of the twelfth century.⁵⁵ It was not, or was not only, the recovery of spiritualism in that era, but the establishment of new social groups through which the recovery emerged, that was responsible for the growing individualism of that period. The very differentiation of corporate bodies engendered by the Papal Revolution, or Investiture Conflict, together with the development of myriad new roles as group identities proliferated in this era, were all central to the development of ideas of

52. Galatians 3:28.

53. WOLFGANG SCHLUCHTER, *THE RISE OF WESTERN RATIONALISM* 152 (Guenther Roth trans., 1985).

54. WALTER ULLMANN, *THE INDIVIDUAL AND SOCIETY IN THE MIDDLE AGES* 9 (1966) (emphasis omitted).

55. See generally HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1983); CAROLINE W. BYNUM, *JESUS AS MOTHER: STUDIES IN THE SPIRITUALITY OF THE HIGH MIDDLE AGES* (1982); M.D. CHENU, *NATURE, MAN, AND SOCIETY IN THE TWELFTH CENTURY: ESSAYS ON NEW THEOLOGICAL PERSPECTIVES IN THE LATIN WEST* (Jerome Taylor & Lester K. Little eds. and trans., 1968); R.W. SOUTHERN, *THE MAKING OF THE MIDDLE AGES* (1953); ULLMANN, *supra* note 54; Caroline W. Bynum, *Did the Twelfth Century Discover the Individual?*, 31 *J. ECCLESIASTICAL HIST.* 1 (1980).

an inner life and of intentionality—as opposed to just action—as an aspect of individual agency and morality. In fact, this period was characterized not solely by the growth of different group identities, of which the new corporate identity of the clergy was by far the most important, and by the increase in horizontal mobility as the immediate family differentiated itself from wider kin groups, but by the recognition of different orders of knights, clerics, priests, married men and women, widows, virgins, soldiers, merchants, peasants, and craftsmen—each with their different talents, institutions, and roles in society. Central here was the growth of different religious orders.⁵⁶ All these developed concomitantly with the growth of individual and private modes of self-expression through the revival of the religious tradition of autobiography, confessional literature, and courtly love poetry as well as through the emergence of legal differentiation of a legal corpus no longer bounded by custom or Germanic tribal ideas of honor and fate.⁵⁷ This latter development stressed the legitimacy of enacted, objective law over the consensual mold of tradition and custom. In so doing, the new legal system of the twelfth century set up a generalized conceptual legal system that broke with existing group loyalties—clan and household—and posited new corporate definitions of what were, essentially, new social roles and role expectations.⁵⁸

In a manner both reminiscent of the development of early Christianity and foreshadowing the Protestant Reformation of the sixteenth century, the twelfth century was characterized by a convergence of a specific set of structural and symbolic features. These features coalesced around a greater appreciation of individual identities as central and focused, interestingly enough, on the ideas of agency or voluntarism and the workings of conscience. As Benjamin Nelson has noted, “The extraordinary stress on the responsibility of each individual for the activity of his will and the state of his soul attained its height in the High and Later Middle Ages.”⁵⁹ It was, we may note, not simply Abelard in his *Ethica seu Seito te Ipsum*, or *Ethics: or Know Thyself*, and *Sic et Non*, or *Yes and No*, who stressed inward intentionality in the conceptualization of spiritual life. Such a reorientation was evinced in the writings of others—the school of Lyon, for example—and upheld even by such of Abelard’s critics as Bernard of Clairvaux. Its institutionalized expression was in the decree of the Fourth Lateran Council of 1215’s mandate requiring an individual confession for communicants at least once a year. As Colin Morris has noted:

[T]he attempt to make intention the foundation of an ethical theory is a striking instance of the contemporary movement away from external regulations towards an insight into individual character; a movement which finds its widest expression in the acceptance of private confession as the basis of the Church’s normal discipline.⁶⁰

Its other institutional expression was in the developing science of casuistry and the proliferation of “specialized treatises tracing the obligations of conscience

56. Bynum, *Did the Twelfth Century Discover the Individual?*, *supra* note 55.

57. See PETER BROWN, *SOCIETY AND THE HOLY IN LATE ANTIQUITY* 302-32 (1982).

58. BERMAN, *supra* note 55, at 145, 149-51.

59. BENJAMIN NELSON, *Self Images and Systems of Spiritual Direction*, in *ON THE ROADS TO MODERNITY: CONSCIENCE, SCIENCE, AND CIVILIZATIONS* 34, 43 (Toby E. Huff ed., 1981).

60. COLIN MORRIS, *THE DISCOVERY OF THE INDIVIDUAL, 1050-1200*, at 75 (1978).

in the here and now, spelling out how individuals were obligated to act in every case they encountered in the conduct of their lives In these works conscience extended into every sphere of action, ranging over the whole moral life of man"⁶¹

Not surprisingly, the new valorization, and indeed representation, of a self apart from social roles saw too the valorization of personal relations not so defined. Hence, there emerged tentative and nascent ideas of friendship—albeit still within the boundaries of the Church—on the one hand, and on the other, the conceptualization of love advanced by the troubadours, both of which, in Morris's terms "desire[d] to make personal experience and personal relations the focus of life," through, it should be added, the process of self-discovery and analysis.⁶²

Of crucial sociological importance is the fact that these developments all took place against a backdrop of increasing structural differentiation. Central to this increasing complexity of the system were: 1) the separation of the nobility from the rest of society through its increasing tendency to be defined in hereditary terms; 2) the growth of commerce and of cities with the vast degree of internal differentiation among the different urban orders that characterized their growth; and 3) the post-Gregorian Church, which not only freed episcopal elections—and elites—from political impingement, but "created a clergy that was set apart much more radically than before from ordinary Christians."⁶³ In fact, the Gregorian Reform not only separated the clergy from the laity, most especially through the campaign for clerical celibacy, but also led to a vast proliferation of new institutional, and sometimes only semi-institutional, religious orders or roles—most formidably in the development of the friars, for men, and in the creation of new roles for women, such as the beguine which was, in its essence, "opposed to complex institutional structures."⁶⁴

Note then the very "Durkheimian" correlation between the development of individual identities together with the ever-growing complexity of social organization and its roles and role-expectations. The same period which sees the "fundamental religious drama" relocated into the self is the period that sees a proliferation of religious orders, vocations, "callings" and "lives." The same period that saw a growing literature of private passion and theories of love and, in R.W. Southern's terms, "the enlargement of the opportunities of privacy, in the renewed study of the theory of friendship, of conscience and of ethics"⁶⁵ is also a period marked by a greater social differentiation, complexity, and distinction in the forms of social life.

Moreover, as Bynum has noted, this period was characterized not only by a proliferation of the forms of institutionalized religious life as well as a greater degree of social differentiation in other realms, but also by an intense awareness

61. NELSON, *supra* note 59, at 45; *see also* 2 D. ODON LOTTIN, *PSYCHOLOGIE ET MORALE AUX XII^E ET XIII^E SIÈCLES* 104-350 (1948).

62. MORRIS, *supra* note 60, at 118.

63. BYNUM, *JESUS AS MOTHER: STUDIES IN THE SPIRITUALITY OF THE HIGH MIDDLE AGES*, *supra* note 55, at 11.

64. *Id.* at 15.

65. SOUTHERN, *supra* note 55, at 221.

of this differentiation, an “urgency, unlike anything we see in the early Middle Ages, about defining, classifying, and evaluating what they termed ‘orders’ or ‘lives’ or ‘callings’ (which includes what we would term both voluntary religious associations and social roles).”⁶⁶ Only, I would claim, in this developing complexity of social identities, could a sense of individual identity flourish. Central to this individual identity as it developed in the West was the idea of conscience, expressed most saliently in this period in the idea of intentionality in religious life, and the gradual construction of a private realm, beyond formal role obligations, where such intentionality and conscience came to the fore, whether in the rites of courtly love, the developing genre of correspondence between friends, or in the individual Church confession.

The importance of the Protestant Reformation, and especially of its sectarian variants, in the developing idea of conscience is so well-studied as to need almost no explication. In Benjamin Nelson’s words, there developed:

[A] new integration of life, both personal and political, through the rearrangement of existing boundaries. . . . [O]lder maps were redrawn, fixing new coordinates for all focal points of existence and faith: religion-world, sacred-profane, civil-ecclesiastical, liberty-law, private-public. . . . [In this rearrangement n]ew scope and authority were given to the Inner Light, sparked by the Holy Spirit. This was the Holy Spirit within each individual and within groups.⁶⁷

Here, then, is the return to Augustinian piety and the breaking with the sacraments, the mediating structures of the Church, and its symbols of the Virgin Mary and the different saints, to reassert unmediated access of the believers to the deity within what became the private space of individual conscience.⁶⁸ But here too is the radical, painful, often violent breaking of established group identities and the reestablishment of new group solidarities and new role definitions—through, among Puritans, for example, the whole covenantal theology.⁶⁹

The new bonds forged under sectarian Protestantism were, in essence, a recasting of the bonds of “community” as a shared tradition, into new bonds of “communality.” These bonds of a new “communion,” in Herman Schmalenbach’s sense, were to be the basis of the new communities forged by religious virtuosi

66. BYNUM, *JESUS AS MOTHER: STUDIES IN THE SPIRITUALITY OF THE HIGH MIDDLE AGES*, *supra* note 55, at 89.

67. Benjamin Nelson, *Conscience and the Making of Early Modern Culture: The Protestant Ethic Beyond Max Weber*, 36 *SOC. RES.* 4, 15-16 (1969).

68. See ADAM B. SELIGMAN, *INNER-WORLDLY INDIVIDUALISM: CHARISMATIC COMMUNITY AND ITS INSTITUTIONALIZATION* (1994); Adam Seligman, *Inner-Worldly Individualism and the Institutionalization of Puritanism in the Late Seventeenth Century New England*, 41 *BRIT. J. SOC.* 537 (1990).

69. For in-depth treatment of Puritan covenantal theology, see generally PATRICK COLLINSON, *THE PURITAN CHARACTER: POLEMICS AND POLARITIES IN EARLY SEVENTEENTH-CENTURY CULTURE* (1989); WILLIAM HALLER, *THE RISE OF PURITANISM* (1972); WILLIAM HUNT, *THE PURITAN MOVEMENT: THE COMING OF REVOLUTION IN AN ENGLISH COUNTY* (1983); DAVID LITTLE, *RELIGION, ORDER, AND LAW: A STUDY IN PRE-REVOLUTIONARY ENGLAND* (1984); AVIHU ZAKAI, *EXILE AND KINGDOM* (1992).

throughout European societies.⁷⁰ The social restructuring of the bonds of communality, and, we may note, of authority, was, in essence, part of the restructuring effected by the Reformation in general, but specifically, in ascetic Protestantism, part of the relation between the Church and the World. Within medieval Catholic Europe, the only "life-calling" legitimized in sacred terms was that of the monastic orders. As noted by Parsons and others, the importance of the Reformation lay precisely in its "endowment of secular legitimation with a new order of religious life as a field of 'Christian opportunity.'" ⁷¹ It was thus only with the Reformation that secular callings were given a religious legitimation and were perceived as possible paths to salvation.

Famously, within the Puritan context, these religious orientations took a particularly intense expression.⁷² There developed new forms of religious expression, as well as of communal bonds, both characterized by a break with existing models of social organization. More than any other social act, the drawing up of "covenants" between and among Puritans in Tudor England provided the basis for the reworking of the terms of social life in line with a new model of social organization.⁷³ In the covenanted communities and the "gathered churches" of the later sixteenth and early seventeenth century, diverse groups of

70. Herman Schmalenbach, *The Sociological Category of Communion*, in THEORIES OF SOCIETY 331 (Talcott Parsons et al. eds., 1961).

71. See, e.g., Talcott Parsons, *Christianity and Modern Industrial Society*, in SOCIOLOGICAL THEORY, VALUES, AND SOCIOCULTURAL CHANGE 33, 51 (Edward A. Tiryakian ed., 1963).

72. Much has been written on the institutional implications of Puritan religiosity. For some of the more relevant analyses see GORDON MARSHALL, PRESBYTERIES AND PROFITS: CALVINISM AND THE DEVELOPMENT OF CAPITALISM IN SCOTLAND, 1560-1707 (1980); GEORGE L. MOSSE, THE HOLY PRETENCE: A STUDY IN CHRISTIANITY AND REASON OF STATE FROM WILLIAM PERKINS TO JOHN WINTHROP (1957); Jerald C. Brauer, *The Nature of English Puritanism: Three Interpretations*, CHURCH HIST., 1954, at 99; C.H. George, *Puritanism as History and Historiography*, PAST & PRESENT, Aug. 1969, at 133; Charles George & Catherine George, *Protestantism and Capitalism in Pre-Revolutionary England*, CHURCH HIST., 1958, at 351; William M. Lamont, *Puritanism as History and Historiography: Some Further Thoughts*, PAST & PRESENT, Aug. 1969, at 133; George L. Mosse, *Puritan Political Thought and the "Cases of Conscience"*, CHURCH HIST. 1954, at 109; George L. Mosse, *Puritanism and Reason of State in Old and New England*, WM. & MARY Q., Jan. 1952, at 67; Michael Walzer, *Puritanism as a Revolutionary Ideology*, 3 HIST. & THEORY 59 (1963).

73. On the centrality of the covenant in the lives of the Puritans, see Patrick Collinson, *Towards a Broader Understanding of the Early Dissenting Tradition*, in THE DISSIDENT TRADITION 3 (C. Robert Cole & Michael E. Moody eds., 1975). On the relation of covenant theology to Calvinist doctrine, see PERRY MILLER, ERRAND INTO THE WILDERNESS 48-98 (1964); Everett H. Emerson, *Calvin and Covenant Theology*, CHURCH HIST., 1956, at 136; Jens G. Moller, *The Beginnings of Puritan Covenant Theology*, J. ECCLESIASTICAL HIST., 1963, at 46. Further theological issues are explored in KLAUS BALTZER, THE COVENANT FORMULARY (David E. Green trans., 1971); CHAMPLIN BURRAGE, THE CHURCH COVENANT IDEA: ITS ORIGIN AND ITS DEVELOPMENT (1904). Different political aspects of the covenant are developed by DAVID ZARET, THE HEAVENLY CONTRACT: IDEOLOGY AND ORGANIZATION IN PRE-REVOLUTIONARY PURITANISM (1985); S.A. Burrell, *The Covenant Idea as a Revolutionary Symbol: Scotland, 1596-1637*, CHURCH HIST., 1958, at 338.

English Puritans laid down, as it were, the blueprint for a fundamental reorganization of the principles of collective life.⁷⁴

The institutional aspects of this new conception of social order have been attested to by historians from William Haller to Michael Knappen, and we need only summarize them here.⁷⁵ On one level, they were manifest in a new mode of religious expression characterized by lay preaching, "prophesyings," as well as what later would be termed an "enthusiastic" religiosity of popular piety and non-institutionalized manifestations of grace.⁷⁶ On the level of social organization, the covenanting of communicants implied primarily a break with existing solidarities of both Church and neighborhood.⁷⁷ Covenanting together, the Puritans also covenanted themselves off from the major existing institutional loci of solidarity—the Church, village, or parish—and so from those social identities which prevailed in English society.⁷⁸ The withdrawal from existing loyalties, both national and ecclesiastical, and the growth of a new set of loyalties to the individuals covenanted together in pursuit of a new spiritual and moral life, were fundamental elements in the construction of new loci of social life and individual identity.⁷⁹

74. The extent to which the covenants regulated the lives of those who entered into them, especially in maintaining the symbolic and physical boundaries of the new community is evinced in JOHN BASTWICK, *THE UTTER ROUTING OF THE WHOLE ARMY* 306 (1646), *reprinted in* MURRAY TOLMIE, *THE TRIUMPH OF THE SAINTS: THE SEPARATE CHURCHES OF LONDON 1616-1649*, at 196 (1977); *see also* MICHAEL R. WATTS, *THE DISSENTERS* 30-31, 41-42, 55-56 (1978).

75. *See, e.g.*, HALLER, *supra* note 69; M.M. KNAPPEN, *TUDOR PURITANISM: A CHAPTER IN THE HISTORY OF IDEALISM* (1939).

76. For these aspects of Puritanism, see GEOFFREY F. NUTTALL, *THE HOLY SPIRIT IN PURITAN FAITH AND EXPERIENCE* (1946); NORMAN PETTIT, *THE HEART PREPARED: GRACE AND CONVERSION IN PURITAN SPIRITUAL LIFE* (1966). For a less theological and more historical view, see HUNT, *supra* note 69, at 94. For the importance of this form of religious expression among the separatists, see WATTS, *supra* note 74, at 26. For a general history of Christian enthusiasm, see RONALD A. KNOX, *ENTHUSIASM: A CHAPTER IN THE HISTORY OF RELIGION* (1950). For a discussion of enthusiasm's changing temper in the seventeenth century, see Michael Heyd, *The Reaction to Enthusiasm in the Seventeenth Century: Toward an Integrative Approach*, 53 *J. MOD. HIST.* 258 (1981).

77. Just how drastic this "dichotomizing" of society was is a matter of some historical debate, though there is a relative consensus among historians that by the early decades of the seventeenth century it was radically more evident than in the Elizabethan period. By this latter period the desire to make the community of the godly "real and visible" led to palpable tensions between the community of the gathered Church and the rest of the "Christian nation." Recent discussion of this problem can be found in COLLINSON, *supra* note 69.

78. A slightly different view is offered in PATRICK COLLINSON, *THE ELIZABETHAN PURITAN MOVEMENT* 375 (1967) (discussing particularly the idea of *ecclesiola in ecclesia*).

79. Avihu Zakai, *The Gospel of Reformation: The Origins of the Great Puritan Migration*, 37 *J. ECCLESIASTICAL HIST.* 584 (1986). Impressive discussions of this process whereby new loci of community were formed within the overall Puritan movement and its separatist tradition can be found in COLLINSON, *supra* note 69; HALLER, *supra* note 69; TOLMIE, *supra* note 74; WATTS, *supra* note 74, at 14-26. The tension formed within society by the growth of Puritanism is amply attested to in such satires as "Zeal-of-the-land-Busy," in BEN JONSON, BARTHOLOMEW FAIR (1960), or in the 1633 *Declaration of Sports*, which explicitly ordered the Puritans "to conform themselves or to leave the country" if they would not abide "our good

Interestingly enough, as Puritan communities underwent a process of institutionalization in the late seventeenth and early eighteenth centuries, the privileging of conscience and individual agency as an attribute of virtue became a constitutive component of many such communities. Perhaps more than anyone else, Margaret Jacob has developed this argument in respect to English Unitarians, Dutch Collegians, and the increasingly secular French Freemasonry.⁸⁰ Perhaps the central tenet of these groups' religiosity was, as Andrew Fix has described in his study of the Dutch Collegians, the fact that they "rejected the authority of ecclesiastical institutions and based religious life instead on the individual believer and his inner ability to know religious truth."⁸¹ By the second half of the seventeenth century, this conception, wedded to a belief in the workings of natural reason in the apprehension of truth, led to an emergent belief in the "principle of individual conscience."⁸²

Jacob's own work has in fact stressed the role of religion—or more properly a particular form of privatized Protestantism which developed among certain groups of elites—in the construction of that private and individual sphere oriented around personal autonomy which we identify with bourgeois culture. "At the heart of this experience lay the encouragement it gave the individual to conceptualize and to experience himself and herself as an ethical being equally engaged in the private and public spheres."⁸³

This new ethical being emerged as the universal subject who, as an individual, became the new locus of solidarity, orientated around new definitions of moral autonomy and economic agency. Portentously, as Stephen Darwall has explained in his recent work on seventeenth-century and early eighteenth-century moral philosophy, "one of the most significant developments of this period was the fashioning of the concept of autonomy *in tandem with* philosophical speculation

people's lawful recreation," for which the king's pleasure decreed:

that after the end of divine service our good people be not disturbed, letted or discouraged from any lawful recreation, such as dancing, either men or women; archery for men, leaping, vaulting, or any other such harmless recreation, nor from having of May-games, Whitsunales, and Morris-dances; and the setting up of May-poles and other sports therewith used . . .

DECLARATION OF SPORTS (1633), *reprinted in* SAMUEL R. GARDINER, *THE CONSTITUTIONAL DOCUMENTS OF THE PURITAN REVOLUTION 1625-1660*, at 99, 101 (1906). A good understanding of the social importance of the local games, rites, and feasts with which the Puritans broke can be found in V.A. KOLVE, *THE PLAY CALLED CORPUS CHRISTI* (1966); PETER LASLETT, *THE WORLD WE HAVE LOST* (1965); Mervyn James, *Ritual, Drama and Social Body in the Late Medieval English Town*, *PAST & PRESENT*, Feb. 1983, at 3. Comparative perspectives on ritual among Protestants and Catholics on the continent can be gained from Natalie Z. Davis, *The Sacred and the Body Social in Sixteenth Century Lyon*, *PAST & PRESENT*, Feb. 1981, at 40. Further perspectives on the Puritan aversion to the *Declaration of Sports* can be found in W. DELOSS LOVE, JR., *THE FAST AND THANKSGIVING DAYS OF NEW ENGLAND 1-27* (1895).

80. Margaret C. Jacob, *Private Beliefs in Public Temples: The New Religiosity of the Eighteenth Century*, 59 *SOC. RES.* 59 (1992).

81. ANDREW C. FIX, *PROPHECY AND REASON: THE DUTCH COLLEGIANS IN THE EARLY ENLIGHTENMENT* 118 (1991).

82. *Id.* at 119.

83. Jacob, *supra* note 80, at 64.

about moral obligation.⁸⁴ Here too we see the necessary concomitance of doctrines of agency and action together with ideas of moral obligation and the workings of conscience.

Though circumscribed within the religious realm and limiting our understanding of agency to the phenomena of conscience, we have seen, I hope, how the moral valuation of the private and individual agent who stood at its core developed—albeit haltingly—in periods of greater structural differentiation, to become, with capitalism and the culture of modernity, constitutive of both our political principles as well as our individual selves.

Finally, of course, beyond Christian civilization proper we may look to eighteenth-century bourgeois society—with its doctrines of civility and moral individualism—to those beliefs given philosophical form by Kant and embedded within our own sociological understanding by Durkheim. Here of course, the idea of the individual sheds its religious garb and is no longer constituted of relations with the transcendent, but achieves its meaning in the autonomy of the individual conscience. Here, too, contemporary social thinkers, from Adam Ferguson in the eighteenth century to Benjamin Constant and Alexis de Tocqueville in the nineteenth, all noted the importance to the making of bourgeois culture of what we would term “social differentiation.”

In all periods we witness a number of similar, related, and central developments: 1) the breaking of existing group bonds and their replacement with new ones, including new social roles and new definitions of existing ones; 2) the move from fewer roles and commitments to more and more complex and multitudinous role-sets and status-sets; and 3) the move from more rigid, publicly sanctioned modes of role transition and definitions to ones less anchored in public constraints. Tribal, civic, fraternal, and later, confessional boundaries between roles are replaced by actor-oriented ones—as, for example, with sexual practices among early Christians, the formation of the twelfth-century religious orders, the “internalization” of conscience among late seventeenth-century Puritans, or the role of civility, as opposed to honor, in the discourse of the Scottish moralists.⁸⁵

In all, the idea of the individual emerged slowly, as did the idea of a private sphere. Both would of course only begin to be fully articulated in the eighteenth century when, not surprisingly, the tension between the private sphere and more public, legally sanctioned modes of interaction and expression became apparent. Perhaps most accessible in the literature of the period we find resonances of this tension in works such as Defoe's *Roxana*, Richardson's *Clarissa*, and Fielding's *Amelia*, all of which are mid-eighteenth-century novels dealing with the needs of the hero and heroine to come to terms with the new distinction between public and private, between law and morality, and essentially between formal relations regulated by public law and the search for a new basis of individual trust and a matrix of interpersonal relations beyond contract and law. As succinctly stated

84. DARWALL, *supra* note 6, at 17 (emphasis in original).

85. MARVIN B. BECKER, *THE EMERGENCE OF CIVIL SOCIETY IN THE EIGHTEENTH CENTURY: A PRIVILEGED MOMENT IN THE HISTORY OF ENGLAND, SCOTLAND, AND FRANCE* 66-114 (1994).

by John Zomchick, "In Fielding law and virtue remain divergent."⁸⁶ And in this divergence lies, we might add, the developing tension between public and private existence as they became apparent in this period.

CONCLUSION

Aspects of this divergence are in fact already familiar to us from Professor Conrad's paper and his sensitive evocation of the symbolic role of women in the thought of John Wilson. Indeed, to a great extent some awareness of the above developments, if phrased in different terms, led the eighteenth-century moral philosophers to posit a personal or private sphere, of friendship and trust—as opposed to interest—as one of the unalterable benefits of "commercial," or what we would term "modern," society.⁸⁷ In so doing they were in effect noting those changing terms of sociability remarked upon above. For in premodern and feudal society, bonds of personal affinity were rooted in codes of status and honor, while in the court, societies existent from the sixteenth century were tied to a personalized politics of court status. Freed from the constraints of calculation and interest, the private sphere became in the eighteenth century a realm where the personal nature of individual relations, that is, friendship, was freed from concerns of social station. Thus, just as the idea of the morally autonomous individual emerged through the myriad new and impersonal role relations in the public sphere, so did the very idea of the private, which came to be conceived as a realm of trust and mutuality existent apart from the legally defined relations of the public sphere.

However, while the idea of civil society emerged as a way to bridge the two worlds of public and private, of interest and trust, we must note that the realm of the private, founded on individual conscience, took a certain moral priority, constituting the true residency of virtue or, according to Immanuel Kant, constituting the realm of the ethical.⁸⁸ Here, however, a new dynamic evolves and it is with this dynamic that I wish to end, offering some brief comments on certain aspects of contemporary debates in normative political philosophy.

Recall here the seeming contradiction referred to earlier; that is, how the growing institutionalization of the idea of the individual as the source of the moral order led to restrictions on the autonomy and freedom of individual agents as parties to contract. The very notion of entitlements represents this principle, but of course any restrictions on contract in the name of principles of public order point to the same organizing principle. I would like to claim that the very process of institutionalization, or in other words, the concrete organization of the division of labor on the basis of society's unconditionalities or principles of

86. JOHN P. ZOMCHICK, FAMILY AND THE LAW IN EIGHTEENTH-CENTURY FICTION: THE PUBLIC CONSCIENCE IN THE PRIVATE SPHERE 52 (1993).

87. Alan Silver, *Two Different Sorts of Commerce—Friendship and Strangership in Civil Society*, in PUBLIC AND PRIVATE IN THOUGHT AND PRACTICE (J. Weintraub & K. Kumar eds., forthcoming).

88. See ADAM SELIGMAN, THE IDEA OF CIVIL SOCIETY (1992); Adam Seligman, *Animadversions upon Civil Society and Civic Virtue in the Last Decade of the Twentieth Century*, in CIVIL SOCIETY: THEORY, HISTORY, COMPARISON 200 (John A. Hall ed., 1994).

generalized exchange, has led to an extremely interesting situation characterized by a contradiction between the “principled” or “pristine” forms of society’s unconditionalities and its more institutionalized workings within the social order. Moreover, it is, I would like to claim, through this contradiction that we can best understand some of the most salient points of dispute within contemporary moral philosophy as represented by communitarian and liberal positions respectively. How so?

One of the important insights we have gleaned from anthropologists and sociologists working in this field is that unconditional principles of generalized exchange exist in two forms—in what may be termed their pristine or pure form; that is, in those interactions that symbolize and legitimize the process of such unconditionalities, as well as in those institutional forms, basically legal dicta, through which they regulate and structure the flow of resources in society—providing for precisely that social capital necessary for associational life.

Moreover, a tension between these two forms of society’s unconditionalities is an indisputable aspect of social life. It can be seen, for example, in the tension between the Sermon on the Mount and the institutional workings of the medieval Catholic Church, between the brahmic ideal of renunciation and the workings of the caste system in Hinduism, between any ideal of kinship solidarity and the concrete workings of the division of labor. In our case it is between the non-contractual forms of relations posited by the communitarian tradition and the types of encumbrances and restrictions, such as entitlements, placed on the contract in the liberal tradition—in the name, I might add, of the very same set of principles, those predicated on the idea of the individual as source of the moral order. The communitarian tradition privileges and attempts to integrate the “pristine” form of these relations into the public realm while the liberal tradition values, and in some cases, apotheosizes its institutional expression.

Here perhaps a word of clarification is in order. For I can well see how some may object that I have only been able to develop the forgoing analysis by imputing to communitarianism a concern with the individual actor that does not really reflect its thought at all and is rather the preserve of the liberal tradition alone. This argument must, however, be rejected out of hand. For if we are to see the individual as something beyond a simple bundle of infinite desires, but rather as one imbued with agency, able to make, in Charles Taylor’s terms, “strong evaluations,”⁸⁹ endowed with what Philip Selznick has termed “moral competence,”⁹⁰ then we must admit that the agentic individual has stood at the core of the classical republican tradition since its inception. Agency, and, crucially, the mutual recognition of individual autonomy and agency, is at the heart of those very non-contractual relations posited by the communitarian tradition. In fact, it must be so, or else there can be no meaning to such social bonds and relations. Contractual relations can, contrariwise, be seen as those

89. CHARLES TAYLOR, HUMAN AGENCY AND LANGUAGE: PHILOSOPHICAL PAPERS 15-44 (1985).

90. PHILIP SELZNICK, THE MORAL COMMONWEALTH: SOCIAL THEORY AND THE PROMISE OF COMMUNITY 33-36 (1992).

where agency is severely circumscribed by formal rules, regulations, imposition of sanctions, and the whole web of systemic injunctions in the fulfillment of role obligations and expectations. They are characterized less by the autonomy of will than the threat of sanctions.

The problem, however, is one of the arena where this agency is affected—and again I would claim we come to the problem of institutionalization. For in contemporary societies, that social arena where individual agency and autonomy are most recognized and consequently the arena where the “pristine” form of society’s unconditionality seems to reside is not in the market place, mall, stock exchange, or other public space but in the private realm of friendship or love relations.

In a sense, both communitarian and liberal positions recognize this fact, but value it differently. The liberal position—at its principled extreme—accepts this as the cost of the modern division of labor and is content to let the chips fall where they may. That is to say, those who take this position are content to let the public realm be defined solely by the institutionalized workings of society’s unconditionalities via its legal system, preserving for the private sphere its most valorized “pristine” articulation. The republican and communitarian traditions, though they cannot in truth be so blithely equated, are less willing to accept this principled distinction between the two realms. Also unwilling, we may note, were the early proponents of the civil society tradition who mourned the loss of that particular form of solidarity whose passing was occasioned by the modern division of labor. What was lost and what contemporary republicans attempt to reintroduce into the public realm is precisely those forms of unconditionality that privilege communal identity and membership as a source of the individual self; indeed, as a very different model of self and of its obligations as evinced in Michael Sandel’s description of individuals “as members of *this* family or community or nation or people, as bearers of *this* history, as sons and daughters of *that* revolution, as citizens of *this* republic,” to whom, it may be added, owe “allegiances” and “obligations” that go beyond those that “justice requires or even permits.”⁹¹

When one stands back from the current political fray and analyzes the situation with some measure of composure, one comes to understand that the contradiction between communitarian and liberal positions is, to some extent, a mirror of an older contradiction; between positive and negative liberty in Isaiah Berlin’s terms, or between ancient and modern notions of liberty in Benjamin Constant’s terms, between what are essentially public and private visions of self, or between what can also be described as a vision of society resting on principles of virtue and one resting on principles of civility. I would claim that it is a contradiction between the realm where our principled unconditionalities are symbolized and legitimated and the realm their institutionalized workings.⁹² The issue, then, is

91. MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* 179 (1982) (emphasis added).

92. On the contradiction between virtue and civility as informing these sets of oppositions, see Seligman, *Animadversions upon Civil Society and Civic Virtue in the Last Decade of the Twentieth Century*, *supra* note 88, at 200-23.

not one of voting for Democrats or Republicans, nor of supporting a communitarian agenda or liberal platform. The issue is one of institutionalization, of an inexorable process that always involves a transformation of the ethical principles upon which it was founded, and also, by the way, always relegates its intestine debates to the dustbin of history—who today addresses the debates between Armenian and strict Calvinists over the terms of sanctification and regeneration in Congregational theology.

Individual agency and autonomy, of course, remain, whether as a curse, as in the Bolivarianism of Latin American politics, or as an unfulfilled promise. I, for one, do not know. However, what is clear is that the ever-increasing autonomy, if not disembedding, of these individual, or what Sandel termed “unencumbered,” selves, and the concomitant need to institutionalize the terms of their interaction, has, most ironically, led to ever increasing calls to reestablish that civil society whose ability to synthesize is, unhappily, long since past.

