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AMERICAN ROUSSEAU: BARACK OBAMA AND THE SOCIAL CONTRACT

“Man is born free; but everywhere he is in chains.”¹

BRIAN GILMORE

I. INTRODUCTION

On September 18, 2008, professor of philosophy at the New School in New York City, Simon Critchley, delivered an address entitled, “Barack Obama and the American Void.”² After his lecture at the New School, it was contended, *inter alia*, that Critchley was arguing that some observers were wrong about the political philosophy of Barack Obama and his appeal to the masses of the public.³ It was President Obama’s “detachment” that made him an appealing figure, according to an account of the lecture by the very conservative New York newspaper, The New York Observer.⁴ It was that detachment, according to that same account, that also distanced Obama from any similarities to France’s preeminent political philosopher, Jean-Jacques Rousseau.⁵ The paper noted, “Critchley...decided to present an argument that Obama’s beliefs are not, in fact, rooted in the work of 18th-century French philosopher Jean-Jacques Rousseau,”⁶ yet added, “There are people who believe otherwise, apparently.”⁷

Critchley’s address, a version of which was eventually published in the November 2008 edition of *Harper’s Magazine*, does contain a reference to Obama and Rousseau,⁸ but it contains an elusive connection lacking any

1. JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* 49 (Penguin Books 1968) (1762) [hereinafter *SOCIAL CONTRACT*].

2. Simon Critchley, *The American Void*, *HARPER’S*, Nov. 2008, at 17, 17.

3. *Critchley on Embracing Obama’s Listlessness*, *NEW YORK OBSERVER*, Sept. 19, 2008, <http://www.observer.com/2008/politics/critchley-embracing-obama-listlessness> [hereinafter *Embracing Obama’s Listlessness*].

4. *Id.*

5. While Rousseau was born in Geneva, he is associated generally with France. In his later years, he became a highly respected writer in France (despite the controversial nature of his writings) and was buried in Paris upon his death. His connection to the French Revolution is well established ideologically. JEAN-JACQUES ROUSSEAU, *REVERIES OF THE SOLITARY WALKER* 8 (Penguin Classics 1979) [hereinafter *THE SOLITARY WALKER*]; see *infra* note 10 for full biography.

6. *Embracing Obama’s Listlessness*, *supra* note 3.

7. *Id.*

8. Critchley, *supra* note 2, at 17.

attempt to connect Obama and Rousseau ideologically.⁹ In fact, it is difficult to even conclude from the passage if Critchley's opinion is that President Obama shares any connection to Rousseau's ideals.

However, in light of Barack Obama's rise to the office of President of the United States, and his aggressive domestic agenda, it is easy to link Obama's agenda to the ideals considered and discussed, at least in part, by France's Jean-Jacques Rousseau¹⁰ in his well known political classic, *The Social Contract*.¹¹ Rousseau and Obama share some philosophical principles. Their acceptance of the idea of a social contract is the key.

The fact that Rousseau, a French writer and philosopher, and Barack Obama share philosophical principles is especially interesting in the post-Bush era. It was six years ago that segments of the political establishment in the United States, led by President George W. Bush, were seething at France (and anything French, it seemed) due to its non-support of the United States invasion of Iraq in March 2003.¹² Their reaction to the lack of loyalty France demonstrated towards the United States was, at times emotionally extreme and anti-intellectual. Anything associated with France suddenly was subject to intense criticism by various segments of the United States conservative political apparatus and its supporters in the media. The political anger of President Bush and others manifested itself in a most sophomoric manner when the dish "French Fries" was suddenly changed to "Freedom Fries" in the cafeteria in the United States House of Representatives.¹³

In contrast to that contentious and wasteful political episode, President Barack Obama, since his inauguration as President, has consistently re-connected with France as a political ally and, in addition, has welcomed the

9. Critchley, *supra* note 2, at 17.

10. Jean-Jacques Rousseau was born on June 28, 1712 in Geneva, Switzerland but lived much of his life in France. Rousseau was primarily a political writer who wrote numerous books on the philosophy of politics. His books include, *Confessions* and *Emile or On Education*. In 1762, he published his masterwork, *The Social Contract*, one of the most influential political works in modern history. This work and others forced Rousseau to flee arrest in France due to the controversial nature of the writings. Rousseau, who continued to write for the remainder of his life, died in 1778. James J. Delaney, *Jean-Jacques Rousseau (1712-1778)*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY, Oct. 21, 2005, <http://www.iep.utm.edu/rousseau/> (last visited Oct. 23, 2009).

11. SOCIAL CONTRACT, *supra* note 1.

12. Keith Richburg, *Chirac Seems Intent on Challenging U.S.*, WASH. POST, May 31, 2003, at A-12.

13. Joseph Rosenbloom, *Europeans in America: Freedom Fries and Raw Nerves*, N.Y. TIMES, Mar. 22, 2003, available at http://www.nytimes.com/2003/03/22/news/22iht-rus_ed3_.html.

friendship of France's President Nicolas Sarkozy despite ideological differences. Most importantly for purposes of this essay, President Obama has re-committed the United States to achieving one of the most important ideals with strong ideological links to France: the social contract, as considered by Jean-Jacques Rousseau, a thinker and writer synonymous with France. Man is free, Obama realizes, but everywhere he is in chains, and it is specifically due to the fact that for the last forty years formation of a social contract has stalled.

This essay will examine this historical moment and the enormous possibilities, historically and politically, for the realization, at last, of a true social contract in the United States.

Part I will discuss the development of the concept of a social contract through Thomas Hobbes, Jean-Jacques Rousseau, and into the modern era. Part II will examine the period of time in the United States since 1980 when Ronald Reagan was elected President and the assault upon the social contract began. Part III will consider Barack Obama's policies and his proposals within the context of the principle of the social contract. Part IV will contemplate the political battles over the social contract as President Obama attempts to implement various components of the contract.

II. THE SOCIAL CONTRACT

The English philosopher, Thomas Hobbes,¹⁴ provided the framework for a "social contract" between man and the state.¹⁵ While Jean-Jacques Rousseau is generally credited with the concept because he wrote the famous book called *The Social Contract*,¹⁶ it was Hobbes who initially proposed this idea well before Rousseau ordered the concept more precisely as we understand it today. This is very important because Hobbes, despite the shortcomings in his concepts, is still highly influential in the West with respect to government and order.

14. Thomas Hobbes was born April 5, 1588 in Westport, adjoining Malmesbury in Wiltshire, England. He was educated at Oxford in England and eventually served as a tutor to the Earl of Devonshire. Hobbes is the author of many books on various topics; Hobbes' masterwork is *Leviathan*, a book that set forth his political philosophy in great detail. Thomas Hobbes Biography, <http://www.egs.edu/resources/hobbes.html> (last visited Oct. 23, 2009) [hereinafter Hobbes Biography].

15. THOMAS DONALDSON, *CORPORATIONS AND MORALITY* 39 (Prentice-Hall 1982).

16. Rousseau's book, *The Social Contract*, or as it was entitled at the time of publication in 1762, *Du Contrat Social*. See generally SOCIAL CONTRACT, *supra* note 1.

Hobbes theorizes the social contract concept in his book, *Leviathan*.¹⁷ In order to set up the discussion on Barack Obama and the social contract, this essay will discuss Hobbes from *Leviathan*, and then Rousseau from *The Social Contract*, before moving forward with a discussion of the political journey to Barack Obama, into executive level implementation of these fundamental political ideals.

a. Hobbes

In Barack Obama's political manifesto, *The Audacity of Hope: Thoughts on Reclaiming the American Dream*, he devotes a small passage to the ideas of Thomas Hobbes, the seventeenth century English philosopher.¹⁸ In referencing Hobbes, Obama discusses the Constitution, democracy, and its importance in society, however, the discussion has more to do with the development of the values that formed the nation.¹⁹

Obama writes that Hobbes' idea of government is a "bargain" by individual men with the government (that they form) so that "one man's freedom" will not "become another man's tyranny."²⁰ Men (the people) will "sacrifice individual license,"²¹ according to Obama's interpretation of Hobbes (he also mentions John Locke²²) to "better preserve . . . liberty."²³ Obama is quick to note that while these ideas are the foundation of American democracy, few cogent examples of functioning democracies existed at the time of the foundation of the Republic.²⁴ It was also not likely that a real democracy, as explained in theory over generations, was possible when the nation was founded.

But Hobbes's ideas are still vitally important to understanding the path that Obama is trying to take in the twenty-first century towards a social contract with the public even in the face of failures and shortcomings over the centuries. Hobbes' basic ideas are contained in his book, *Leviathan*.²⁵

17. See generally THOMAS HOBBS, *THE LEVIATHAN* (Oxford Univ. Press 1998).

18. BARACK OBAMA, *THE AUDACITY OF HOPE: THOUGHTS ON RECLAIMING THE AMERICAN DREAM* 87 (Vintage Books 2008).

19. *Id.* at 87-100.

20. *Id.* at 87.

21. *Id.*

22. *Id.*

23. *Id.*

24. OBAMA, *supra* note 18.

25. HOBBS, *supra* note 17.

Leviathan, the book where Hobbes set forth his ideals most clearly, has its origins in the Bible (at least metaphorically); the “Leviathan,” biblically, is a serpent.²⁶ In particular, in the Book of Isaiah, God (Lord) punishes the “leviathan, the piercing serpent, even leviathan the crooked serpent...”²⁷

Leviathan also appears in the Book of Job as a similar entity.²⁸ However, for Hobbes, his Leviathan is not a serpent but the government, “the state, the commonwealth,”²⁹ as put forth in *Leviathan*. It is not necessarily evil in nature, despite the negative connotation often associated with Hobbes³⁰ and *Leviathan* over the years. In fact, this misinterpretation is very critical to understanding the later manifestations of a social contract.

Writer Matthew Reisz sets forth today’s meaning of Leviathan very well as it relates to political structures:

The message of Leviathan was clear: political authority existed to secure peace; a man who accepted the benefits of a stable government - peace, and the enjoyment of his property - had in all essentials agreed to obey that government. Previous promises to a government, or to a regime such as that of Charles I, had been invalidated by its inability to protect its subjects’ lives and possessions.³¹

Reisz defines Hobbes’ thoughts in *Leviathan* as driven (and ultimately developed, of course) by a dreadful view of human beings.³² This dreadful view becomes the primary motivating force for establishing a stable government that people can rely upon to provide for their needs, the most significant of which during Hobbes’ time was self-preservation. There is a valid reason for Hobbes’ views as contained in the Reisz quote.

As a young man, Hobbes witnessed civil strife in England prior to leaving the country in 1640 for France.³³ From 1642 to 1649, the first and second civil wars were fought in England.³⁴ The people and government

26. *Isaiah* 27:1 (King James).

27. *Id.*

28. *Job* 3:8 (King James).

29. HOBBS, *supra* note 17, at 111.

30. See JOHN BOWLE, HOBBS AND HIS CRITICS: A STUDY IN SEVENTEENTH CENTURY CONSTITUTIONALISM 64 (Routledge Press 1969).

31. Matthew Reisz, *Canonical Texts: Are These the Most Influential Books Ever Written?*, TIMES HIGHER EDUC., Apr. 23, 2009, available at <http://www.timeshighereducation.co.uk/story.asp?storycode=406223>.

32. *Id.*

33. See Hobbes Biography, *supra* note 14.

34. See Encyclopædia Britannica, English Civil Wars, available at

officials held Charles I, the King at the time, responsible for encouraging the war.³⁵ Charles I was eventually executed for his acts and this had a huge effect upon Hobbes and how he came to view man and his personal struggle for order.³⁶ Hobbes returned to the country after these events and the publication of *Leviathan* soon followed in 1651.³⁷

Hobbes believed that the nation would function more properly with an all-powerful entity in place as a result of these traumatic events in the life of the state that he witnessed from afar. While his view did not remain completely intact over the centuries, the conclusion he reached has survived at least as a point of discussion for the role of the state in the lives of people, as demonstrated by twenty-first century interpretation of Hobbes. Critics have stated,

Hobbes insisted that human beings were not naturally kind or sociable, but competitive, cruel, selfish, and suspicious--driven only by the need to gratify private desires, and incapable of social life. The Hobbesian human being did not desire companionship, but feared his fellow creatures as threats to his life, property, and happiness; his life was lived in isolation and in fear of violence. As the oft-repeated lines from *Leviathan* put it, the life of man in the state of nature must be "solitary, poore, nasty, brutish, and short," a perpetual war "of every man, against every man."³⁸

However, *Leviathan* is not a book about malevolence, but is about the establishment of a commonwealth, the entity that will establish peace and order in the lives of men who are in a natural state of war. The Hobbes concept has been described as the "most excellent work of man"³⁹ because it is the result of man coming together for the purpose of establishing something directly tied to man's self-interest and preservation.

<http://www.britannica.com/EBchecked/topic/187936/English-Civil-Wars> (last visited Oct. 23, 2009) [hereinafter English Civil Wars].

35. English Civil Wars, *supra* note 34.

36. *Id.*

37. Hobbes Biography, *supra* note 14.

38. Emily Colette Wilkinson, *Lead Kindly Life*, WEEKLY STANDARD, June 15, 2009, available at

<http://www.weeklystandard.com/content/public/articles/000/000/016/598whkw1.asp> (last visited June 20, 2009).

39. DAVID P. GAUTHIER, *THE LOGIC OF LEVIATHAN: THE MORAL AND POLITICAL THEORY OF THOMAS HOBBS 1* (Oxford Univ. Press 1969).

The social contract is the most important concept to emerge from the development of the *Leviathan*. Hobbes set forth the basics in the introduction:

For by art is created that great Leviathan, called a Common-wealth, or State, which is but an Artificiall [sic] Man; though of greater stature and strength than the Naturall [sic], for whose protection and defence [sic] it was intended; and in which, the Sovereignty [sic], is an Artificiall [sic] Soul, as giving life and motion to the whole body...⁴⁰

Here is the contract between the people and the state: for the state to provide order and comfort. Hobbes briefly relates his full concept here. Man is a being of nature (“natural”) and the state (“artificial man”) provides the protection through order and unity.⁴¹ To some, this concept is easily understood and necessary. Government (the commonwealth) provides for the public, in other words, the nation. To others, the fact that government is relied upon to provide for the people is problematic. In other words, there is a problem with the state possessing such power; so it is best that the power of the government be checked at all times in order to allow man to achieve his (or her) goals. Yet, this view, at least in the world of Thomas Hobbes, would be highly destructive.

To a certain extent, this viewpoint is pure liberalism. It insists that unregulated men will cause major damage to themselves and the world in which they live. Hobbes refers to it as “restraint” and notes that man must have the “foresight of their own preservation” to achieve a “more contented life.”⁴² Freedom is the natural state of man, but that is the problem, Hobbes urges; the lack of order in the lives of men.⁴³ The creation of a government by men will provide that order and reduce the natural strife that men would face without such an entity.⁴⁴

b. Rousseau

While Thomas Hobbes set forth the foundation of a “social contract,” the covenant between people and the state, Jean-Jacques Rousseau

40. HOBBS, *supra* note 17, at xviii.

41. *See id.* at 110.

42. *Id.* at 115.

43. *See id.* at 110-12.

44. *See id.*

consolidated these ideas into an applicable ideal for the modern state, and, in fact, added moderation to the ideal. Hobbes' proclamations that "covenants, without the sword, are but words, and of no strength to secure man at all" sound terroristic.⁴⁵ In fact, Hobbes wrote that the laws of nature "without the terrour [sic] of some Power" were essentially useless.⁴⁶ Thus, it is Rousseau who is invoked today when discussions of a social contract begin because his version of the contract is far more flexible. This, indeed, would be more conducive to the pragmatic ideals of Barack Obama, who while often referred to as a liberal, is not necessarily easily categorized.

Rousseau's *The Social Contract* was published in 1762,⁴⁷ and not long after became a book and concept linked to both the American Revolution of 1770-1776 and the French Revolution of 1789-1799. Rousseau's ideas lack the desperate absolutism of Hobbes' *Leviathan*, and while possessing controversial concepts with respect to achieving equality, the basic theory has endured and is generally accepted even today.

The Social Contract is arranged into four books (each with multiple short chapters) to explain a concept that Rousseau describes in the foreword as "part of a larger work," and something he considers "least unworthy" to offer to the public.⁴⁸ In Book I, Rousseau states that the purpose of the book is to "consider if, in political society, there can be any legitimate and sure principle of government, taking men as they are and laws as they might be."⁴⁹ This is an allusion to Hobbes either directly or indirectly.

Rousseau is "taking men as they are"⁵⁰ because this is man (the people) in his natural state. It also prepares the discussion on the social contract, asking casually if there is a reason for men to form a government. While Rousseau wrote in the eighteenth century, this is still the fundamental question that the United States has been trying to answer for decades and even more so in the latter half of the twentieth century regarding the roles of the government and state.

The summary of the modern debate, as alluded to in the introduction, is as follows: conservatives and their political allies have been arguing for limitations on government or as little government as possible. Liberals, on the other hand, and their political supporters have been demanding more

45. HOBBS, *supra* note 17, at 115.

46. *Id.*

47. See SOCIAL CONTRACT, *supra* note 1, at 23.

48. *Id.* at 47.

49. *Id.* at 49.

50. *Id.*

government involvement in order to provide for the needs of the people. This has especially been the case since the Great Depression of 1929.⁵¹ That depression revealed serious vulnerabilities in society and most notably in capitalism, the economic system that dominates the world.

In Chapter 6 of Book I entitled, “The Social Pact,” the social contract concept begins to take form. Rousseau describes men as feeding a need to unify in order to seek self-preservation.⁵² This is much in line with the thinking of Hobbes who referenced self-preservation by insisting that man was in a state of war (which is why the contract with the state was needed).⁵³ However, Rousseau’s belief was more specific and flexible.

He envisioned a “union of separate men” who merged and each man, “without putting himself in peril and neglecting the care he owes to himself,” worked to “overcome” shared difficulties in order to “act in concert.”⁵⁴ Perhaps, it can be argued by both dominant political ideologies in the United States – liberalism and conservatism – that they share this desire to act in concert through their government. However, the modern conservative movement, as discussed below, has been particularly effective at discrediting the idea that the Government should wield a strong influence over the lives of the people.

In fact, conservatism is synonymous with anti-government ideals (mostly in the last thirty years) insisting that the best way to serve man (the people) would be to reduce the presence or influence of government and allow the people to be as free as possible.⁵⁵ A more accurate characteristic of conservatism during this period is that it represented self-regulating capitalism.⁵⁶ Rousseau’s world, several wars and centuries ago, is different than that world and far more accommodating.

51. JOHN KENNETH GALBRAITH, *THE GREAT CRASH, 1929 passim* (Mariner Book 1955) (The Great Depression occurred between 1929-1939 and is often referred to as the worse economic recession in the history of the United States. It was triggered by a catastrophic stock market crash in 1929 that led to a collapse of the banking system and the entire economic system. By the time Franklin Roosevelt took office in March 1933, unemployment had reached twenty-five percent. The citizens of the country had all but given up on the country. The number of homeless rose, suicide was rampant in the financial industry, and the Government, in an effort to address hunger, created soup kitchens. The GNP was generally lethargic for years during the period. Only after aggressive and sustained government intervention was the depression brought under control).

52. SOCIAL CONTRACT, *supra* note 1, 59-60.

53. HOBBS, *supra* note 17, at 109.

54. SOCIAL CONTRACT, *supra* note 1, at 60.

55. BARRY GOLDWATER, *WHERE I STAND* 101 (McGraw Hill Book Co. 1964).

56. WILLIAM KLIENKNECHT, *THE MAN WHO SOLD THE WORLD: RONALD REAGAN AND THE BETRAYAL OF MAIN STREET AMERICA* 155-64 (Perseus Book Group 2009).

Rousseau believed in an association of men that created a “reciprocal commitment” between man and the government (society and the individual) in order to make a contract not only with the state but also with his fellow citizens as a member of the association.⁵⁷ At the end of Book I, Rousseau re-explains the “social pact” (the contract) in terms that, at the time, are illuminating for the future:

I shall end this chapter – and Book I – with an observation which might serve as a basis for the whole social system: namely, that the social pact, far from destroying natural equality, substitutes, on the contrary, a moral and lawful equality for whatever physical inequality that nature may have imposed on mankind; so that however unequal in strength and intelligence, men become equal by covenant and by right.⁵⁸

Rousseau’s point here is the natural free state of man is not sacrificed as a result of the formation of this contract. But the contract, in fact, will make man more equal because if there are any inequalities that exist between individuals in society, the pact can address these issues.

In Book II and Book III of *The Social Contract*, Rousseau expands upon the idea of a “covenant” that is a “sacred right which serves as a basis for all other rights.”⁵⁹ Early in Book II, Rousseau writes about a “social pact,” revisiting the themes recited at the end of Book I.⁶⁰ This pact, according to Rousseau, “establishes equality among the citizens” and provides them all with the “same rights.”⁶¹ According to Rousseau, “every act of sovereignty,” if it is an “authentic act of the general will, binds or favors all the citizens equally.”⁶² No distinction is ever made under such circumstances of “any members” who compose the nation.⁶³ These ideals are important for the development of democratic institutions. Various manifestations of the social contract were created in the centuries following Rousseau’s writing.⁶⁴ His focus upon equality for all people is especially universal. It sets forth the implication that the various inequalities

57. SOCIAL CONTRACT, *supra* note 1, at 62.

58. *Id.*

59. *Id.* at 51.

60. *Id.* at 74-76.

61. *Id.* at 76.

62. *Id.*

63. SOCIAL CONTRACT, *supra* note 1, at 76.

64. The most famous of all the ‘social contract’ documents is the document that emerged from the French Revolution: THE DECLARATION OF THE RIGHTS OF MAN AND CITIZEN.

perpetuated by people against others on the basis of race, sex, class, national origin, disability, or any other basis recognizable by the general will (the legal rights of gays and lesbians is currently at the center of this ideal),⁶⁵ have no legal or social basis in Rousseau's vision of a nation. Nevertheless, for a country such as the United States which has only recently addressed its deep seated racial problems legally (but not necessarily culturally, socially, or by custom), as well as the inequality of women living in the United States, Rousseau's ideals are what the country proposed, in theory at its creation. However, this is not what every citizen, state, city, or municipality practices.

However, Rousseau expands further upon this rationale by insisting that the contract is real. He calls it an "exchange" where an "uncertain and precarious life" is sacrificed for a "more secure" life and "natural independence for freedom."⁶⁶ "Their very lives," Rousseau writes, "which they have pledged to the state, are always protected by it."⁶⁷ This assertion by Rousseau is much more liberal in nature, considering that some segments of the population reject the notion of the government providing such protection.

"Democracy," Chapter 4 of Book III, is the key section that forms the government, the key party of the contract. Rousseau, *inter alia*, writes about checks and balances, a very important concept of the future American democracy that will be formed in the wake of the emergence of Rousseau's writings.⁶⁸ The social contract between the people and the government has historically found such a concept useful as it avoids concentrating control and authority in the hands of one aspect of government.

In the United States, the division of the three branches of government are: legislative, judicial, and executive – represented by: Congress, the courts, and the office of the President. Rousseau stresses that a government where the legislative and executive branches are "united" is "deficient."⁶⁹ Rousseau refers to such an arrangement as one in which the "prince" and "the sovereign" are the same person, a "government without government."⁷⁰ He adds that "[i]t is not good that he who makes the law should execute it,

65. Michael D. Shear, *At White House, Obama Aims to Reassure Gays*, WASH. POST, June 30, 2009, at A1.

66. SOCIAL CONTRACT, *supra* note 1, at 77.

67. *Id.*

68. *Id.* at 112-13.

69. *Id.* at 113.

70. *Id.*

or the body of the people should turn its attention away from general perspectives and give it to particular objects.”⁷¹

In addition to other discussions regarding types of government (monarchy, aristocracy, etc.), Book III also reinforces the general idea of the social contract, and the guiding principle set forth by Hobbes; the government is formed as an association of people with a desire to be governed in order to achieve certain goals, namely “the protection and prosperity” of the members of the association.⁷²

At the beginning of Book IV, Rousseau emphatically writes, “So long as several men assembled together consider themselves a single body, they have only one will, which is directed towards their common preservation and general well-being.”⁷³ Inherent in these words is Hobbes’ pronouncements for self-preservation and the more concrete ideas that would inspire the United States Constitution for generations.

This is again a recitation of the basic ideals of a social contract. Hobbes’ ideals, while flawed, continue to survive in principle. The key principle, however, is the unity and strength of the general will of the people and the foundation upon which the nation is constructed. According to Rousseau, the contract is broken if unity is not maintained; “the social tie” begins to “slacken” and “sectional societies” and “particular interests” begin to “exert influence” over the “greater society.”⁷⁴ “The general will,” according to Rousseau, “is no longer the will of all.”⁷⁵

Rousseau’s point here is there can be differences of opinion on small issues, but sectional based issues cannot prevent the general will of the people, for purposes of prosperity and protection, from prevailing. Rousseau takes these ideas to a higher level by discussing the importance of voting (Chapter 2 – The Suffrage) and execution of the right to vote by the people (Chapter 3 – Elections).⁷⁶ While these ideals are underdeveloped in this eighteenth century text, the concepts as expressed through Rousseau’s contract theory possess clarity.

Rousseau states that “[a]part from this original contract, the votes of the greatest number always bind the rest.”⁷⁷ But then he asks an important

71. SOCIAL CONTRACT, *supra* note 1, at 112.

72. *Id.* at 130.

73. *Id.* at 149.

74. *Id.* at 150.

75. *Id.*

76. *See generally id.* at 151-57.

77. SOCIAL CONTRACT, *supra* note 1, at 153.

question that is at the heart of the contract: “How can the opposing minority be both free and subject to laws to which they have not consented?”⁷⁸ The answer is simple: this is the general will of the state.

While Book IV contains further discussions on various important ideas, including a lengthy controversial critique of religion in the state, Rousseau’s most important points on a social contract generally conclude after the discussion on voting. By this point in *The Social Contract* he has set forth a document that will prove influential for decades, and one invoked by the people of various nations to forge new struggles for democracy and independence. It is a foreshadowing of American democracy, at least in principle, if not in actual implementation.

AMERICAN CONTRACT

i. Race and Sex

It is the Declaration of Independence of July 4, 1776, and the United States Constitution produced eleven years later, that forms the basic foundation for a social contract in the United States. These documents, while not drafted by Hobbes or Rousseau, contain the principles of a social contract amongst the government and the people. This American contract would also require many other acts by the citizens and the political establishment in the United States in order for a declaration by men (the people as configured at that time) to be governed and to be bound to one another for common goals, mainly, self preservation, and prosperity. The Declaration of Independence states that “[w]e hold these truths to be self evident that all men are created equal.”⁷⁹ The document adds that these “men” are “endowed by their creator with certain “inalienable rights” among which are “life, liberty, and the pursuit of happiness.”⁸⁰ While this initial declaration is a conservative statement in nature and a statement consistent with Hobbes’ notion of man in his natural state, the clause that follows alters that meaning and provides the contractual language.

The document reads, “that to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the

78. SOCIAL CONTRACT, *supra* note 1, at 153.

79. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

80. *Id.* at para. 2; *see* SOCIAL CONTRACT, *supra* note 1, at 77.

governed.”⁸¹ This is the key statement because it states the people formed a government in order to achieve the natural rights endowed to men by God. This concept is consistent with those developed by Hobbes in *Leviathan*.

Penned in 1787, the United States Constitution followed the Declaration of Independence, and it builds upon the ideas of the Declaration despite its major flaws. In the preamble to the document are the potentially empowering words:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.⁸²

The preamble contains sentiments of Hobbes and Rousseau. Specifically, the words “tranquility” and “posterity,” as well as the phrase “the blessings of liberty,” are consistent with their beliefs. This is terminology easily linked to Hobbes’ notion of preservation and Rousseau’s idea of prosperity for man.

However, despite the exactness of these documents that form the American social contract, that contract in the United States is, and has been, a struggle. There are multiple reasons for this struggle, and ultimately a failure, by the country collectively to form that contract for most of its existence.

Specifically, inequalities based upon race and the subjugation of women were entrenched in the United States when the country was founded.⁸³ This rendered any real contract quite limiting and only applicable to only certain members of the population. Most blacks, though citizens of the United States in principle, possessed no rights under the law.⁸⁴ Black people were bought and sold like tables or chairs, and most enjoyed little, if any, input or involvement in a social contract.

Likewise, white women, while not slaves, did not enjoy the same rights as white men and did not enjoy civic equality in society. Today,

81. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

82. U.S. CONST. pmbi.; see SOCIAL CONTRACT, *supra* note 1, at 112-13.

83. See HOWARD ZINN, THE PEOPLE’S HISTORY OF THE UNITED STATES: 1492 - PRESENT 58-59 (Harper Collins 2003).

84. The case that clarified the status of black Americans is *Scott v. Sandford*, 60 U.S. 393 (1856). This case made it clear that black Americans had no rights under the law that anyone had to respect.

women are still unequal because of custom, law, and behavior. Thus, before a social contract could actually be formed in the United States, racial inequality, as well as the condition of women, has to be addressed.

Economic inequality (class) is also a huge issue and it impacts any notion of a contract. But economic inequality is central to a quest for enacting a social contract. It is also clear that complete equality was never a goal of Rousseau's social contract. This is made clear in Rousseau's discussion in Book III of *The Social Contract* regarding types of governments.

In Book III, Rousseau is quick to note that under the contract there are two "distinct artificial persons namely the government and the sovereign."⁸⁵ The sovereign is the representative entity for the people; the government is simply the government, an entity unto itself that exists outside of the sovereign, and by design, the people. This is not always made clear but it is critical to Rousseau's social contract theory because he also loosely endorses rule by the aristocracy. The "first societies,"⁸⁶ Rousseau notes, were governed in this manner.

While Rousseau promotes an "elective" "aristocracy," he still promotes a system where "the wisest" govern the "multitude," and this seems somewhat inconsistent with the pursuit of equality.⁸⁷ To his credit, Rousseau adds that "if this form of government involves a certain inequality of wealth, it is good that the administration of public affairs be entrusted to those who can best give all their time to it, and not as Aristotle asserted, so that the rich should always be chosen."⁸⁸ Despite this weakness in Rousseau's contract, it does not change the fact that his idea of the contract endorses equality in all respects, nor is it a reason to conclude that there is no contract until inequality is completely addressed.

The struggle for racial equality is quite different. It cannot be included in the basic struggle for the formation of a contract because the system of racial inequality destroys any notion that a contract exists. By classifying one group of human beings as sub-human and non-citizens, it discredits any chance for a meaningful social contract. An association with common goals cannot be formed with some of the people.

Racial inequality, in fact, has been most vexing because even after slavery was legally abolished, a new system of control and

85. SOCIAL CONTRACT, *supra* note 1, at 114.

86. *Id.*

87. *Id.*

88. *Id.* at 116.

disenfranchisement was formed. This was known as segregation or “Jim Crow.”⁸⁹ While historically associated with the southern states where slavery was most prominent and where racial hostility and control was most pronounced, northern states also practiced segregation by custom, the manipulation of existing laws, and through violent force and control if necessary.⁹⁰ This “Jim Crow” system against blacks was not legally dismantled until the Supreme Court’s decision in 1954 in *Brown v. Board of Education*.⁹¹ Society was dramatically changed by the civil rights struggles of the 1950s and 1960s with the statutory implementation of civil rights laws,⁹² numerous court cases upholding the *Brown* decision, affirmative action,⁹³ and a gradual alteration of daily customs in the United States.

With respect to women in the United States, their struggle for equality was vastly different and required a different approach regarding change. While women have been historically oppressed in the United States, treated unequally, and subject to violence at epidemic levels, there was no established system such as “Jim Crow” segregation that worked daily (officially and unofficially) to destroy their lives. However, the inequality and mistreatment women were, and are, subject to is well documented and substantiated.

It was only after the Feminist Movement,⁹⁴ which followed the Civil Rights Movement, that women were able to begin making greater gains in society. Women did not gain the right to vote until 1920⁹⁵ and only began to make wide gains in the American political system in the last thirty to forty years.⁹⁶ Some milestones include the appointment of Sandra Day O’Connor as the first female Supreme Court Justice in 1987, the election of a large number of women in Congress, the consistent appointment of

89. NEIL R. McMILLAN, *DARK JOURNEY: BLACK MISSISSIPPIANS IN THE AGE OF JIM CROW* 3-5 (Univ. of Ill. Press 1990).

90. STEPHEN GRANT MEYER, *AS LONG AS THEY DON’T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS* 2-29 (Rowman & Littlefield Publishers, Inc. 2001).

91. 347 U.S. 483, 483 (1954).

92. The three key civil rights laws of the civil rights period are the Civil Rights Act of 1964, 42 U.S.C. § 2000 (1964); Voting Rights Act of 1965, 42 U.S.C. § 1973 (1965); and Fair Housing Act, 42 U.S.C. §§ 3601-19 (1968).

93. S.N. COLAMERY, *AFFIRMATIVE ACTION: CATALYST OR ALBATROSS?* 1 (Nova Science Publishers 1998).

94. GLORIA WATKINS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 28-39 (South End Press 2000).

95. *See* U.S. CONST. amend. XIX.

96. WATKINS, *supra* note 94.

women to cabinet positions under the President of the United States, the ascension of women to positions of power and influence in corporate America, and the rise of women as cultural figures in media, entertainment, and home life.

Notwithstanding a constant level of inequality based upon race, sex, and other categories⁹⁷ in the United States, the biggest impediment to a true social contract in the United States has been inflexible political ideologies. There simply is not a consensus with respect to how certain fundamental human needs (all relating in some degree to Hobbes' notion of self preservation) will be solved in the United States or how the nation will endure difficult times or improve the quality of life. This includes such basic and necessary needs as food, shelter, education, health care, and the principle that governs these needs: equality.

The two dominant political parties in the United States, Democrats and Republicans, debate these issues of governmental power constantly, but have never resolved these issues to the point where the debate, for the most part, has ended. The debate within these political parties is further complicated by the strong liberal tradition forged within the Democratic Party, and an even stronger conservative tradition that has developed in the Republican Party, over the last thirty years.

For example, all western industrialized nations in Europe provide universal health care for their citizens under a single payer system.⁹⁸ Although the debate is over, there are political groups in these countries who believe it is wrong for the government to provide health care to all citizens. This is not true in the United States.

The United States does not provide universal health coverage for its citizens, and millions of citizens have no access to basic coverage.⁹⁹ A debate in the United States rages over this key quality of life issue as the United States is finally discussing the future with a government health plan for the citizens who are uninsured.¹⁰⁰

97. Some other protected classes in various states and/or under federal law include: disability, sexual orientation, source of income, and familial status. See D.C. Human Rights Act, D.C. CODE ANN. § 2-1402.01 (2001) and the federal Fair Housing Act, 42 U.S.C. § 3601. It should be noted that the legal and social struggle over the right of gay and lesbian to marry is a major issue at the present time.

98. TOM DASCHLE ET AL., *CRITICAL: WHAT WE CAN DO ABOUT THE HEALTH-CARE CRISIS* 3-4 (Thomas Dunne Books 2008).

99. *Id.*

100. Carl Hulse, *With Health Care Talks Uncertain, Democrats Consider a Last Resort*, N.Y. TIMES, Aug. 2, 2009, at A16.

Health care, a key quality of life issue and obvious component of any key social contract between the state and the people, is still not resolved in the United States after 233 years since the founding of the Republic, and at a very critical time for the nation with respect to its continued place in the world. For reasons such as health care, Rousseau's social contract is an elusive ideal in the United States despite its compatibility with the basic ideals of the nation that "all men are created equal."

Are there instances in history where a social contract in the United States seemed ready to take shape completely? Certainly.

The reign of President Abraham Lincoln presented an opportunity for the nation to embrace the idea of the social contract for all citizens. With the dissection of the union into North and South, the nation was confronted with a formidable challenge to its existence.¹⁰¹ Religious writer, David Gibson, has written that Lincoln was a public theologian who sought to use biblical ideals to advance the unity of the country and to seek the greatest good under the circumstances.¹⁰²

Lincoln's effort to preserve the union was successful, and a social contract was possible following the war. But as already briefly alluded to above, while chattel slavery was legally abolished in 1865,¹⁰³ "Jim Crow" segregation began to develop almost immediately following the war.

Historian Howard Zinn recently wrote about the aftermath of the Civil War and the plight of the African-American's sudden emancipation from slavery:

They were brought into semi-slavery. They were betrayed by the politicians and the financiers of the North. They were left without resources. They were left at the mercy of the same plantation owners who owned them as slaves and now they were serfs. They couldn't move from one place to another. They were hemmed in by all sorts of restrictions, and many of them were put in jail on false charges. And vagrancy statutes were passed so that employers could pick up blacks off the streets and force them to work in a kind of slave labor.¹⁰⁴

101. CEDRIC J. ROBINSON, *BLACK MOVEMENTS IN AMERICA* 67-69 (Routledge 1997).

102. David Gibson, *The Gospel According to Barack Obama*, POLITICS DAILY, June 8, 2009, <http://www.politicsdaily.com/2009/06/08/the-gospel-according-to-barack>.

103. ROBINSON, *supra* note 101, at 81-83.

104. Howard Zinn, *A Just Cause [not equal to] a Just War*, THE PROGRESSIVE, July 2009, at 23.

Lincoln also acknowledged that solving the race issue was secondary to the preservation of the union. "My paramount object in this struggle is to save the Union," he stated in 1862 as the Civil War continued, "and is not either to save or destroy slavery. If I could save the union without freeing any slave I would do it, and if I could save it by freeing all the slaves I would do it."¹⁰⁵ Nevertheless, following the end of the war in 1865, Lincoln was assassinated, and while the black population enslaved prior to the war was free, their ability to become full citizens was challenged quickly, legally, and through violence across the country.¹⁰⁶ New laws were implemented to obstruct their daily lives. Domestic terror organizations were formed to promote racial violence and hatred. By the 1880's, most of the minimal gains by blacks following the Civil War had been eroded.¹⁰⁷

In 1896, the United States Supreme Court, in *Plessy v. Ferguson*¹⁰⁸ declared separate but equal facilities constitutional despite the racial discrimination and segregation it promoted.¹⁰⁹ Thus, the era of "Jim Crow" was official in the United States and the nation embarked upon a disturbing period of government supported domestic terrorism against its African-American population. The social contract was never realized.

ii. *Franklin Delano Roosevelt*

The most concrete progress towards a real social contract in the United States is Franklin Delano Roosevelt's "New Deal" of the 1930's.¹¹⁰ Roosevelt's efforts to stabilize the nation during a severe economic crisis led to the first real possibility of a social contract in the United States. However, the most important point to stress here is that while in office, Roosevelt provided the first real opportunity for a social contract, not an actual social contract. This important distinction should be made because segregation based upon race in the United States did not get resolved under

105. JOHN VAN HOUTEN-DIPPEL, RACE TO THE FRONTIER: "WHITE FLIGHT" AND WESTERN EXPANSION 291 (Algora Publishing 2005) (Letter from Abraham Lincoln to Horace Greeley, Aug. 22, 1862).

106. ROBINSON, *supra* note 101, at 81-83.

107. GEORGE C. RABLE, BUT THERE WAS NO PEACE: THE ROLE OF VIOLENCE IN THE POLITICS OF RECONSTRUCTION 70-71 (Univ. of Ga. Press 2007).

108. 163 U.S. 537, 537 (1896).

109. *Id.* at 544-45.

110. Biography of Franklin D. Roosevelt,
<http://www.whitehouse.gov/about/presidents/franklinroosevelt/>.

Roosevelt. Furthermore, the internment of Japanese-Americans¹¹¹ in 1942 prevented the formation of a social contract in the United States. Japanese-Americans who were relocated to the internment camps in 1942 as the war in the Pacific region accelerated in intensity were citizens of the nation.

Roosevelt's administration was a start to a real social contract. At the time of the New Deal, the country was suffering from a catastrophic economic downturn stemming from the collapse of the stock market in 1929.¹¹² Life in the United States had deteriorated for millions of people. While the economic collapse occurred in 1929, President Herbert Hoover did not accept the notion that aggressive governmental activity was necessary to address the problem. Herbert Hoover framed the issue of government intervention during this crisis, and this ideological struggle has remained in place now eighty years later.¹¹³ One political organization refused to act decisively regarding the ordinary challenges of the citizenry; the other party, led by Roosevelt, acted decisively and a contract, for the moment, became possible.

In a 1932 article in the *New York Times*, Bainbridge Colby, Secretary of State under President Woodrow Wilson, explains the ideological difference between Hoover and Roosevelt, but most importantly, the shortcomings of the conservative approach to the problems in society.¹¹⁴ Speaking to a Democratic Party group in St. Louis on October 6, 1932, Colby urged a change in leadership from Hoover to Roosevelt citing Hoover's repeated failures to act as the Great Depression gathered throughout the nation.¹¹⁵

Colby noted in the article that "[t]he plain truth is Mr. Hoover has been a failure by every test that fairness and non-partisanship can apply."¹¹⁶ He added, "Hoover has failed for lack of vision, failed for lack of sympathy, failed for lack of understanding, failed for his prejudices, political, economic, social, and failed in leadership."¹¹⁷

In addition, Colby commented upon the concept of rugged individualism. Colby asserted that Hoover had "botched" everything and

111. *Korematsu v. United States*, 323 U.S. 214, 223 (1942).

112. GALBRAITH, *supra* note 51, at 128-167.

113. HERBERT HOOVER, *AMERICAN INDIVIDUALISM: THE CHALLENGE TO LIBERTY* 12-14 (Herbert Hoover Presidential Library Ass'n 1934).

114. *Colby Sees Hoover No 'Victim' of Panic*, N.Y. TIMES, Oct. 7, 1932, at 12 [hereinafter *Victim of Panic*].

115. *Id.*

116. *Id.*

117. *Id.*

had been unable to “envisage the misery of the masses...”¹¹⁸ According to Secretary Colby, Hoover “insists that the American way is to unload the responsibility for their living or starving upon private charity.”¹¹⁹ Colby describes this as Hoover’s idea of “individualism,” so rugged that Hoover’s vision of the country includes “the right to starve.”¹²⁰ Colby’s final charge to Hoover was that he wanted the rich to “inherit the earth” and was only concerned with “banks,” “railroads,” and “great corporations.”¹²¹ This is also consistent with the modern view that conservatives are primarily concerned with the affluent and the financial institutions they control.

Of course, the history after Hoover is grave as the economy of the country deteriorated, clearing the way for Franklin Roosevelt’s dramatic actions and a change in governmental history. A recent account of the moment describes the gravity of the economic destruction:

March 4, 1933 was perhaps the Great Depression’s darkest hour. The stock market had plunged 85% from its high in 1929, and nearly one-fourth of the workforce was unemployed. In the cities, jobless men were lining up for soup and bread. In rural areas, farmers whose land was foreclosed were talking openly of revolution. The crowd that gathered in front of the Capitol that day to watch Franklin D. Roosevelt’s Inauguration had all but given up on America. They were, a reporter observed, “as silent as a group of mourners around a grave.”¹²²

In John Kenneth Galbraith’s famous account of the beginning of the Great Depression, *The Great Crash 1929*, the seriousness of the moment was also recalled:

The Crash blighted the fortunes of many hundreds of thousands of Americans. But among people of prominence worse havoc was worked on reputations. In such circles credit for wisdom, foresight, and unhappily also, for common honesty underwent a convulsive shrinkage.¹²³

118. Victim of Panic, *supra* note 114.

119. *Id.*

120. *Id.*

121. *Id.*

122. Adam Cohen, *The First 100 Days*, TIME, Jul. 6, 2009, at 32.

123. GALBRAITH, *supra* note 51, at 128-44.

Roosevelt, with a mandate from the electorate, acted quickly to restore confidence and to stabilize the economy with several controversial, but now well known programs. These include not only his initial efforts to restore the banking system, but also efforts to provide for ordinary people and to address problems in the financial markets. The Federal Deposit Insurance Corporation (FDIC), a major guarantor for the banking industry and individual banking deposits, is one of Roosevelt's singular New Deal programs, as is the Securities and Exchange Commission, an agency created to regulate the securities market in the United States.¹²⁴

In addition, Roosevelt created social security, unemployment compensation, and the Works Progress Administration in order to create jobs and to provide individuals and families with some income while they tried to find employment in a stagnant economy.¹²⁵ In 1941, Roosevelt signed Executive Order 8802, which prohibited discrimination in the hiring of defense industry employees after blacks had organized a march on Washington D.C. to demand civic equality.¹²⁶

Social security and unemployment compensation, despite decades of criticism and attacks, have remained part of the social safety net created by Roosevelt in the 1930s. FDIC is still a critical component of life in the United States for most Americans, evidenced by the recent decision to increase the insurance amount from \$100,000 to \$250,000.¹²⁷

While a debate continues to be waged by various political factions in the United States with respect to the success of the New Deal, Roosevelt's ability to demonstrate to the public the government's ability to deliver for the overall public is undisputed. It is only the level of comfort and recovery that is in dispute to historians.

III. THE DEATH OF A SOCIAL CONTRACT

It has, indeed, been a policy for nearly thirty years (with some intermittent but insignificant periods or episodes of relief) to reduce the

124. Harold L. Cole & Lee Ohanian, *Where the New Deal Went Terribly Wrong*, MILKEN INST. REV. 17, 17-18 (2009).

125. *Id.*

126. A. Philip Randolph, *Desegregating the Military*, in RIPPLES OF HOPE: GREAT AMERICAN CIVIL RIGHTS SPEECHES 182-83 (Josh Gottheimer ed., Basic Civitas Books 2003).

127. FDIC – INSURED DEPOSITS FOR RETIREMENT: NOW GUARANTEED UP TO 250,000 (2006), available at <http://www.fdic.gov/deposit/deposits/stuffer/4panel.pdf>.

citizens of this country to individual players forced to struggle on their own without a strong presence of the state in their lives. This realization is especially evident with the arrival of the “Contract on America” in 1994 where the Government declared an artificial war on the citizens by attempting to destroy any meaningful relationship between the people and the state.¹²⁸

From 1980-2008, it was the goal of the Republican Party and its conservative wing to dismantle the social contract formed by Roosevelt with the people during the Great Depression and the implementation of the New Deal. This is a period that includes the historic rise of Ronald Reagan and conservatism, the sacrifice of the moderate Republican George H. W. Bush as orchestrated by the arch conservative Newt Gingrich, the ineffective centrism of William Jefferson Clinton, and the ultra-political tactics of George W. Bush.

Nearly three decades have led to this moment where a social contract is under reconstruction, and President Barack Obama is the person who will do the rebuilding, if it is to be done. However, before understanding what is being attempted, it is appropriate to understand what happened since the rise of conservatism and the assault upon Roosevelt’s covenant.

This section shall briefly discuss four individuals, their views, vision, and the kinds of policies advanced during their political reigns in order to place the conservative era into historical perspective. The four individuals are Barry Goldwater, Ronald Reagan, Newt Gingrich, and George W. Bush. Collectively, they were able to discredit the idea of a social contract or re-define it to mean something completely different and adverse to the ideas set forth by those who originated the idea centuries ago.

a. Barry Goldwater

In 1960, Barry Morris Goldwater¹²⁹ was a United States Senator representing the State of Arizona. He also wrote a book that year entitled

128. Jeffery B. Gayner, *The Contract with America: Implementing New Ideas in the U.S.*, HERITAGE FOUNDATION, Oct. 12, 1995, available at <http://www.heritage.org/research/politicalphilosophy/hl549.cfm>.

129. Barry Goldwater was born in Phoenix, Arizona, on January 1, 1909. He was elected a United States Senator from Arizona in 1952 and served until 1986. He unsuccessfully ran for President of the United States in 1964, losing in a landslide to Lyndon Johnson. He died in 1998. Bart Barnes, *Barry Goldwater, GOP Hero, Dies*, WASH. POST, May 30, 1998, at A-1.

*The Conscience of a Conservative*¹³⁰ that changed American history. *The Conscience of a Conservative* relates conservatism to the “social order” and “freedom,” concepts less important than the idea put forth by conservatism that “government” thwarts man’s “liberty” and that “government” controls and regulates the lives of the people.¹³¹

This is remarkably different from both the Hobbes and Rousseau view of government. In their view, government, or the state, assists the people in bringing order to their lives and is a necessary entity. The social contract is, therefore, also necessary because it is the bond formed by the people that addresses their individual but shared needs.

Goldwater, however, asserts that there needs to be as little government as possible in order to provide the people with the freedom that will allow them to succeed. Rousseau’s famous opening to *The Social Contract* – “Man is born free; and everywhere he is in chains,” is thus, turned upside down by Goldwater. In Goldwater’s view, man is, to put it plainly, born free and the way to keep him free is to limit the power and authority of the state, not by expanding its power.

As for the important specifics of Goldwater’s book as related to the social contract, Goldwater famously attacks many of the key components of the American social contract, including social programs and government involvement in equality measures. Most importantly, it also attacked the liberalism of the Democratic Party and the values of the Republican Party at that time.¹³²

Goldwater accused both parties of practicing some version of “totalitarianism,” and of propounding government views that were in conflict with the Constitution of the United States.¹³³ This is also interesting considering that Hobbes’ view of the contract would not endorse totalitarianism, but would be open for the authority of the state to provide strict order to the people.

Notably, *A Conscience of a Conservative* is critical of efforts to establish civil rights in the United States for minorities stating that *Brown v. Board of Education*¹³⁴ is not the “law of the land.”¹³⁵ This belief is

130. BARRY GOLDWATER, *THE CONSCIENCE OF A CONSERVATIVE* (C.C. Goldwater ed., Hillman Books 1960).

131. *Id.* at 12-13.

132. *Id.* at 15.

133. *Id.* at 15-16.

134. 347 U.S. 483 (1954).

135. GOLDWATER, *supra* note 130, at 30.

interesting considering the evolution of conservatism since Goldwater. Goldwater, *inter alia*, accused the United States Supreme Court, at the time, of abusing its power, and referred to the decision as an “unconstitutional trespass into the legislative sphere of the government.”¹³⁶ It isn’t likely that Rousseau’s contract would reach the same conclusion considering that Rousseau believed that the people were working for the same goals, although they were seeking individual goals.

Goldwater, in *A Conscience of a Conservative*, provides numerous examples to the reader to consider in the section entitled “Taxes and Spending.”¹³⁷ It is here that he continues his hard criticism of governmental involvement in the lives of people:

The government must begin to withdraw from a whole series of programs that are outside its constitutional mandate – from social welfare programs, education, public power, agriculture, public housing, urban renewal, and all the other activities that can be better performed by lower levels of government or by private institutions or by individuals.¹³⁸

Perhaps more than any other section of the book, this passage represents the severing of the social contract between the state and the people though Goldwater’s agenda. Goldwater is stating that the Federal Government has no legal authority to engage in any of the above functions. The Government should not be providing education, housing, trying to improve the cities, meddling in the affairs of farmers, helping individuals when they have encountered financial problems, or any other function for which the Government had come to provide assistance since 1960.¹³⁹ Indeed, by 1963, the country that Goldwater insisted was post-Great Depression would soon be a country struggling for equal rights for its colored citizens.

Goldwater’s views at the time are important because he is advocating a return to the idea of “rugged individualism,” a concept alluded to previously.¹⁴⁰ In the world of rugged individualism, there is no sincere bond between the state and the people; each person is technically on their

136. GOLDWATER, *supra* note 130, at 30.

137. *See generally id.* at 53-62.

138. *Id.* at 68-69.

139. *Id.* at 25-28, 68.

140. HOOVER, *supra* note 113.

own for even the bare essentials. Hoover, as previously mentioned, was heavily criticized for endorsing this approach.

Barry Goldwater's vision proved to be important from an ideological standpoint even though initially his ideas did not succeed. In 1964, as the Civil Rights movement reached its apex, Goldwater became the Republican nominee for President of the United States. However, the Democratic nominee, Lyndon B. Johnson, won by a landslide.¹⁴¹ Goldwater had opposed the Civil Rights Act of 1964 and it proved catastrophic for him politically. It did not, however, alter conservatism, but it did guarantee the rise of the ideology. Goldwater had sacrificed himself personally to advance his anti-government ideology that would soon be embraced and focused upon by a more capable legion of politicians. The most important of these individuals would be Ronald Reagan of California.

c. Ronald Reagan

On January 20, 1981, Ronald Reagan was sworn in as President of the United States.¹⁴² In his inauguration speech, he uttered the famous words that have come to define his legacy and the legacy of the modern conservative movement. Reagan stated, "In this present crisis, government is not the solution to our problem, government is the problem."¹⁴³

The words are striking because it is the person in charge of the government, the President of the United States, speaking. The first question that is presented by such a comment is obvious: why is an individual who thinks government is 'the problem' being placed in charge of that very important entity? With respect to the idea of a social contract, for a person to be placed in charge of the entity that Hobbes considered could save the people from their state of war seems facially reckless.

Nevertheless, by 1981 Reagan, and those who shared his views, had been making similar speeches that contained such thoughts for nearly twenty years. Reagan's most famous speech, "A Time for Choosing," is an example of the conservative ideology that he had been promoting for two decades by the time he was inaugurated. In that now famous 1964 speech,

141. KIM PHILLIP-FEIN, *INVISIBLE HANDS: THE MAKING OF THE CONSERVATIVE MOVEMENT FROM THE NEW DEAL TO REAGAN* 148-49 (W.W. Norton & Co., Inc. 2009).

142. Ronald Reagan biography, <http://www.whitehouse.gov/about/presidents/ronaldreagan/>.

143. Ronald Reagan, President of the United States, First Inaugural Address (Jan. 20, 1981).

Reagan condemned social security, universal health coverage, government regulation of the economic market, and welfare.¹⁴⁴ It was an attack on the legacy built by Franklin Delano Roosevelt.

However, the January 20, 1981 speech, while not as famous, is more important. William Safire, the conservative New York Times columnist, wrote that Reagan not only attacked big government, but was indeed anti-government.¹⁴⁵ Safire makes this declaration despite the fact that Reagan also stressed in the speech that he was not going to do away with government.¹⁴⁶

From that moment forward, Reagan slowly began to build his popularity in his own party and around the country. Reagan proved to be exactly what the conservative movement needed: a charismatic figure with superb communication skills and credibility as a politician who was not part of the Washington D.C. establishment.

Writer William Klienkecht states in his book, *The Man Who Sold the World*, that "Reagan's brand of conservatism rippled across our society as thoroughly as Progressivism."¹⁴⁷ Kleinknecht's point is the modern conservatism that Reagan proposed was popular and was no longer an isolated ideological agenda. Klienkecht stressed that Reagan's conservatism was an opposition movement to the Enlightenment Era of Hobbes and Rousseau:

Our nation was founded on the principles of the Enlightenment, the idea of a society based on reason and democracy, not the perquisites of monarchs and aristocrats. The Progressive Era and the New Deal rested on those principles. They brought intellect to bear on the most serious problems of society. Reaganism replaced Enlightenment thinking with a corrupted Romanticism that portrays free market purism as an article of religious faith that is the real meaning of America.¹⁴⁸

Klienkecht is also highly critical of how the Reagan philosophy manifests itself in a specific manner. Klienkecht stated that, "[T]he answer to any of the economic challenges is to do nothing...[c]ut taxes, eviscerate all regulation of private enterprise, and trust the market to guide

144. PHILLIP-FEIN, *supra* note 141, at 147.

145. William Safire, *The Land is Bright*, N.Y. TIMES, Jan. 22, 1981, at A27.

146. *Id.*

147. KLIENKNECHT, *supra* note 56, at 20.

148. *Id.*

our fates.”¹⁴⁹ Although this was the agenda, the process as described by Kleinknecht did not completely happen between 1981-1989 when Reagan was President. One of the earliest examples of this mentality was the Reagan administration’s attempt to have ketchup and relish declared vegetables in the school lunch program in order to reduce the budget.¹⁵⁰

According to the story, as reported in the New York Times, the Department of Agriculture under Reagan proposed to re-classify ketchup and relish as vegetables in the subsidized school lunch program.¹⁵¹ These proposals were revealed on September 25, 1981 when President Reagan withdrew the standards under pressure from politicians and dieticians.¹⁵²

While this early effort at budgetary restraints at the expense of a basic service for citizens (food for low income children in the school lunch program) was unsuccessful, it was an ideological revelation. The message is not subtle; it has clarity: the Government is not necessarily bound to the people in a covenant for a basic staple of life - food. Food is about self-preservation, but also related to posterity and liberty. One cannot be free if they cannot eat.

Indeed, the Reagan years were about ideology. Just one month into his term on February 18, 1981, his State of the Union address announced dramatic cuts in housing aid, welfare, unemployment insurance, food stamps, and other programs.¹⁵³ The cuts amounted to \$41.8 billion in reductions, and were accompanied by a “sharp decrease in corporate taxes” and targeted tax reductions for the nation’s wealthiest citizens.¹⁵⁴

Poet June Jordan encapsulated the era in 1980 in her poem, *From Sea to Shining Sea*:

149. KLIENKNECHT, *supra* note 56, at 20.

150. Robert Pear, *President Gets Revised Proposals for Standards on School Lunches*, N.Y. TIMES, Nov. 19, 1981, at A29.

151. *Id.*

152. *Id.*

153. KLIENKNECHT, *supra* note 56, at 27-28.

154. *Id.* at 28.

Unemployment Compensation and the minimum wage have been identified as programs that plague the poor and the young who really require different incentives towards initiative/pluck and so forth...¹⁵⁵

Another event that set the standard for the Reagan years, which changed the posture of the political discussion in the larger American community, was the termination of air traffic controllers in 1981 by President Reagan and the destruction of the union, PATCO.¹⁵⁶ While the decision to act decisively might have been correct, Reagan's actions still amounted to union busting. It sent a message to union workers everywhere that the rights of workers and their livelihood would be sacrificed for the sake of commerce. The fact that the Government prohibited the Federal Aviation Administration from hiring any of the controllers back for twelve years is proof that the decision by Reagan to terminate the controllers was important to the conservative anti-union efforts over the past thirty years.¹⁵⁷ PATCO has long since been replaced and was, in fact, quickly decertified back in 1981.¹⁵⁸ For eight years, actions of this nature were the norm rather than the exception.

The main tools of the conservative program during the Reagan years were deregulation and tax cuts - efforts designed to increase the power and reach of classic capitalism into every aspect of society. These efforts unleashed capitalism unbound into the lives of the citizens and promoted the rise of serious economic inequality. This conduct was contrary to everything associated with a social contract and the ideals of Hobbes, which warned of the natural state of man being problematic with a "sword" to promote the covenant.¹⁵⁹ William Klienknecht again put the phenomenon in proper perspective when he stated, "The Reagan Revolution has rested on a fallacy that somewhere in the American past shimmers a halcyon era when the masses lived happily and private enterprise flourished without

155. JUNE JORDAN, *FROM SEA TO SHINING SEA*, IN *LIVING ROOM 16* (Thunder Mouth's Press Inc. 1993).

156. PATCO stands for Professional Air Traffic Controllers Organization, the union of air traffic controllers at the time of the 1981 strike and controversy. See HAYNES JOHNSON, *SLEEPWALKING THROUGH HISTORY: AMERICA DURING THE REAGAN YEARS 162-64* (W.W. Norton & Co., Inc. 2003).

157. JOHNSON, *supra* note 156.

158. *Id.*

159. See HOBBS, *supra* note 17, at 137.

interference from the dead hand of government.”¹⁶⁰ Klienknecht additionally points out, “for much of the twentieth century, when America was at the zenith of its power and influence, government was regarded – at least in the public utterances of our leaders, if not always in their actions – as a tool to achieve the betterment of the common man.”¹⁶¹ This is what made Reagan’s rhetorical achievement more significant because it convinced the general public that a system of “rugged individualism”¹⁶² was actually in their best interest. New York Times columnist Bob Herbert, in a 1994 article, described it all as a “fraud” and “simple minded,”¹⁶³ but the ideal has endured now into the twenty-first century, an achievement that cannot be easily dismissed. However, Barack Obama understands the ideological foundation of Ronald Reagan. In *The Audacity of Hope* he noted that it was “remarkable how durable” the Reagan “narrative...has proven to be.”¹⁶⁴

d. Newt Gingrich

The Reagan Revolution, which began with the election of Ronald Reagan in 1980, was fully realized in 1994 when the Republican Party obtained control of Congress for the first time in forty years.¹⁶⁵ The person most responsible for that success was a congressman from Georgia named Newt Gingrich. Gingrich, at the time, was only a representative in the House of Representatives from the State of Georgia.¹⁶⁶ However, following that mid-term election, Gingrich became Speaker of the House and the official ideological leader of the Republican Party.¹⁶⁷

160. KLIENKNECHT, *supra* note 56, at 71.

161. *Id.* at 27-28.

162. Victim of Panic, *supra* note 114.

163. Bob Herbert, *In America: A Simple Case of Fraud*, N.Y. TIMES, Nov. 13, 1994, § 4, at 15.

164. OBAMA, *supra* note 18, at 32.

165. Robert L. Borosage, *A Real Contract with America*, NATION, Oct. 6, 2005, available at <http://www.thenation.com/doc/20051024/borosage>.

166. Newt Gingrich was born in Harrisburg, PA, in 1943. He was first elected to the United States Congress in 1978, as a representative from the State of Georgia. He became Speaker of the House in 1994, and served until 1999 when he resigned amidst an ethics controversy and Republican defeats in Congress. See Newt Gingrich Biography, http://topics.nytimes.com/top/reference/timestopics/people/g/newt_gingrich/index.html?scp=1-spot&sq=newt%20gingrich&st=cse.

167. *See id.*

The Republican takeover of the country's legislative body will be forever known as the "Contract with America" because this is what Gingrich and others called the political program as it gained momentum in 1994. It is interesting that it was referred to officially as a "Contract with America," as opposed to a contract for America, considering conservatism's ideological position with respect to a social contract. The Contract with America also asserted that it was going to "restore the bonds of trust between the people and their elected representatives."¹⁶⁸

It is also an interesting development because the rise of Newt Gingrich and conservatism actually began because of the actions of a Republican President, George H. W. Bush. It is due to President Bush's support of a tax increase, led by the Democrats in Congress in 1990, that caused Gingrich to effectively turn against Bush and his more moderate brand of politics.¹⁶⁹ Gingrich refused to support Bush following the tax increase, and effectively assisted in the destruction of any re-election of Bush to a second term.¹⁷⁰ Gingrich's agenda during the entire episode was to destroy President Bush (George H. W.) in order to gain control of Congress and try to implement a hard conservative agenda throughout Congress.¹⁷¹ This set the stage for an interesting and important ideological struggle.

Democrat William Jefferson Clinton was elected President in 1992.¹⁷² Clinton, thinking his election was a mandate, tried to pass universal health coverage. Newt Gingrich and the conservative political apparatus attacked Clinton and all efforts to establish universal health care for all, which has historically been a missing component of the social contract in the United States.¹⁷³ The issue was eventually defeated and the status quo health care system remained in place. Clinton's political failure led to the "Contract

168. NEWT GINGRICH, *WINNING THE FUTURE: A 21ST CENTURY CONTRACT WITH AMERICA* 193 (Regnery Publishing 2005).

169. ARTHUR M. SCHLESINGER & TIMOTHY NAFTALI, *GEORGE H. W. BUSH* 115-17 (MacMillan Publishing 2007).

170. *Id.*

171. *Id.*

172. William Jefferson Clinton was the forty-second President of the United States from 1993-2001. He also served two terms as Governor of Arkansas. A Rhodes scholar and graduate of Georgetown University, Clinton also holds a law degree from Yale University Law School. While Clinton is a Democrat, he is also considered a centrist Democrat with strong ties to the Democratic Leadership Council, a centrist political organization associated with the Democratic Party. See Biography of William J. Clinton, <http://www.whitehouse.gov/about/presidents/williamjclinton/>.

173. Derek Bok, *The Great Health Care Debate of 1993-94*, PUBLIC TALK (1998), <http://www.upenn.edu/pnc/ptbok.html>.

with America” (The Contract)¹⁷⁴ and a further intrusion of conservatism into the daily operations of government.

The Contract was a ten-point plan that the Republican Party sought to implement.¹⁷⁵ The proposals revealed how differently conservatism directly impacted any idea of a social contract. The proposals of the Contract were ambitious but simple. Included was a line item veto for the President on the budget, significant alteration of the welfare system (reform would be inaccurate), anti-crime measures (mostly incarceration), increased defense spending, child support enforcement measures (other social engineering efforts to address dysfunctional family issues), term limits, and proposals to limit monetary recoveries in litigation.¹⁷⁶

Most of the ideals of the Contract never became law, but the Republicans were successful in forcing President Bill Clinton to sign a major welfare reform (short term assistance for dependent families was no longer an entitlement).¹⁷⁷ However, it did not resolve the long term and systemic economic issues with respect to those forced to live on welfare.¹⁷⁸ Clinton also signed a major crime bill that significantly impacted the black community because it resulted in mass disproportionate incarceration of black men for low-level narcotics violations.¹⁷⁹

While the Contract is often described as a policy agenda for the people of the country, it is still hard to define the Contract to this day and specify exactly what it accomplished. The Contract sought to diminish the role of government in the lives of people and it did reach that goal on some policy issues, most certainly welfare, and some regulations. Nevertheless, the Reagan rhetorical legacy labeling government the problem persevered as Gingrich and his surrogates controlled the debate for several years.

The event that came to symbolize the meaning of the Contract was Gingrich’s decision to shut down the Government in 1995.¹⁸⁰ The action

174. Republican Contract with America,
<http://www.house.gov/house/Contract/CONTRACT.html>.

175. *Id.*

176. *Id.*

177. Bill Clinton Biography,
http://topics.nytimes.com/top/reference/timestopics/people/c/bill_clinton/index.html
(last visited Oct. 9, 2009).

178. ROBERT KUTTNER, OBAMA’S CHALLENGE: AMERICA’S ECONOMIC CRISIS AND THE POWER OF A TRANSFORMATIVE PRESIDENCY 58-60 (Chelsea Green Publishing 2008).

179. Adam Liptak, *1 in 100 U.S. Adults Behind Bars, New Study Says*, N.Y. TIMES, Feb. 28, 2008, <http://www.nytimes.com/2008/02/28/us/28cnd-prison.html>.

180. JOHN DEAN, BROKEN GOVERNMENT: HOW REPUBLICAN RULE DESTROYED THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL BRANCHES 223-24 (Viking Adult 2007).

was an effort by Gingrich to defeat President Bill Clinton on ideological grounds directly related to conservative thought and the budget. The effort occurred in 1995 during budget negotiations.¹⁸¹ Gingrich unsuccessfully shut down the Government for twenty-seven days during that period.¹⁸² There were no huge budget cuts, but Gingrich did expose conservatives as anti-government, the very antithesis of a social contract. It was a political mistake by the Republicans.

The biggest victory of the Contract was Bill Clinton's admission in 1996 regarding the role of government. This statement alone was highly destructive to any movement for a true social contract, if there had been such a movement in 1996. It occurred in Clinton's 1996 State of the Union address when he stated on national television rather reluctantly (but in order to save his political career) that the era of "big government" was over.¹⁸³ Barry Goldwater and Ronald Reagan had their ideological victory at that moment. The social contract for the moment was philosophically dead in the United States.

e. George W. Bush

While George W. Bush proved to be an ineffective President with multiple failures as a leader, his commitment to conservatism is well established. During the 2000 election campaign for President, President Bush referred to himself as a "compassionate conservative,"¹⁸⁴ but his policies were confusing and fairly traditional from a conservative vantage point. In fact, with respect to the relationship between the government and the people, during President Bush's time in office, the number of poor people in the United States increased dramatically.¹⁸⁵ Additionally, the

181. DEAN, *supra* note 180.

182. *Id.*

183. Clinton's full statement on this issue is interesting and is as follows: "The era of big government is over. But we cannot go back to the time when our citizens were left to fend for themselves. Instead, we must go forward as one America, one nation working together to meet the challenges we face together. Self-reliance and teamwork are not opposing virtues; we must have both." See William Jefferson Clinton, President of the United States, State of the Union Address (Jan. 23, 1996), available at <http://clinton4.nara.gov/WH/New/other/sotu.html>.

184. George W. Bush, *Foreword* to MARVIN OLASKY, COMPASSIONATE CONSERVATISM: WHAT IT IS, WHAT IT DOES, HOW IT CAN TRANSFORM AMERICA 2 (Free Press 2000).

185. Brian Gilmore, *Don't Forget the Poor*, THE PROGRESSIVE, Nov. 18, 2008, available at <https://www.progressive.org/mp/gilmore111808.html>.

number of Americans without any health insurance coverage increased dramatically.¹⁸⁶

However, if this were the only deficiency with respect to the Bush administration in relation to the social contract, his period in office would not be judged so harshly. But such is not the case during the Bush years. The entire concept of a social contract, where the government and the people formed a covenant to address self-preservation issues, was rarely advanced. There are two concrete examples that support this position.

First, during his second term, President Bush's attempt to dismantle social security was well known. There is no other element of the American social contract that is more essential than social security. President Bush's intention was to allow individuals to withdraw a portion of their social security from the fund and invest in the stock market for a higher return. This is not only a violation of the social contract, but would have been disastrous considering the collapse of the stock market in 2008 along with the financial services sector.

Second, President Bush refused to expand health insurance coverage for children through the SCHIPS program. In fact, despite support across political lines, President Bush vetoed expansion of the program in October 2007.¹⁸⁷ The expansion of the program would have covered an additional 3.5 million children.¹⁸⁸ The justification for the veto was, according to President Bush, philosophical.¹⁸⁹ He firmly believes that individuals should purchase health insurance in the private market.¹⁹⁰ This position is a complete repudiation of a social contract.

While these are two examples of a failure to advance or support the Contract by President Bush, his presidency overall, with the exception of his educational initiatives, was hard right conservative in nature. President Bush promoted tax cuts for the wealthy even as the financial state of the nation began to deteriorate, and slowly picked away at government programs in a systematic manner with the goal of forcing larger spending cuts and the ultimate elimination of programs.¹⁹¹ While he expanded government on defense and security issues, there is no such commitment to

186. See Gilmore, *supra* note 185.

187. David Stout, *Bush Vetoes Children's Health Bill*, N.Y. TIMES, Oct. 3, 2007, at A1.

188. *Id.*

189. *Id.*

190. *Id.*

191. E.J. DIONNE, SR., STAND UP AND FIGHT: REPUBLICAN TOUGHS, DEMOCRATIC WIMPS, AND THE POLITICS OF REVENGE 35 (Simon & Schuster 2004).

programs traditionally associated with the Contract. President Bush, for the most part, is a Herbert Hoover-like president, who did not believe the Government should be involved in the affairs of people on a daily basis.¹⁹²

IV. BARACK OBAMA

The new social compact (Compact), as being constructed today (consciously or unconsciously), contains at least four fundamental components. This is a little different from the Roosevelt compact that contained only three components – employment, health and retirement, and a safety net (unemployment, social security, etc.). This compact can be formed, but equality issues cannot be ignored. Racial and gender equality are always the source of intense focus, but other areas of equality not readily apparent until only recently also must be addressed. This includes, but is not limited to, the disabled and gay and lesbian men and women.

Obama's Compact consists of employment, health and retirement benefits, the safety net, and a new component of the Compact - energy policy. This final component of the Compact is often forgotten in political discussion, but in the modern world, a world far different than the world during the age of Enlightenment, energy, and how it is handled by nations, is critically important to understand the Compact. In fact, it impacts the entire compact because a failure to properly address the issues that energy directly influences will cause major problems.

There are three sources for Barack Obama's views and policy choices regarding his Compact. These sources are: his book, *The Audacity of Hope*, his various campaign speeches and policy positions, and now, since he has become President, the various policies he has put forth. Using these sources and the four definite components of the Compact, the following is an abbreviated analysis of some of the high points of the Compact that is being formulated.

a. *The Audacity of Hope*

President Barack Obama's book, *The Audacity of Hope*,¹⁹³ is his political and social manifesto concerning his ascent to political power in the

192. DIONNE, *supra* note 191.

193. OBAMA, *supra* note 18.

United States. President Obama's belief in the ideal of a "social compact" appears at various moments implicitly and explicitly. He comments specifically on a "social compact" in the book, demonstrating his knowledge of the philosophical and political history of the ideal.¹⁹⁴ He also presents ideas that can be directly related to traditional discussions of a social contract.

President Obama links the Compact back to the days of Franklin Delano Roosevelt, reminding the reader that Roosevelt's terms in office were the last time there was such an "economic transformation as disruptive as the one we face today."¹⁹⁵ It should be noted that President Obama is not referring to the economic crisis (the recession) we are currently facing as this article is completed; President Obama is referring to changes that are occurring in the world with or without a recession: globalization, the spread of digital technology, and the rise of new economic powers.

According to President Obama, Roosevelt's policies during the New Deal years and after were (and are) a social compact, a "bargain between government, business, and workers that resulted in widespread prosperity and economic security for more than fifty years."¹⁹⁶ The foundation for the Compact, according to President Obama, was stable employment with adequate wages, health insurance and retirement benefits, and a safety net available during difficult economic times.¹⁹⁷ These are the three components that were challenged repeatedly during the conservative period in the United States and components that continued to be devalued during the Presidency of George W. Bush.

As a result, President Obama writes the social compact is "beginning to crumble"¹⁹⁸ though many would assert that the United States has yet to establish a compact, despite the best efforts of many politicians. Employment, the first piece of the Compact, is under threat due to foreign competition with or without a recession. Downsizing, automation, and off-shoring, according to President Obama, are the realities for today's American worker.¹⁹⁹ Also, wages are stagnant for American workers and

194. OBAMA, *supra* note 18, at 208.

195. *Id.* at 176.

196. *See id.* at 177.

197. *Id.*

198. *Id.* at 178.

199. *Id.* at 177.

benefits are not as predictably available as in previous years because benefits are tied to employment.²⁰⁰

Health care costs have dramatically increased and companies have also significantly reduced their role in a person's pension.²⁰¹ Thus, it is apparent, with employment and wages being unstable for American workers, that two key pieces of the social compact no longer exist.

President Obama proposes an approach to the problem that is consistent with Roosevelt's social compact. It starts with the key issue in a social compact: employment. President Obama's vision in *The Audacity of Hope* is to provide assistance to the American workers whose lives have been altered by the changes in the world's economic systems.

President Obama states that "government policies can help these workers with little impact on market efficiency."²⁰² According to President Obama, the initial means to accomplish this goal is to "raise the minimum wage,"²⁰³ something that was done prior to his election to office, proving the value of such a policy decision.²⁰⁴ In addition to the minimum wage, President Obama calls for an "update" of the "existing system of unemployment insurance" and "trade adjustment assistance."²⁰⁵ This "adjustment assistance" consists of retraining efforts and education assistance (accounts).²⁰⁶

In addition to this direct assistance to enable workers to compete in the new global workforce, President Obama seeks a level playing field for workers in relation to their employers. This is a clear endorsement of the importance of unions in the marketplace, as opposed to the conservative view that is not only anti-government, but is not supportive of employee unions.²⁰⁷ As mentioned previously, one of the most influential moments of the Reagan years was his success in creating an anti-union sentiment around the nation.²⁰⁸

200. See OBAMA, *supra* note 18, at 177.

201. *Id.* at 179-80.

202. *Id.* at 181.

203. *Id.*

204. Steven Greenhouse, *Raise in Minimum Wage Takes Effect Today*, N.Y. TIMES, (July 24, 2008), available at http://www.nytimes.com/2008/07/24/us/24brfs-RAISEINMINIM_BRF.html.

205. OBAMA, *supra* note 18, at 181.

206. *Id.*

207. See *supra* note 15 and accompanying text.

208. See *id.*

Health care and retirement benefits, the second pillar of the Compact, are also discussed in depth in *The Audacity of Hope*. While it is clear that President Obama is in favor of significant reform in the health care system, the importance of his comments in the manifesto is the fact that President Obama takes a position with confidence and fortitude on the opposite end of the modern conservative approach. President Obama writes, "Given the amount of money we spend on health care (more per capita than any other nation), we should be able to provide basic health coverage to every single American."²⁰⁹ This belief is different from the conservative approach, which contends that the market can provide health coverage to any and all Americans who require health services.²¹⁰

Importantly, President Obama adds another critical point that exposes the inherent flaw in self-regulated capitalism: that the market alone will not provide health coverage for all unless it is profitable for the actors in the market.²¹¹ But, in actuality, this is highly unlikely because health care is not like food at the grocery store or a haircut. It is a critical component of our self-preservation, the ideal Hobbes set forth as critically important in the seventeenth century, a time when health insurance companies did not exist.

To accentuate his commitment to providing health care for all Americans, President Obama proposes a comprehensive approach to the problem that includes everything from cost savings, model plans, preventive care, and tax breaks in order to provide basic coverage to everyone.²¹² The seriousness of the approach that would establish this critical element of the Compact cannot be diminished. Obama refers to it as a "bargain (with)...the American people worth making."²¹³ The Hobbes-Rousseau sentiment is self-evident because of the idea of self-preservation. (It must feel extremely challenging to not have health coverage while many of your fellow citizens, through their elected officials, work against the idea of health care for all.)

There is a similar approach by President Obama with respect to retirement, the other key component of the second pillar of the Compact. The respect extended to the Roosevelt era ideas is again apparent in

209. OBAMA, *supra* note 18, at 184.

210. MARY JOAN McDONOUGH, *CAN A HEALTH CARE MARKET BE MORAL? A CATHOLIC VISION* 206-07 (Georgetown Univ. Press 2007).

211. OBAMA, *supra* note 18, at 212-23.

212. *Id. passim*.

213. *Id.* at 187.

President Obama's proposals. Social security insurance is protected (solvency issues are to be addressed) and is not described as a problem or a wasteful government program. In addition, while acknowledging the significant change in retirement systems, the Government accepts a role in the lives of ordinary people in assisting them in reaching their goals of using a combination of social security and their retirement savings (the Government matching funds for 401k accounts is one proposal).²¹⁴

b. Energy

During the election campaign for President of the United States, and the daily debate that was waged during the campaign season and during the actual election, Barack Obama had a multitude of opportunities to express his view on a variety of policy choices relating to a social compact. However, one of the more controversial and difficult issues to articulate was the need for comprehensive change in the energy policy of the United States.

As supported by historical events such as the rise of terrorism, climate change and environmental destruction, dramatic changes in the economic power balance in the world, and not to mention the financial state of millions of American families, energy policy is critical to understanding a new social compact. American dependence on foreign oil has proven to have consequences on the United States economy, the environment, the earth's climate, and the ability of families to provide a decent living now and into the future.

Energy was not part of Roosevelt's social contract because the world was vastly different in 1933, even though the auto industry performed poorly during the Great Depression.²¹⁵ The public did not consider automobiles agents of pollution. In addition, the United States auto industry was thriving in 1933 and was a key component of American economic superiority.²¹⁶ Today, the automobile industry is in transition and the appearance of fuel efficient and clean cars is evidence of the changing dynamic within the industry as it relates to climate change.²¹⁷

214. OBAMA, *supra* note 18, at 216.

215. DAVID GARTMAN, *AUTO OPIUM: A SOCIAL HISTORY OF AMERICAN AUTOMOBILE DESIGN* 105 (Routledge Press 1994).

216. *Id.* at 104-06.

217. WILLIAM GREIDER, *THE SOUL OF CAPITALISM: OPENING PATHS TO A MORAL ECONOMY* 275-76 (Simon & Schuster 2003).

Barack Obama's words shortly after he took office summarize the importance of energy reform to the Compact:

So we have a choice to make. We can remain one of the world's leading importers of foreign oil, or we can make the investments that would allow us to become the world's leading exporter of renewable energy. We can let climate change continue to go unchecked, or we can help stop it. We can let the jobs of tomorrow be created abroad, or we can create those jobs right here in America and lay the foundation for lasting prosperity.²¹⁸

As a result of this charge, billions of dollars have been committed to create employment in the new energy sector; to upgrade federal buildings to more energy efficient levels (green buildings); to create a grid that will move renewable energy from the rural places it is produced to the cities where it is used; and to provide assistance to states and cities in their energy reform projects.²¹⁹ Billions of additional dollars in funding has been committed to research, as well as to the financially troubled automobile industry in order to produce cleaner automobiles.²²⁰ This entire package, as proposed by Obama and his administration, represents a completely new direction for energy in the United States and the world.

Philosophically, it also represents something much more compelling: it is an expansion of the Hobbes-Rousseau concept of a social contract. It especially embraces Hobbes because Hobbes is most concerned with the natural state of men and their ability to live in peace because of a lack of order in their daily lives. An energy policy that finally forces the nation (the people, business, and the state) to address pollution issues, climate change, and economic growth is consistent with the Hobbes-Rousseau tradition of self-preservation, especially when the policy emanates directly from the government for the first time in history.

c. Campaign Trail Notes

While Barack Obama provided numerous important speeches during the long Presidential campaign, his speech announcing his candidacy is the

218. Whitehouse Report on Energy and Environment, http://www.whitehouse.gov/issues/energy_and_environment/ (last visited Sept. 1, 2009) [hereinafter Energy and Environment].

219. *Id.*

220. *Id.*

best example of his philosophical positions with respect to governing the country. On February 9, 2007, then Senator Obama announced that he was running for President of the United States in Springfield, Illinois, the birthplace of one of his heroes, Abraham Lincoln.²²¹ The speech resonated with references to a social contract in a very subtle oratory. The speech also re-visited the problems the United States had always confronted when trying to form a complete social contract that, at a minimum, seeks to include all citizens, men, women and children.

President Obama notes in the speech that some of the problems that citizens are confronting include rising health care costs and stagnant wages.²²² Their government, however, has advised the citizens that their “anxiety” regarding such basic needs is an “illusion” and that climate change is a “hoax.”²²³ This, of course, is the breach suggested by President Obama, that the Government has failed its citizens by failing in the most basic manner.

While focusing on a broad range of issues, including ethics reform in government, President Obama maintains his focus on the social contract and the key components:

[L]et’s be the generation that ensures our nation’s workers are sharing in our prosperity. Let’s protect the hard-earned benefits their companies have promised. Let’s make it possible for hardworking Americans to save for retirement. And let’s allow our unions and their organizers to lift up this country’s middle class again.²²⁴

This passage sets the tone for more of the same policy statements lifted directly from the Roosevelt era, with modern day nuances to sharpen their focus. Nevertheless, the focus is still upon the fundamentals: employment, health care and retirement, a safety net, and the new element of the bargain: energy/climate change. For those in poverty, the focus is employment, job training, and child care to afford them the opportunity to maintain employment.

221. Abraham Lincoln Biography, <http://www.whitehouse.gov/about/presidents/abrahamlincoln/> (last visited Oct. 6, 2009).

222. Barack Obama, Senator (D), Announcement of his Candidacy for the President of the United States of America (Feb. 10, 2007), *available at* http://www.barackobama.com/2007/02/10/remarks_of_senator_barack_obam_11.php (last visited Sept. 1, 2009) [hereinafter Obama Candidacy Speech].

223. *Id.*

224. *Id.*

President Obama proposes to tackle the “health care crisis” by controlling “costs” and focusing upon “prevention,” “better treatment” for the “chronically ill,” and “technology” to address bureaucratic issues.²²⁵ Additionally, he calls for “universal health coverage by the end of the next President’s first term.”²²⁶

The energy/climate change issue is mentioned in the speech, as well as President Obama’s proposal to free the nation from “the tyranny of oil.”²²⁷ As always, however, the energy issue is framed within the context of the social contract principles first explained by Hobbes. Obama links these changes in energy policy to jobs that will be created as a result of the developments in energy policy, in addition to the production of a healthier environment.

President Obama ends the speech by referencing the history of the pursuit of the social contract.²²⁸ He mentions the legacy of Abraham Lincoln, but mostly talks about the bargain between the citizens and the government, and how that bargain is the key to the future success of the nation:

That is why this campaign can’t only be about me. It must be about us - it must be about what we can do together. This campaign must be the occasion, the vehicle, of your hopes, and your dreams. It will take your time, your energy, and your advice - to push us forward when we’re doing right, and to let us know when we’re not. This campaign has to be about reclaiming the meaning of citizenship, restoring our sense of common purpose, and realizing that few obstacles can withstand the power of millions of voices calling for change.²²⁹

The speech, delivered at a time when it was doubtful he could become President, is a complete thought regarding public policy. There are numerous aspects not mentioned here which also relate to a social contract, but the excerpts presented provide an overview that best represents his ideals. Hobbes’ contract is self-evident in the covenant offered by President Obama to the people of the nation that day.

225. Obama Candidacy Speech, *supra* note 222.

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

d. *President Barack Obama*

Like Roosevelt, President Obama encountered enormous problems when he entered office. The country, and the world for that matter, was experiencing an economic recession.²³⁰ In addition, the nation's banking system was still experiencing serious problems and the housing industry, the entity that caused the banking system to collapse, was still suffering from great difficulties.²³¹ President Obama also arrived in office with an ambitious agenda that included health care reform and an action on climate change. In fact, the opportunity to advance forward legislatively, as well as through policy, was in place. However, the recession threatened to hinder any real possibility of significant change.

The most important legislative initiative thus far by Obama is the nearly \$800 billion stimulus package known as the "American Reinvestment and Recovery Act of 2009" that was signed shortly after he assumed office.²³² The law is comprehensive, in scope. It provides for new employment and addresses the issue of jobs that were to be eliminated as a result of the economic recession by providing funds to save some positions.²³³ The initiative also provides for tax relief for citizens, \$150 billion in infrastructure investment (obviously a source of job creation though not mentioned implicitly), and the digitization of health records that will provide cost savings generally believed to be an enabling factor in the initiative to provide health coverage for all.²³⁴ The act, in a variety of ways, creates the environment in which to promote a social contract.

There are two other important indicators that President Obama is pursuing a social compact in his early months as President. First, he signed into law the Lilly Ledbetter Fair Pay Act of 2009.²³⁵ The law was passed as a direct result of a United States Supreme Court decision in *Lilly Ledbetter v. Goodyear Tire and Rubber Company* that prevented Lilly Ledbetter, a

230. Barack Obama, President of the United States, Weekly Address (July 11, 2009), available at http://www.whitehouse.gov/the_press_office/Weekly-Address-President-Obama-Praises-Recovery-Act-Progress/ [hereinafter Obama Recovery Act Address].

231. Renae Merle & Dina Elboghady, *U.S. Launches Wide-Ranging Plan to Steady Housing Market*, WASH. POST, Mar. 5, 2009, at A-1.

232. The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (codified as amended in scattered sections of U.S.C.) (2009).

233. Obama Recovery Act Address, *supra* note 230.

234. *See generally id.*

235. Sheryl Gay Stolberg, *Obama Signs Equal Pay Legislation*, N.Y. TIMES, Jan. 29, 2009, at A1.

long time plant worker at Goodyear, from maintaining a lawsuit against Goodyear Tire for discrimination based upon unequal pay for women.²³⁶ The final opinion in the case, as delivered by the conservative majority on the United States Supreme Court, is a legal insult to women across the country. The Supreme Court interpreted the law narrowly and in the process denied Ms. Ledbetter an opportunity to recover for discrimination that was clearly supported by the facts.²³⁷ When Obama signed the act into law, it symbolically stated that the long history of discrimination against women might not be eliminated, but it would be addressed whenever possible in his administration.

The decision, as might be expected, could be directly linked to George W. Bush's conservative agenda. Associate Justice Samuel Alito,²³⁸ who had taken Sandra Day O'Connor's²³⁹ seat on the High Court, not only provided the fifth vote for the 5-4 majority, but he also wrote the opinion denying Lilly Ledbetter the right to maintain her legal action against Goodyear Tire.²⁴⁰ It was even more of an insult that O'Connor's replacement was the author of the opinion that denied Ms. Ledbetter due process.

Another indication of President Barack Obama's commitment to a social compact is his signing of an expansion of the SCHIP program²⁴¹ into law right after he entered office.²⁴² It is the same government administered health insurance program that provided low-income children with access to health care that President Bush vetoed.²⁴³ This again was a repudiation of the conservative agenda that Bush had been forging for eight years. By signing the expansion, it was clear that President Obama was taking the first

236. 550 U.S. 618, 618 (2007).

237. *Id.*

238. Supreme Court Justice Biographies, <http://www.supremecourtus.gov/about/biographiescurrent.pdf> (last visited Oct. 6, 2009). Associate Justice Samuel Alito was born in Trenton, N.J., on April 1, 1950. A long time federal appeals court judge and Assistant United States Attorney, Alito was nominated to the United States Supreme Court by George W. Bush and took his seat on January 31, 2006.

239. *Id.* Former Associate Justice Sandra Day O'Connor was born March 26, 1930 in El Paso, Texas. O'Connor was the first woman to serve on the United States Supreme Court. She was appointed by Ronald Reagan and took her seat on September 25, 1981. She retired in 2006.

240. *Ledbetter*, 550 U.S. at 620.

241. Noam N. Levey, *Obama Signs into Law Expansion of SCHIP Health-care Program for Children*, CHI. TRIB., Feb. 5, 2009, at A-1.

242. *Id.*

243. Sheryl Gay Stolberg & Carl Hulse, *Bush Vetoes Health Bill Privately, Without Fanfare*, N.Y. TIMES, Oct. 4, 2007, at A18.

step towards expanding health coverage for the nation. Most of all, it was an endorsement of a complete social contract with the people.

IV. CONCLUSION

Writer Kevin Baker calls Barack Obama, “Barack Hoover Obama.”²⁴⁴ Baker’s assessment of Barack Obama’s performance in addressing the main components of a social contract is that Obama is going to fail and that he already has taken steps to ensure that failure.²⁴⁵ This includes failure on health care reform, climate change (energy policy), and the economic depression issues.²⁴⁶ According to Baker, Obama is like Herbert Hoover; he is a man “attempting to realize a stirring new vision of his society without cutting himself free from the dogmas of the past - without accepting the inevitable conflict.”²⁴⁷ Baker contends that Obama is “bound to fail” and is “even more alone than Hoover...in facing the emergency at hand.”²⁴⁸

Baker’s analysis is admirable but premature. However, he does provide a good entry point for the conclusion to this essay. This is because President Obama’s goals are much different than those of Herbert Hoover. In addition, the atmosphere in which President Obama is attempting to forge change is different. President Obama is interested in addressing the issue related to the current economic recession, but he also has a bigger goal: a true social compact or contract. His speeches may not explicitly state this underlying goal, but his policy choices are directed towards this goal.

It is also precisely because of Roosevelt, Hoover’s successor, that President Obama’s work in achieving this goal is difficult, but is not as difficult as might seem if he remains focused upon the goal. Roosevelt’s New Deal established social security, unemployment compensation insurance, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and many other programs.²⁴⁹ Due to the fact that these entities already exist, President Obama does not need to create new

244. Kevin Baker, *Barack Hoover Obama*, HARPER’S, July 2009, at 29.

245. *Id.*

246. *Id.*

247. *Id.* at 34.

248. *Id.*

249. Cohen, *supra* note 122, at 32-34.

agencies or new programs to address these problems. He only needs to resolve the issue of whether a social contract can truly be formed at this time.

With respect to health care reform, it is also apparent that change will be difficult, but to conclude that President Obama will fail in solidifying this tenet of a social contract is premature. This is especially true considering that both the House of Representatives and the Senate have health care reform legislation pending and will vote on that legislation before the end of the year.²⁵⁰

As of this writing, Speaker of the House, Nancy Pelosi,²⁵¹ despite all of the difficulties, criticism, and tactics by the Republican minority to defeat health care reform, states that there are enough votes to pass a health care reform bill.²⁵² Whether the House or Senate possesses the requisite votes for change is immaterial; the importance of her statement is that the United States Government is preparing to vote on a key component of the social contract. The failure to address the issue sixteen years ago, as orchestrated by the arch conservative Newt Gingrich, has proven to be extremely costly for the nation and United States businesses.

Reform in the climate change policy area is similar in review at this juncture. While there has been little progress by the Obama administration, this does not mean that there will be failure in regards to energy policy in the future.²⁵³ The notion that this issue is being taken seriously and is the subject of legislation is progress towards achieving this goal of the social contract.

The largest impediment to a social contract is the economic depression and the effect upon employment. As of this writing, unemployment has reached nearly ten percent nationwide despite efforts by the Obama administration to create jobs and to save jobs through the stimulus

250. Shaliagh Murray & Paul Kane, *Senators Close to Health Accord*, WASH. POST, July 29, 2009, at A1.

251. Nancy Pelosi Biography, <http://www.baltimoresun.com/topic/politics/nancy-pelosi-PEPLT005126.topic> (last visited Oct. 6, 2009). Nancy Pelosi is the first woman to serve as Speaker of the House of Representatives for the United States Congress. She took the position on January 4, 2007. She has served in Congress since 1987.

252. David Herzenhorn & Robert Pear, *Pelosi Says Health Care Bill Still on Track*, N.Y. TIMES, July 22, 2009, at A-1.

253. Lisa Lerer & Patrick O'Connor, *House Passes Climate-Change Bill*, POLITICO, June 25, 2009, available at <http://www.politico.com/news/stories/0609/24232.html> (last visited Sept. 2, 2009).

package.²⁵⁴ It is not expected that these employment numbers will improve. A number of states also report unemployment rates above ten percent.²⁵⁵ If President Obama is to achieve the goal of a social compact in the United States, the unemployment statistics will have to improve.

Nevertheless, the ideals of Rousseau and Hobbes are within sight in the United States for the first time in history. This is because for the first time in history, the ideals of the contract are established, and the obstacles towards achieving the contract have been addressed. The fact that a black man is President of the United States is evidence that a social contract is now possible. The struggles of the civil rights period in the United States have proven to be critical to the establishment of the contract. The progress women have achieved in society has also eliminated the status of women as an argument that there is no real contract. Social equality is not yet complete in many ways, as demonstrated by the slow progress for gays and lesbians on very basic issues, such as marriage and all of the protective legal rights that marriage provides.

It has been 233 years since the Declaration of Independence was written, a document that was not a “bargain” between the Government and blacks. However, it now looks as if a black person will be the one who can make the document actually possess the meaning of its creed as Martin Luther King, Jr. pronounced many years ago, “We hold these truths to be self-evident that all men are created equal.”²⁵⁶

Of course, in the spirit of Rousseau, this is the goal, and not necessarily the truth.

254. News Release, Bureau of Labor Statistics, Employment Situation Summary (Oct. 2, 2009), *available at* <http://www.bls.gov/news.release/empstat.nr0.htm>.

255. Unemployment Rates by State, <http://www.bls.gov/web/laumstrk.htm> (last visited Oct. 6, 2009).

256. Rev. Dr. Martin Luther King, Jr., I Have a Dream (Aug. 28, 1963), *available at* <http://www.americanrhetoric.com/speeches/mlkhaveadream.htm>.

