

# JUSTIFICATION OF COERCION

By

Thabane Vincent MAPHAI

**Supervisor: Professor James Moulder**

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## ABSTRACT

In oppressive states where legitimate opposition is outlawed resistance organisations often operate underground. The secret membership and leadership make consultation, debate and accountability virtually impossible. Invariably covert organisations tend to be undemocratic. Yet, to be effective, a resistance organisation needs the support of the broader mass of oppressed non-members (bystanders) whom it cannot consult, and from whom it received no mandate. This study examines the question whether or not covert resistance organisations are **entitled** to support from bystanders. Alternatively, are bystanders justified in withholding support on the grounds that they had not consented to the aims and strategies of the movements, or that they were not consulted on a particular issue? Almost every major political programme of resistance in South Africa is characterised by a measure of both persuasion and coercion. School, rent and consumer boycotts and national stayaways, for example, are monitored closely by activists and the consequences for the violators are sometimes perilous. Critics have been quick to point out that coercive involvement of the oppressed in the liberation struggle is morally indefensible. This study concludes that the issue is much more involved than is suggested in the above criticism. Consent theory of obligation fails to account for any obligations the oppressed may have to support a liberation struggle. Voluntary consent of the oppressed is highly improbable where reprisals by the oppressive regime are likely to diminish or undermine the willingness to participate in the liberation struggle. By

employing the theory of fair play it is argued, that in certain limited circumstances, coercive measures by liberation movements in an attempt to enlist support for specific projects and campaigns are justified. However, no bystander should be coerced into joining a political organisation.

The fact that formerly banned resistance organisations were unbanned in February, 1990 has not affected this study's findings materially. The aim remains to examine to what extent an underground organisation can be democratic.

## TABLE OF CONTENTS

<b>ACKNOWLEDGEMENTS</b>	(i)
<b>INTRODUCTION</b>	(1)
Problems And Conceptual Muddles	(5)
What then is Liberation?	(6)
Methodology - Assumptions and Approach	(9)
Problems and Dilemmas	(13)
Forms of Resistance and possible Outcomes	(14)
Example One	(15)
Example Two	(17)
Example three	(18)
Consumer Boycotts	(19)
Common Features	(20)
The thrust of this argument - An overview	(25)
Notes	(27)
<b>SECTION ONE - Obligations, Rights and Consent</b>	(28)
<b>CHAPTER ONE: Introduction - Obligation, Rights and Freedom</b>	(29)
Obligation, Rights and Duties	(29)
Obligations and Duties - A worthless distinction?	(31)
Sources of Rights and Obligations	(37)
Obligation and Ought	(39)
Freedom and Authority	(41)
Autonomy and the Liberation Struggle	(43)
Obligations and Liberation	(47)
Notes	(50)
<b>CHAPTER TWO: Self-regarding obligations - Are the oppressed obliged to liberate themselves?</b>	(51)
Do the oppressed, qua oppressed, stand in any special moral relationship to one another?	(58)
Two Concepts of Society	(59)
A case for group rights and obligations	(63)
Contingent and contextual group obligations:	
A consequentialist account	(64)
Contingent obligations of the Oppressed	(66)
Possible sources of obligations obtaining within the oppressed communities	(70)
Notes	(72)

<b>CHAPTER THREE: What is consent? - An analytic-historical Survey</b>	(74)
The social context of resistance organisations	(76)
Consent theory and resistance organisations	(79)
Radical Anarchism	(80)
Democracy by representation	(84)
Majoritarian Democracy	(85)
Consent by Implication	(87)
Consent - An obstructive Concept?	(90)
Notes	(96)
 <b>SECTION TWO - Non-consensual Obligations</b>	(97)
 <b>CHAPTER FOUR: Liberation: Whose responsibility is it then?</b>	(98)
The Principle of Fair Play	(100)
What is a Public Good?	(102)
Co-ordination problems for large Groups	(103)
The Prisoner's Dilemma	(107)
Prisoners' Dilemma, Public Goods and Liberation	(115)
Objections To The Principle Of Fair Play	(118)
Morality and Non-Coercive Solutions to the Dilemma	(121)
Fair Play and Consent - Equivalents or Substitutes?	
A reply to Nozick	(128)
Notes	(137)
 <b>CHAPTER FIVE: Utilitarianism and Fair Play</b>	(138)
Problems with utilitarianism	(139)
Notes	(148)
 <b>CHAPTER SIX: What Is Harm?</b>	(149)
An analysis of the concept of Harm	(149)
Interest and Desire	(151)
Harm, Benefit and Non-Benefit	(155)
Free Riders and Harm to the Oppressed?	(157)
The Amended Principle of Fair Play	(158)
Notes	(168)
 <b>CHAPTER SEVEN: Coercion and Obligation</b>	(169)
Coercion	(174)
Coercion or Duress	(175)
Coercion and Political Goals	(178)
Coercive Methods	(180)
Coercion and the Prisoner's Dilemma	(182)

Enforcement of the Obligation - Whose Prerogative is it?	(183)
<b>SECTION THREE - Application and Limitations</b>	(187)
<b>CHAPTER EIGHT: Applicability and Disanalogies</b>	(188)
Participation in the Struggle	(188)
The general call to liberation: With Us or against Us?	(190)
The Struggle - Problems and Disanalogies	(201)
The uncertainty of the Benefit	(203)
Rationality and Liberation	(208)
Assessment and allocation of Costs	(209)
Altruism and rational self-interest	(210)
Education Boycott	(212)
Rent and Consumer Boycotts	(216)
Concluding Remarks	(218)
The South African Situation - Final Questions	(218)
Notes	(222)
<b>CHAPTER NINE</b>	(223)
The Problem of Paternalism	(223)
What is Paternalism	(225)
A Case for political Paternalism	(227)
Liberty and Paternalism	(229)
Conceptions of Liberty	(230)
Concluding Remarks	(236)
Notes	(238)
<b>BIBLIOGRAPHY</b>	(239)

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Thabane Vincent Maphai  
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## INTRODUCTION

This essay addresses the question whether liberation is such an overriding imperative that the oppressed have an **obligation to liberate themselves**, even to the point of coercing one another into participating in the **liberation struggle**. In other words, what kind of moral claims do **liberation movements** have upon the oppressed, and more especially upon those who may prefer to remain merely sympathetic bystanders?<sup>1</sup> In many ways these questions are not unique. The issues raised are discussed extensively in literature on civil disobedience and revolutions. However, all too often, this is done largely in the context of democratic institutions of countries in the northern hemisphere where the political atmosphere is characterised by openness, debate and public discussion. This study marks an attempt to engage certain traditional liberal concepts in an authoritarian setting like South Africa. Quite often when such engagement takes place it involves the application of undiluted and unrestructured principles in their original European form in a different setting. The uniqueness of this study lies in an attempt to examine the question whether it is possible or not to maintain liberal respect for individual choice in a revolutionary situation against an authoritarian setting.

What does it mean to say of people that they are under obligation to liberate themselves? For the purposes of this study a distinction is made between duty and obligation. Duty refers to moral benevolence. For example, a person will be said to have a duty to help strangers, to love his neighbour, to tell the truth or to feed the hungry. Obligations refer to the moral claims which involve corresponding rights on the part of others to enforce the obligation, or to defend their rights. Obligations and rights are correlatives. According to Hart (1967:55), rights are 'moral claims whose **enforcement** would be appropriate. There is with respect to rights [and therefore, obligations] a special congruity in the use of force, or the threat of force'<sup>2</sup>. A creditor is entitled to demand payment from debtors, in a way that ~~the~~ hungry

cannot demand to be fed. This distinction does not suggest, for example, that fulfilment of an obligation is morally prior to that of a duty or the converse. This distinction is addressed in greater detail in chapter one.

If the oppressed have obligations in this sense, to whom then is this obligation owed? Is it to themselves? Or to their fellow oppressed? To future generations? Or to the liberation movements? Was this obligation incurred solely through their involuntary membership of an oppressed group? Assuming that there is such an obligation, then there should be an agent entrusted with the power and responsibility to enforce obligations and protect rights. This is what is generally expected of governments. The question then becomes whether underground political organisations are entitled to act as governments 'in the wings', so to say, which have to enforce the oppressed's obligation to free themselves. If the political organisations have the right and duty to coordinate the liberation effort, what are their powers and rights? Legislators are said to have rights to enact laws on behalf of the people. What gives the movements the right, if any, to make demands on the people? Clearly they cannot launch the struggle without the support of the people. The struggle is a collective action.

The rights and obligations of the revolutionary organisations in respect to the broader society of the subjugated require elucidation. If there are any rights and obligations pertaining to the two parties, what is their content? Almost every major political programme of resistance in South Africa is characterised by a measure of both persuasion and coercion. If school, rent and consumer boycotts and national stayaways, for example, are monitored closely by a group of youths, the consequences for the violators are sometimes perilous. Critics have been quick to point out that people should not be coerced, but rather educated and persuaded to support the liberation struggle. This requirement, to make the means and the end commensurate, presents a dilemma that is widespread in South Africa. For example, does a non-racial goal require non-racial means, as the critics of the Black Consciousness

Movement (BCM) maintain? Similarly, does a democratic goal necessarily require democratic means?

These two queries respecting South African resistance politics are pertinent as the following concrete example illustrates. The black consciousness organisation, the Azanian People's Organisation (Azapo), has been criticised by its chief rival, the United Democratic Front (UDF), on the basis that its alleged goal of non-racialism is at variance with its black exclusivist, and hence 'racist' means. In turn, when anti-apartheid organisations such as the UDF (or their known members) forcibly enlist support for their programmes, Azapo has raised questions about consistency between means and ends. This study is concerned with the coercion issue raised by Azapo, rather than with the charges of racism against Azapo.<sup>3</sup> Essentially, in the heat of the 1984-86 township uprisings, Azapo criticised some anti-apartheid tactics such as school and work stayaways and consumer boycotts precisely because these were largely enforced by means of severe coercion. By contrast, Azapo advanced a two-phase consultation process. Firstly, leaflets should be issued explaining the purpose of the proposed action, so that debate and discussion on the issue could take place. The second stage would be the actual mounting of the campaign, following a clear mandate from the community. All in all Azapo's sentiments are in keeping with the ideals of true democracy, and reflect genuine concern over some of the coercive measures employed in the enforcement of certain boycotts.

This concern raises a crucial question in political morality. Can anti-apartheid groups organise democratically in an undemocratic, repressive and underground climate? In the first place, one need not be apologetic about being concerned at the thought of someone having to swallow a poisonous detergent as a punishment for breaking a consumer boycott. Azapo's concern is morally well-founded and is shared by many people. At the same time it highlights the seeming tension between the demands of non-consequentialism on the one hand, and those of efficacy on the other. This tension is not strange to liberal theory. Basically,

it involves the demands of individual autonomy against those of group intervention occasioned by possible or real social consequences for individual autonomy. How realistic is Azapo in expecting such a neat system in a politically repressive climate? How does anyone in South Africa, including Azapo, consult so widely and obtain such a mandate? Is some measure of coercion inevitable?

There are three possibilities. Firstly, a resistance organisation might give precedence to personal liberty over national liberation. In practice, this means halting the struggle if the price people have to pay is constant coercion. Secondly, and in contrast to the first alternative, priority might go to the liberation struggle, and individuals forced to participate where required. In this view, where the interests of the struggle are at stake, personal choice becomes a luxury. Thirdly, some might plead for moderation and as much consultation as is humanly possible under the repressive conditions. They would accept coercion only as an ultimate, not initial step and even then organisations would have to take precautions to ensure that such coercion remains proportionate to the circumstances. This is the position defended in this study.

This is not the place to answer these questions. Still, it is worth mentioning at the outset that Azapo's insistence on a democratic base for political initiatives is, in normal circumstances, politically wise. After all, the trade unions derive part of their strength precisely from their democratic base. Collective decision-making has strengthened, not weakened the leadership. At the same time, it can be pointed out that the union model has serious limitations if applied across the political spectrum. South African trade unions are legal institutions with every capacity to call meetings and ask for mandates. It is true that their leadership has not been immune to government reprisals. Nevertheless, the government tended to be more careful when dealing with unions than with political activists. This was not a climate within which resistance organisations operate. It can be argued then that adhering to the ideals of democratic practice and absence

of coercion within resistance groups was not feasible during their banning and repression.

This study questions one of the fundamental misconceptions: namely, that sheer consciousness or political awareness is a sufficient condition for collective successful revolutionary action. In a repressive climate, such as the South African society, underground organisations face a dilemma. It would appear that in order for them to be effective they may have to be undemocratic. Open and democratic practice in an environment of oppression, such as South Africa, was not a readily available option. Liberation movements were outlawed, and could not organise publicly and openly. It is common knowledge that underground work tilts towards lack of democracy. Yet, by being unaccountable and undemocratic, the underground movements risked becoming illegitimate and, ironically, ineffective. Are such underground organisations then **entitled** to cooperation and support from the oppressed?

The broadness of the questions should be evident. Reference to obligation and entitlement already raises significant issues regarding rights and enforcement of such rights. Questions of rights are linked invariably to the subject of freedom and autonomy. However, this essay is rather focused and limited to a specific context. In this narrow sense, the problem is about aspects of political resistance in repressive systems like South Africa.

### **Problems And Conceptual Muddles**

Certain key concepts were highlighted in the opening paragraph: 'obligation', 'to liberate themselves', 'the liberation struggle' and the 'liberation movements'. The concept of obligation and its link with coercion are addressed in the next chapter. However, the remaining three phrases, which run through this study, are extremely problematic. They are essentially contested concepts that mean different things to different people



and therefore require different actions from different people. Some of the meanings contradict each other.

For example, the theory of 'liberation before education' includes, amongst other things, the following obligatory activities: school boycotts, destruction of physical symbols of 'gutter education', and the harassment of teachers and school inspectors. In contrast, the theories of 'liberation through education' and 'education for liberation' take school and education activities very seriously, and require participation in these activities. They require pupils to go to school, or to institutions which are not 'part of the system'. Evidently, it is possible for three people, A, B, and C, to accept that they have an obligation to **liberate themselves** and to contribute to, and participate in the **liberation struggle**. However, if they hold different theories of what the liberation struggle entails, it is not evident that they would be justified in coercing one another on the basis of their respective theories, which are not shared among them. Chapters seven and eight represent an attempt to unpack these difficulties.

### What then is Liberation?

It is clear that the 'struggle' is not a tidy concept with determinate features and boundaries. It is a process of considerable complexity. Part of the problem is that it is defined variously by its protagonists, and the definitions become tainted with sectional interests of the various constituencies in the oppressed community. Thus professionals (teachers, lawyers, doctors) claim to be involved in the struggle by the **very nature** of their work. On the other hand, students refer to 'liberation now, education later'. Who advances the struggle further? Is it a student frequently marching in confrontation with the police, or one constantly sweating it out in the library? It is hard to tell: perhaps in the long term both do? What is the correct strategy towards the struggle? Not everyone equates liberation with

participation in politics. Also some believe that given time and patience, South Africa will eventually evolve out of its racist policies, whereas liberation movements are led by people who want to end racism now. Why, for example, not help the process of economic development that some believe is the road to the end of racism? This belief may be true or false, but this is not the fundamental issue. The issue is whether any individual is entitled to hold such a view. Are individuals entitled to believe that it is better to make sacrifices to get their children educated than to make sacrifices to get them the vote? If so, they seem to be contributing to liberation but not in the manner that the movements believe they should. If the movements are entitled to continue with a strategy that for decades has not worked, why cannot the bystander take a long-term strategy that is different?

There is a further paradox here. If liberation movements do not have a substantial reservoir of people who can help them run the country after the attainment of political freedom, liberation will result in very little change. Some whites argue that the best option for whites is to give blacks the vote in a unitary, non-racial system. This will put an end to sanctions and international pressure. It would also mean that for at least six decades whites will maintain their economic dominance which is considerable. After all it took the Afrikaner about sixty years to begin to be on par with the English in economic terms. Besides, essentially there are two conceptions of what liberation is.

(a) There is a **minimal** conception according to which liberation is viewed simply as the end of racial discrimination in South Africa. There would be a system of universal adult suffrage, the right to stand for elections and form a political party. In short a liberated society would be one in which there is no reference to race and all discriminatory legislation has been abolished. This view is common within the Inkatha Freedom Party and the white parliamentary Democratic Party. If there are any differences, they are likely to be in details rather than substance. In brief, this notion would encapsulate the values of classical liberalism.

(b) A **maximal** definition includes many of the issues raised in (a). In addition, the society has to be socialist. According to this view, liberty is impossible except where there is a non-capitalist mode of production. Democracy, according to this conception, necessarily presupposes that the working class owns and controls the means of production.

If people are indeed obligated to liberate themselves, then it is essential to spell out in what sense of the term, liberation, they are obligated. Are black individuals who support a free market system obligated to bring about a socialist system, even at great peril to themselves? This is just one of the numerous questions confronting a potential revolutionary. The above scenario raises a number of questions and problems. A distinction is made between problems faced by the individuals on the one hand, and those confronting political organisations on the other. Although some have been discussed briefly already they are spelled out in greater detail in the next chapter.

For now it should be emphasised that participating in, supporting, or being involved in the struggle does not entail joining an organisation. It only requires support for certain specific projects or campaigns launched by organisations meeting certain requirements. One should guard against making an unthinking transition from the belief that (a) everyone ought to strive for liberation to the conclusion that (b) everyone ought to strive in the same way. In other words to accept liberation as a



goal does not commit one to specific organisations or means. Universal cooperation may not be required in the struggle as a whole, but in certain specific actions it should be required (e.g. rent boycotts). In fact, empirically we know that revolutions are successful, not because **everyone** participates (this has never happened) but because the leaders adopt sophisticated and viable strategies for achieving widely acceptable goals.

### Methodology - Assumptions and Approach

The first and fundamental assumption of this study is what Feinberg (1973:21) calls the 'presumptive case for liberty':

... there is always a presumption in favor of freedom whenever we are faced with an option between forcing a person to do something and letting him decide on his own whether or not to do it; **other things being equal**, we should always opt for the latter.<sup>4</sup>

This approach does not **a priori** rule out the possible need for coercion. On the contrary, it merely shifts the burden of proof to those who advocate coercion. As Feinberg (1973:25) points out, this need not necessarily be wrong:

If social and political coercion is a harm-causing evil, then one way to justify it is to show that it is necessary for the prevention of even greater evils.

No argument is advanced here in favour of freedom, and respect for a person's autonomy. This is assumed.

The second assumption which will not be argued for is that oppressed people in South Africa have no general obligation to obey the state. Where they do it, it is despite their conviction that the state is illegitimate. They might do so because they happen to agree with the particular laws. The basis of their non-obligation is the fact that the state is not representative of all its citizenry. Citizens are not equal before the law, nor, until the early nineties, was the political process open and free (see

Walzer:1970:47). Indeed, the struggle in South Africa is not essentially about civil disobedience. The whole fabric of the political system is in dispute.

Thirdly, morality invariably involves both principles and context. South Africa, before February 1990, is used as a context against which the problems of coercion and obligation are examined. All the anti-apartheid organisations were unbanned on the 2nd February, 1990 and could consequently operate overtly. For example, it will be argued that everyone has a general obligation to create a just society. However, such a general obligation can be as vague as the injunction to love one another. A moral agent wants to know what specifically needs to be done before this obligation is fulfilled. This depends largely on context and here we find that 'South Africa' is not the focus. The focus of the argument is any intolerant political culture where political dissent is forced underground. The fact that formerly banned political organisations were unbanned in February 1990 should not affect this study's findings materially.<sup>5</sup> The aim remains to examine to what extent an underground organisation can be democratic.

The fourth major issue is that this study adopts a **utilitarian** defence of coercion. It is difficult to see, for example, how a deontological approach can be put to good use in defence of coercion. It seems that revolutionaries have no option but to adopt a utilitarian ethic. This creates a difficulty in chapter four where the principle of fair play is employed in defence of coercion. In general discussions on free riding, one finds innumerable utilitarian objections to the principle of fair play. For example, if on utilitarian grounds one argues that cooperative behaviour is efficient as a means to liberation, then one has to demonstrate that remaining oppressed does not result in a better outcome for the oppressed. One way of dealing with this tension is to argue that, even if free riding were intrinsically evil, as deontologists would maintain, this in itself would not justify group intervention. This is the thrust of the arguments in

chapters five and six, where legal moralism is rejected, and it is maintained that there are utilitarian arguments in defence of the principle of fair play.

It should be emphasised at the outset that this study takes place exclusively within the liberal tradition. This has been a conscious and deliberate approach. Liberalism believes that the use of force against people can be, and must be justified. Two liberal models of obligation are employed to make a case for coercive measures for participation in the liberation struggle. Both of them, consent and fair play, are known for their individualism. Liberalism places a heavy premium on personal liberty, individual rights and individualism. It emphasises the moral and political priority of the individual over the group. This makes a liberal setting a hard case for coercion. In fact coercion seems to be an intractable problem for liberal theory. Every effort has been made to avoid any view based on the belief that exercise of coercion by a group over the individual needs no justification - the view that the group is considered more important than the individual. This would have made the case for coercion relatively easy. It will be argued that even on their premises the models are either ineffective or require a measure of coercion. The paradigms are allowed to 'speak for themselves', so to say, and their case is made as strong as possible. Only in chapters eight and nine are the assumptions behind these models questioned, and the limitations to their explanatory strength exposed. It is argued that while they illuminate the South African problem, they do not account adequately for any obligations the oppressed may have towards the liberation struggle.

Liberalism is pertinent here for another reason. Generally it has inspired a number of revolutions, although it often fails to initiate or sustain them. Revolutionaries often appeal to concepts like liberty, rights and equality, all of which are thematic and central to liberal debates. However, liberalism insists that these values must also be respected by the oppressed in the process of liberation. For example, almost all liberal organisations in South

Africa have opposed economic sanctions and violence, recommending in the process only methods whose effectiveness was at best dubious. Many South African liberals argue that if the organisations are not democratic, then they are no different from the government they oppose. The point of this study is to demonstrate that while this claim may be correct, it does not cover the whole story. A liberal must provide a satisfactory account of how one can be democratic without being able to call a meeting. Quite correctly, liberal parties have persistently called for the unbanning of political organisations. Still liberals need to face the question of how any group organises while it remains outlawed.

There is another fallacy inherent in the position that the means should always be commensurate with the end. For example, it is insane to suggest that in order to become a millionaire one has to look like one in the process of getting there. This might actually guarantee that the aspirant does not get there. In fact if one seriously wants to become a millionaire, it may be necessary to live like a pauper for some time! This fallacy is endemic in political debates in South Africa. Hence it is argued that because the struggle for liberation is a non-racial struggle, the organisations themselves have to be non-racial. This study is concerned with outcomes which cannot be attained without some measure of coercion, and with a collective good which overrides, for the time being, the demand of personal liberty. It is not addressing an ideal situation where free choice, debate, open discussion and freely chosen leaders are the order of the day. Liberation movements are not political parties with stable and formal membership. Basically, the argument is going to explore how the liberation movements can claim a moral right to leadership.

### **Problems and Dilemmas**

The question involves the relationship between the oppressed people and the resistance organisations at the forefront of the liberation effort. While a substantial number of people may be

sympathetic to the aspirations of these organisations, nevertheless the bulk of the oppressed are not members. Others may not even have heard of these groups or their leadership. On the other hand, these resistance organisations cannot function effectively without the collaboration and support of ordinary men and women, whatever their formal relationship with the organisations. As a result, political groups have sometimes made certain demands on people in terms of support and cooperation. The national struggle for freedom is believed to require from the oppressed some sacrifices in return for some future political liberty. People are expected to forego certain benefits, or whatever is left of comfort in the current South African situation, in order to further the course of the liberation struggle.

This raises a moral dilemma for both individuals and the organisations. This dilemma takes two related forms. One involves a situation where there is only one liberation movement fighting for a specific issue. This was the case in Nazi-occupied France. There was only one movement, the French Resistance Movement. All members of the resistance had only one goal - to liberate France from Nazi occupation. Given this simple situation: does it follow that non-members were obliged to support the resistance movement, whether they were in agreement with its goals and strategies or not? If so, what was the basis of this obligation? The other related dilemma involves a situation complicated by various manifestations of the liberation effort, the profiles and variety of rivalries among these political organisations, and their differing conceptions of what a liberated society should look like. The forms of resistance and types of action undertaken vary from place to place, and from time to time. Therefore, a problem for everyone is whether all the movements have the right to coerce them into supporting their specific goals and strategies, or only some of them. If only some, which one or ones? Further, why do only some organisations have this right? Similarly, if we all know that 'participating in the struggle' is open to different and contradictory (and even reasonable) interpretations, then how does



one distinguish between coercion to eliminate apartheid and coercion into promoting the goals of a specific movement which wants to be the new government? Is the people's right to choose going to be defended or not?

It should be noted that the difference between the first ('one-movement') and second ('many-movements') situation is that of detail rather than substance. In both cases the fundamental problem remains - how non-members acquire an obligation to support activities initiated or undertaken by organisations of which they are not members. The second dilemma is simply a complicated version of the first. The 'one-movement' problem is rooted in the individual **vis-a-vis** one resistance organisation, whereas the 'many-movements' dilemma includes groups and individuals. Why, for example, should the African National Congress (ANC) members be coerced into supporting the activities of the Pan Africanist Congress (PAC)? On the individual level, why should non-members support the programmes of any or all of the competing movements? Surely, no one could have an obligation to pursue contradictory goals and strategies or to work for contradictory goals! Therefore, the problem is this: is **every** liberation movement in the country allowed to expect support from individuals? Are they **all** entitled to coerce individuals into assisting them? The position defended here is that people may be obliged to support activities of certain extra-parliamentary organisations. However, coercion is unjustified in the following circumstances:

- (a) to get a bystander to join a **particular** movement.
- (b) where strategies contradict each other, to get a bystander to follow one of them.

### Forms of Resistance and possible Outcomes

The foregoing discussion raised a number of general problems arising from the theory and practice of liberation struggles. Below, a number of specific examples drawn from the South African

situation are provided. It should be emphasised that they are examples, and nothing more. There is no intention to treat them as case studies, with a detailed analysis of moral problems that they raise. In chapter eight they are used to map out circumstances in which coercive measures may be sanctioned by the principle of fair play.

### Example One

On 16th June, 1976 a group of students joined a march in protest against the compulsory use of the Afrikaans language in black schools. It is now general knowledge that the Afrikaans language *per se* was not the sole, or even the fundamental cause of the subsequent explosive uprising. There were other broad national issues at stake. A number of people, mostly pupils, were killed by members of the South African Police. In the subsequent days and weeks the protest escalated, with a corresponding rise in material and human losses.

The decision to launch a protest was taken by the students themselves in a mass meeting. They elected a committee to lead the proceedings - the Soweto Students' Representative Council. The committee was not elected by *all*, perhaps not even the majority of students in Soweto. Some students did not attend the first meeting. Others may not even have been interested in the whole business. Perhaps they also resented the new 'Afrikaans ruling'. However, they may also have chosen to proceed with their studies nonetheless, and earn their formal qualifications rather than to boycott. Whatever the diverse feelings, the result was a massive student boycott, a rising death toll and massive destruction of private and public property.

The short and long term effects of all this were varied. There were gains and losses. The government relented by withdrawing the contentious ruling. At the time though, it was like bolting the stable door after the horse had galloped away. Government concessions did not immediately end the protest. For

pupils this meant the beginning of a protracted period of disrupted schooling, something still prevalent even a decade after the initial eruption. Other children permanently missed out on formal education, and hence are condemned to unskilled and low-income employment. Some died in detention and others in the streets. Those who sought political refuge in other countries battled to cope with the stress of life in exile. They faced possible long term, or seemingly permanent separation from parents and family. Others could not even be accounted for. They may be secretly buried somewhere in the country.

There were gains too, though. The mere capitulation by the government on the Afrikaans issue was a major political gain. It may not be easy for some to appreciate the psychological impact occasioned by this crack in the hitherto monolithic ruling National Party. Its capitulation was seen as an acknowledgement of 'people's power'. In fact, the seeds of the current political reforms can be traced to the 1976 uprisings. What is undeniable is that they are direct outcomes of grassroots pressure and resistance. They resulted in the split in the National Party. Parliamentary and extra-parliamentary groups on the left were also shaken. There were signs of change, however minimal, in education. These were by no means fundamental but merely technocratic, and largely involved improvements in buildings and equipment. A concerted drive for teacher up-grading followed. The private sector, for a long time willing accomplices in an exploitative system, launched or re-evaluated its social responsibility programme. Through organisations like the Urban Foundation, money was poured into the black townships. Housing development became an urgent issue. There may have been some oversimplification in this illustration. However, this is not an essay in social or political history, but an ethical-political analysis of certain political events and actions. The examples are intended to be illustrative and nothing more. Furthermore while people may differ on details, few deny that 1976 was a major turning point in the contemporary political history of South Africa. Lastly, details again



notwithstanding, the thrust of this descriptive account is a non-controversial claim, namely, that 1976 saw important gains and serious costs.

### Example Two

A decision is taken that pupils should boycott schools until the inferior **Bantu Education** has been replaced by **People's Education**. The latter education is not neatly defined, but enough descriptive background is proffered to give an idea of what is involved. According to its sponsors, it is education designed to respond to the needs of the oppressed, rather than those of the exploitative business class<sup>6</sup>. It aims at liberation, rather than domestication. Black heroes like Nelson Mandela and Robert Sobukwe, generally presented as criminals by apartheid education, have to be given a special place in the syllabi. People's education should inculcate socialist values of sharing, concern and cooperation, rather than promote materialism, greed and competition. The oppressed community, rather than the National Party, must decide democratically on the content and form of education. Teachers should become accountable to the black community, instead of remaining tools of the National Party government. To participate in the present education system is to be party to the enslavement of the nation. As a result, pupils and parents should boycott education until it is replaced with an acceptable type.

A few comments are pertinent at this stage. At the time of the boycott, no one had a properly worked out 'people's curriculum'. The issue had not gone beyond slogans. It is true that subsequently efforts were urgently made to put together something; but, on the whole, this hardly took off. Soon the government had most people involved with the People's Education Movement behind bars. Yet even without government intervention it is still doubtful if anyone would have been in a position to deliver 'people's education' at short notice. Anyone involved in

education knows that to implement a uniform syllabus effectively for millions of pupils would require years of thorough preparation and consultation. Moreover, teachers need to be involved through every stage of the innovation. All in all, the clarion call 'Freedom Now, Education Later', if taken literally, could not have been based on an informed and serious assessment of the situation. It was largely to be a cost without tangible benefits. It may be that this campaign was largely a propaganda offensive, conscientising people against schoolbook brainwashing and spreading revolutionary ideology through the school component of the oppressed. Still, one might ask if at that given moment, the cost was proportionate to the propaganda value. This is not an easy question to answer. The conclusion in chapter eight is that this was one area where coercion was highly questionable.

### **Example Three**

In 1985 a 'rent-boycott' was launched in Soweto and other black townships. There were two distinct but related motives, one local and the other national. The local reason had to do with the increase in rents, a phenomenon that had escalated since township management was taken from white administrators and handed over to black councillors by the government. The government presented this as another instance of reform. Blacks viewed it as an attempt to impose 'stooges' on the black community, and let them do the government's dirty work. On the whole, the black councillors did not get financial backing from the government on the scale previously given to the white administrators. As a result, their source of revenue was supplemented through increased rent, rates and service charges. The boycott was designed to contest this increase. The second motive had a broad national thrust, namely to disrupt the much-detested community or town council system. This was part of a broad political strategy of making the townships ungovernable by state functionaries. Diminished revenue would either compel the government to spend more on blacks, or cripple

the councils. For the government, the black local authorities had an important practical and symbolic appeal. In practice, the government hoped that they would provide blacks with a false sense of political power. Symbolically, they would represent another milestone in the reform process. What were the consequences?

Rent defaulters were evicted and harassed by the police. Midnight raids, confiscation of movable property and violent evictions became the order of the day (in fact - of the night). New occupants of the emptied homes were prevented by the 'comrades'<sup>7</sup> from occupying the homes, and previously evicted people were urged to defy the Council and re-enter their homes. There were fights, involving various claimants to the homes, and also between the community and the police. Invariably, there were deaths as well. The Council ran out of funds to the point where it could hardly pay its own workers properly. A strike by municipal workers followed. On the 20th November 1988, the Appeal Court in Bloemfontein made a ruling that prevented the Soweto Council from evicting people, and from collecting rents from certain people. There were even reports that the Council might be willing to write off the rent arrears and stop rent evictions. It is argued later that this is an example where coercive and collective action produced beneficial results for the oppressed. The strategy was vindicated in 1990 following an agreement between a Soweto community delegation, Electricity Supply Commission (Escom) and the Johannesburg municipality.

### **Consumer Boycotts**

These tactics began in the mid-eighties. Essentially, they involved the boycott of white businesses and those of local community councillors. They were almost always issue orientated. They were linked with specific demands such as the release of detained pupils, getting the army out of the townships, and the resignation of the community councillors. People were required to buy in the local shops. In the early stages, local black dealers took advantage of the situation to raise prices. Subsequent

boycotts were coordinated in better fashion than earlier ones.

Enforcement mechanisms could be particularly brutal. Violators were sometimes forced to swallow dangerous detergents that they bought in the cities. Others had their grocery confiscated and thrown all over. Some were also assaulted. At the same time, it had some effect, forcing some small businesses to close down, and getting business to put pressure on the state for reforms.

From time to time there will be reference to the above examples in the course of this study. However, their detailed evaluation is only undertaken in chapter eight.

### Common Features

1. The decision to launch a boycott was taken by a group of people. It was seldom, if ever, a one-person decision. Yet, more often than not, neither was it a joint decision of all affected parties either. People were simply told what was planned and what was expected of them. In most cases, the rationale for proposed measures was provided. Before the **State Of Emergency** in 1985, the information was disseminated through the media. Subsequently, it became largely a matter of pamphlets or rumours. The pamphlets might be anonymous, or attributed to unidentifiable committees.

2. All campaigns involved a degree of risk. Nolan (1988:161) limpidly captures the implications:

To participate fully in the struggle you need something more than commitment, you need **heroic courage**. There is always the risk that you will be detained, interrogated, beaten up and tortured. There is also a real danger that you might be killed.

The 1976 uprisings, as was pointed out, involved deaths, detention, jail sentences and exile. Rent boycotts involved loss of homes for some, humiliation, evictions and arrests for others. School boycotts have resulted in loss of learning hours or even permanent prohibition from schools. At some point there seems to have been

an irretrievable breakdown in the learning environment. There were other invisible social and psychological costs such as an increase in pregnancies, a widening of the generation gap, and a loss of parental and teacher authority and self-discipline.

3. There were gains as well. The government capitulated in some cases. The rent boycott in Soweto particularly was ultimately a success for the residents. In education, students' voices are increasingly being taken seriously. Teachers and parents have begun to reassess their educational and political role. The monolithic political structure of the country shows signs of stress.

4. Benefits applied across the board, to those who were passive observers, those who voluntarily took risks and supported the campaigns, and to others who may have been coerced into participation. On the other hand, direct losses were suffered and carried solely by participants and their families. Indeed, a utilitarian calculus would cast costs more widely than is done here.

5. Campaigns were not intended to be voluntary or optional. The entire group, students or workers, was expected to take part. Threats were both explicit and implicit.

6. Some goals of the campaigns were clear and straightforward. Others were murky, ambitious and unrealistic. Example one is relatively straightforward. The withdrawal of the Afrikaans ruling was the focus. Similarly rent boycotts were designed to bring down the rents, and undermine the councils. The second case was vague and visionary. The Bantu Education system as a whole is not something to be overthrown in a year or two. It can die altogether only with the demise of the entire apartheid system and, even then, its effects might outlive legal apartheid. This does not mean that an interim piecemeal approach is neither possible nor desirable. All that is implied is that there is little to be gained by tying implausible demands to political resistance measures.

Sometimes goals are muddy for other reasons. The anti-



apartheid struggle does not have a neat set of goals. For example, one cannot simply wish the end of apartheid without also working towards some alternative social order. The death of apartheid will not simply be followed by an interim vacuum. It must necessarily coincide with the beginning of another type of social and political system. The only effective anti-apartheid organisation might turn out to be one whose policies are not particularly attractive. For example, there may be people who support the ANC even though their sympathy lies within the PAC. However, they argue, the latter is ineffective, leaving them no option but to join the ANC. Similarly, those with more acceptable long term policies might simply be incapable of lifting the struggle off the ground. There may therefore be confusion about precisely what people are supposed to support. Is it the organisation with whose goals they identify, or one whose strategy is considered effective? In short, clarity is required about precisely what people are supporting. It cannot simply be an ill-defined 'struggle'. It may be necessary, especially in the early stages, to identify some specific and targeted goals.

7. Cooperation on some of the programmes was essential here. The campaigns would have hardly taken off without general mass support for the organisations. It is not sufficient that all formal and registered members throw their weight behind the groups. Contributions and support from 'bystanders' are equally essential.<sup>8</sup> The political leadership is often influenced by the attitude of the bystanders. It must be remembered that the struggle is waged in the name of 'the people'.

8. The legitimacy of leadership and authority is problematic. Often it is not even elected by the entire formal membership of the organisation, but only by some representative delegates. Yet, such leadership would see its mandate as covering quite a wide spectrum of society, including non-members. In South Africa the problem has been complicated further by the fact that political organisations other than those sympathetic to apartheid were outlawed. The few that were not, like the UDF and Azapo, were subject to constant

harassment. They could not organise and operate democratically in an undemocratic and repressive climate. All in all then, the consequences of resistance in the face of oppression are unpleasant at the mildest, and perilous at the worst. They involve important social and human costs, such as death, detention without trial, police harassment, loss of jobs and homes. These are not mere theoretical possibilities but highly probable or assured outcomes. Consequently, people do not willingly participate in these activities. They would rather let someone else take the risk instead. This is understandable. It requires an exceptionally high level of selflessness, or life-or-death commitment, to invite the type of state reprisals certain to follow any act of resistance to government power. Indeed at times the value of such bravado may even be questionable. As Olson (1971:64) notes:

... selfless behaviour that has no perceptible effect is sometimes not even considered praiseworthy. A man who tried to hold back a flood with a pail would probably be considered more of a crank than a saint, even by those he was trying to help.<sup>9</sup>

9. The 'cost-benefit' problem results in an ambivalent attitude among potential partners in the struggle. People are seldom totally averse to or fully enthusiastic about boycotts. Often they welcome the benefits but resent the costs. This results in a number of reasons why people refrain from supporting a struggle. The following list of possible bystanders is purely descriptive, and there is no intention to form value-judgments on any of their activities. An essential assumption of this study is that coercion cannot be justified in terms of the moral character of the coercer or the coerced. Nevertheless it is important to understand why some people remain bystanders, rather than activists.

- a. A person may be a **government functionary and collaborator**. He might feel that under a new dispensation he will at best lose the benefits he already enjoys, or at worst, even lose his life through retribution. There is no doubt that black security

policemen, ex-ANC and PAC renegades, Bantustan chiefs and a whole host of collaborators are not looking forward to the new dawn.

- b. The **nervous cooperator** is willing to share the costs, provided there are good grounds for believing that the scheme will take off. Such persons do not wish to contribute to a lost cause. In practical terms, they are willing to participate in the struggle but fear that it is poorly organised, and that it is doomed to failure. They would not expend energy on a lost cause and have no confidence in the leadership's ability to bring about a new order.
- c. A **trembling cooperator** dreads the thought of participation. Fear is a possible and genuine deterrent. The South African government has a well-established reputation of brutality, on which the police pride themselves. This has resulted for some time in a climate of fear, distrust and resignation. This might have changed in time but, while it lasted, it was a real and genuine consideration.
- d. A **reluctant cooperator** participates on condition everyone else does. She wants neither to exploit nor to be exploited (See Arneson:1982:623).
- e. **Weak-willed cooperators** are people who feel, better the devil they know than the one they do not. This attitude is prevalent among black professionals who feel that, despite apartheid, they have cut a piece for themselves from the economy. It might also be found among senior members of the community. The latter need not be privileged at all. They might just consider life too short to be 'wasted' on political adventures. They may even be caught up in the 'look at the rest of Africa' syndrome. They fear that they might lose the little for which they worked so hard. They display 'a preference for smaller, earlier rewards over greater, delayed rewards' (Elster:1985:143). Liberation might appear too remote to people long under the yoke of oppression.
- f. **Free-riders** want the benefit without the cost. They take others for a ride by simply living off their efforts.
- g. An **enthusiastic slave** does not want to be bothered with the demands of a 'responsible life'. He might also take slavery as the natural order of things. He is commonly known as an 'uncle Tom'. He is completely deferential, accepting the racial hierarchy as divinely ordained. He simply believes that he needs to be led by whites, that



by nature blacks are incapable of self-rule. This is the result of years of indoctrination. This attitude, prevalent in the older generations is slowly dying, perhaps as a result of the unionisation and education of many workers. However, it is also common among certain conservative professionals, especially those who owe their appointments to some type of benevolence on the part of whites.

- h. A **confused cooperator** is an avowed capitalist, who would like to see justice and the end of apartheid. However, because the struggle is about a socialist order, he will have none of it. While he will not frustrate the struggle, he will not assist it either.
- i. A **benevolent struggler** insists on her autonomy. She is committed to the abolition of apartheid and is also involved in projects and programmes that demonstrate this commitment. She is sincere, and is prepared to make sacrifices, like contributing to the bursary fund, and educating underprivileged children. She believes that only through education will people be able to enjoy the fruits of liberation. She is not opposed to boycotts, but would rather work for a post-apartheid society.

One lesson to be gleaned from the above classification is that 'blacks', or the 'oppressed', do not form a homogeneous group. They are people with different interests who support different organisations and strategies.

### The thrust of this argument - An overview

It should be evident from the foregoing that this study raises a number of difficult questions. To simplify issues, focus will be on the obligation to support certain specific forms of protest, rather than to support organisations as such. For this reason, examples of rent, school and consumer boycotts are examined in some detail. The argument here is essentially that it is illegitimate to coerce bystanders into supporting a general call to participate in the struggle. Such general calls are typically fuzzy and open to alternative interpretation. Other specific calls such as education boycotts are contestable to put it mildly. For example,

what advances the course of liberation: 'liberation **before** education', or 'education **for** liberation'. Further, the obligation to support a liberation struggle should not offend against the general obligation to be rational and reasonable. This means that no person should be under obligation both to attend and boycott schools. In short, the focus of this study is on protest **actions** rather than resistance **organisations**.

Nevertheless, it will be argued that organisations may be justified in adopting coercive measures. However, such justification is based on the recommended course of action, rather than any moral attributes of the organisation. The credentials of the coercer are not the essential determinants of the legitimacy of coercion. After all, even a popular, efficient and elected government is not at liberty to coerce people into any and every type of action. There is a false assumption that the better an organisation, the greater its claim to legitimate coercion. This study adopts the line that what matters is the quality of what is to be achieved, rather than the structural virtues of the potential coercer.

It will be argued that the principle of fair play is applicable only in certain specific cases. This work is divided into three main sections. Chapters one through three comprise the first section. They are largely concerned with the analysis of key concepts: obligation, consent and liberation. The second section, chapters four to seven, establishes the basis of non-consensual obligations. In section three, the principles of obligation are applied in a concrete South African situation. It should be emphasised that, in this section, the issue is simply which coercive measures are justifiable or not in terms of the principle. The study is not concerned with whether certain strategies are 'correct' or not.

NOTES

1. In fact, the issue is what kind of claims does **anyone** have on bystanders in respect to the liberation struggle. It will be noticed as the study progresses that in fact the right to coerce may be claimed as much by liberation movements as by ordinary citizens.
2. Emphasis added.
3. The allegation of racism levelled at Azapo is addressed elsewhere (Maphai:1986).
4. Emphasis added. A presumptive case for liberty does not necessarily rule out a legitimate overriding of personal autonomy.
5. In fact, this fact strengthens some of the arguments in this study. To a certain extent, coercion has enabled the liberation movements to attain some of their **immediate** goals, like being unbanned. On the other hand, coercion continues to make it difficult to move towards a democratic approach to membership and decision-making.
6. This statement has not gone unchallenged. There were already comments from groups and organisations that those who passed the National Education Crisis Committee (NECC) resolutions were largely an urban bourgeoisie, and that their demands were for an academic education of the kind that middle class people all over the world advocate. Rural and working class people's needs were neither represented nor considered. Be that as it may, the description is left to stand, and is examined further in chapter eight.
7. This term gained currency during the township unrest in South Africa. It loosely refers to a group of young people, who virtually controlled the townships and imposed and enforced a number of anti-government political activities.
8. Reference is made to 'bystanders', as opposed to simply, 'members'. This term is borrowed from Turner (1973) to describe those who are 'neither members nor opponents of the Movement.' The concept of what makes people members of a group needs to be spelled out clearly.
9. It is possible that an isolated heroic act might have the effect of inspiring others to follow suit. However, the opposite might occur. The ruthlessness of state reprisals might subdue others for a long time, as the aftermath of 'Rivonia' has demonstrated.

## SECTION ONE

### Obligations, Rights and Consent

**Chapter one** examines possible sources of obligation in general. It surveys key concepts like authority, autonomy, freedom, rights and obligations. It studies the problem of consent in relation to other concepts like authority, duty, rights and freedom. The thrust of the chapter is that obligations and rights are **prima facie** grounds for justifiable employment of coercion. It is further argued that, even in the absence of rights and obligations, coercion may still be legitimately employed.

**Chapter two** examines two questions: Who is responsible for bringing about liberation? Are the oppressed, qua **oppressed**, obligated to liberate themselves? The conclusion is that although the state of being oppressed **per se** imposes no obligation on the oppressed, it might do so contingently.

**Chapter three** examines the contention that **only voluntary consent** of the individual is a legitimate source of obligations. Contemporary proponents of this view include Wolff (1968) and Nozick (1972). This approach fails to give an adequate account of those situations where consent is impossible to obtain, and yet where there appears to be a **prima facie** case for obligations. Various versions of consent theory are examined in chapter three with specific reference to the revolutionary organisations.

## CHAPTER ONE

### Introduction - Obligation, Rights and Freedom

This chapter deals with the concepts of right and obligation and addresses the question: Why would any person insist upon consent as a ground of obligation? One way to justify coercion is by demonstrating that a bystander has an obligation to support a liberation struggle. However, it will be demonstrated in chapter seven that such obligation could at best be **prima facie**, that obligation is neither a necessary, nor sufficient condition for coercion. The discussion begins with a general analysis of the concept of obligation, its implication for personal liberty, and how it presupposes the rights of others.

### Obligation, Rights and Duties

An examination of certain typical features of obligation should explain partly why philosophers such as Wolff (1976) insist upon consent as the sole basis of obligation. An obligation is a moral requirement which, in the absence of exonerating factors, has to be discharged, regardless of the inclinations of the person under the obligation (Simmons:1979:7). Therefore, it places significant demands on the individual. It limits personal liberty by giving a third party the right to demand the fulfilment of that obligation. There is also a close relationship between rights and obligations. In fact, they are two aspects of the same coin. For example, to say of someone (x) that she is under an obligation implies that somebody else (y) is entitled to a certain, usually **specific**, performance from (x)<sup>1</sup>. This is an entitlement and not simply a vague expectation. (Y) would be entitled to **enforce** the performance of the act. In short, an obligation is a requirement that is morally enforceable. This position should not be confused with crude positivism, according to which something is not a right unless it can actually be enforced. What is maintained here is

that an obligation is legitimately enforceable, even if in practice this may not be possible. A robber has an obligation not to steal from a paraplegic person even if such a patient may not be in a physical position to enforce such an obligation.

The implication of the foregoing is that rights and obligations are conceptually linked to pressure and coercion. The link with coercion establishes another essential feature of obligation and rights. As was noted earlier, both are freedom limiting concepts. According to Hart (1967:60), to have a right amounts to 'having a moral justification for limiting the freedom of another person and for determining how he should act'. To have a right, therefore, is to be entitled to override another person's liberty in respect of the alleged right. Similarly, to accept an obligation is to surrender one's liberty to act in a specific sphere covered by that obligation.<sup>2</sup> By acts of consent, a person communicates to others his readiness to act in a certain way. He creates expectations. He entitles them to expect things of him, to rely on him, to plan their lives with him in mind as a friend, a colleague, an ally or merely as someone committed to a course of action:

Consents, then, are commitments to other people, or they are commitments to principles or parties or political institutions that arouse expectations in other people. For this reason, obligations are often compared to debts: they are other people's resources. And all social organisations are funded, as it were, through commitments their members make to one another (Walzer:1970:xi).

This explains why obligations and rights require justification. They are important debts involving some loss of personal freedom, and any violation of freedom requires justification. In the light of the foregoing it is now possible to give a provisional answer to the question posed earlier: Why would any person insist upon consent? Obligation is a liberty-limiting concept. Personal liberty is a fundamental requirement for a morally tolerable political society. The presumptive case in favour of liberty

suggests that the optimisation of individual freedom is the **raison d'être** of any political society. It is precisely because obligations imply some restrictions upon liberty that their sources ought to be beyond moral dispute. It seems only fair to conclude that only consent is a legitimate source of obligation. Evidently people should not be burdened with obligations and the consequent loss or limitation of freedom, unless they undertake willingly and intentionally such obligations. This concern cuts through the social contract theories, central to which is the belief that the transition from the state of nature to civil society should follow a unanimous decision of the community.

### Obligations and Duties - A worthless distinction?

Of more immediate concern than these questions is the problem of how obligations are incurred (Simmons:1979:34). Generally, it is believed that duties and obligations are acquired through different routes. Consent is the basis of obligation, while duties may be acquired by nature. Does the distinction between a duty and an obligation serve any useful analytic purpose?

For the purposes of this argument, it is tempting to dismiss this contrast. However, there are quite a number of writers who want to draw some kind of contrast. For example, Hobbes (Peters:1956:184 - 188) makes a distinction between duties which people have just because the law of nature imposes them, and those acquired by consent. It is true that sometimes Hobbes refers to them as obligations because they derive from the law of nature which everyone ought to obey. However, essentially an obligation is self-imposed - acquired by an act of consent. It is a kind of covenant. This view is echoed by Simmons (1979:14-15) who regards obligations as generated by the performance of a **voluntary** act<sup>3</sup>. In contrast, the natural law injunction to 'seek peace' is neither an obligation nor a covenant. It is a natural duty. According to this account, what separates duties from obligations is their source rather than their content.

Rawls (1971:333-342) makes an even more energetic distinction than Hobbes does, which carries some quite radical implications. He maintains that the average citizen has no obligation to obey the laws, whereas politicians, civil servants and the American Congress have. This is because the latter undertake office. They voluntarily acquire public office and in so doing they assume some special kind of obligation. However, according to Rawls (1971), it does not follow that because people have not consented, then they have no good reason to go along with what the government says. There may be sound reasons for doing so. They have a duty to keep the peace, to make social life proceed harmoniously, and to obey the laws most of the time. All these duties are imposed upon them derivatively. They do not have the special legal and formal obligation which politicians have when they put their hands on the Bible, and promise to uphold the constitution.

There are other differences, not directly linked to sources. For example, unlike duties, obligations require performance of a specific action. In addition, while obligations are owed to specific persons by specific people, duties are owed by all to everyone else. If duties correlate with anything, then they correlate with rights *in rem*, that is, rights against everybody else. An obligation is generally regarded as an institutional arrangement, some outcome of consent and agreement. Yet contentions such as these run counter to common intuitions especially in respect of the seemingly natural and non-institutional demands of morality. People often talk of obligations to assist others, including strangers. A person might rationally feel obliged to give food and assistance to the poor, or to save an infant from drowning. In this case, there is no previous commitment on the part of the potential donor or life saver. What would be the basis of such an obligation? If any obligation is involved here, clearly it would not be of a legal type. Other examples come to mind: the duty not to harm others, or inflict suffering on them, and what Rawls (1971:333) calls the natural duty to support and obey a just state, children's



obligation to look after their ageing parents, and the obligation to tell the truth, to promote human welfare and to act justly and fairly.

The distinction between obligations and duties is partly designed to resolve such difficulties. The correlatives of natural rights, that is rights not based on any social convention or agreement, would then be duties instead of obligations. This then makes it possible to retain the consent thesis of obligations without denying the validity of certain intuitive or natural duties. The distinction between duties and obligations is intended, among other things, to circumvent the problem of consent in areas such as these where obligations appear to exist without an explicit agreement. One can then argue that whereas obligation requires consent, duty does not. In short, duties may be incurred by nature. Beran (1987:21) refers to such duties as natural obligations because for him duties and obligations are products of institutional morality. They result from promise, consent, agreement and contracts. In contrast, natural obligations include injunctions such as telling the truth, promoting human welfare and acting justly. These are demands of natural morality. Natural morality gives rise to natural obligations, some of which may be institutionalised. The obligation not to harm others is one such case:

If obligation and duty are restricted to commitments and roles, then we cannot say that we have an obligation or duty to help total strangers simply because without such help they would die. (Beran:1987:21).

However, renaming concepts in this fashion seems only to obfuscate issues further. Ultimately, it really does not matter what appellation is fixed to these concepts. There are far more fundamental distinctions that should be made. What is the moral status of such duties in relation to 'obligations proper'? Which is morally more significant than the other - duty or obligation? The distinction would be fundamental if one could argue, for

instance, that *ceteris paribus* obligations enjoy moral priority over duties, or *vice versa*. Yet, this cannot be done. Sometimes obligations may be overridden by duties as defined. It is considerations such as these which might explain Beran's (1987:21) conclusion that, in the realm of natural morality the concepts of duty and obligation can be used interchangeably.

These concerns are serious, but apparently do not constitute an insurmountable obstacle for consent theorists. The latter might argue that values like truth telling, promotion of human welfare, acting justly and fairly are all results of tacit consent. They are obligations based upon an implicitly accepted social morality. In other words, they are perceived to be obligations because they are logical constructs of an already accepted moral system. Otherwise, people would simply be at liberty to ignore such 'obligations' if they so desired. They could simply maintain that strangers need to fend for themselves, or let a drowning baby die a Spartan death. This is a possible though poor way out for consent theorists. From the mere fact that people 'feel' an obligation towards someone, it does not follow that any such obligation exists, any more than a chronic sense of guilt necessarily vindicates the rightness of a certain moral system. People do feel guilty at times, even when there is no sound reason for doing so.

The purpose of this brief diversion was to underline why someone like Rawls makes the obligation-natural duty distinction. For present purposes a similar distinction is not necessary since it is not intended to sort out the obligations of governments and natural duties of citizens. The issue here is to demonstrate whether or not there is an obligation to give aid to covert liberation movements. If so, how was this obligation incurred? Further, if the 'duty-obligation' distinction can be made, it is useful only to the extent that its practical and moral implication can be illustrated. Is it an obligation, or simply a natural duty in the Rawlsian manner? It follows that one must talk about the fierceness of natural duty, to establish whether there is something

stronger than the proposition that those who support the struggle ought to be praised either for their good nature or their benevolence. Is the claim stronger to the effect that they have some sort of obligation to join in? According most moral theories people have a duty to be charitable, or helpful, or cooperative, though not an obligation with respect to anybody in particular, or any particular occasion. Here, without prejudice to what a full theory of obligation and duties looks like, obligations in the stronger sense of obligatoriness will be discussed. For this purpose duty will refer to the weak sense of moral injunctions. On the other hand, obligation refers to the strong version which involves a correspondingly enforceable dimension. Failure to honour a duty results only in moral condemnation. However, those under obligation may be coerced into fulfilling that obligation.

In effect there is a two-stage argument. First, this chapter is about obligations in the Rawlsian sense which assigns them to certain people. Second, this chapter asks: What is the basis of the natural obligation to assist liberation movements? Is it strong enough to justify coercive measures? This is a difficult problem which involves another important distinction between **general** and **specific** injunctions. Thus, if there is an obligation to support liberation movements, is this obligation general or specific? Further, do people have an obligation to heed **the general as well as the specific injunctions** of a covert liberation movement, or do they only have to heed its general injunction? Here is a common illustration.

A marriage service is a contract into which partners voluntarily enter. It involves specific and general commitments. Generally, partners undertake to love each other; specifically, partners have to refrain from extra-marital relationships. Clearly, each is at liberty to interpret the general requirements of love implicit in the marriage contract. Yet, none is free to interpret specific prohibitions such as adultery and infidelity. Similarly, joining a liberation movement entails both general (liberate yourself, destroy apartheid, or promote the aims of the

Freedom Charter) and specific (boycott school and rent, support sanctions) injunctions. It involves a measure of liberty<sup>4</sup>. Certain activities such as spying on the liberation movements obviously preclude one from claiming to be supportive of the liberation effort. Others are not as transparent as that. For example, opposing disinvestment campaigns or sending children to a private school could be acts of betrayal **only if** not engaging in these activities is a specific condition of supporting the struggle, or membership of a resistance organisation.

It should already be evident why this distinction is problematic. Clearly, neither marriage nor a liberation struggle can survive or grow solely on the observation of general injunctions. At some point people have to commit or abstain from certain specific activities. The general level presents fewer problems than the specific. In South Africa, all resistance organisations were united in their general condemnation of apartheid. Yet, this common basis has not prevented disunity, at the mildest, or fratricidal warfare at worst. It will be contended that, if the struggle is to take off, any obligation incurred should involve much more than simple general exhortations. Otherwise, it remains a (politically) worthless injunction. It remains to be seen how this condition is fulfilled where there are serious differences of opinion regarding strategies and tactics.

Besides, fulfilment of the obligation to support the struggle requires that a proper criterion should be mapped to determine which specific activities may be coerced while others are not. Furthermore, which political organisations have this right? Is it all of them or only some of them? Clearly, it cannot be all of them, given **ex hypothesis** that the movements have different if not contradictory strategies. If flagrant totalitarianism is to be averted, it should be possible to distinguish between coercing people into fighting apartheid and coercing them into membership of a movement which aspires to become the new government. The individual's right to political choice, so sacred in liberal theory, needs to be addressed.

To conclude provisionally, two distinctions are crucial in this study: One involves a strong and weaker sense of obligation and duty, while the other addresses the general and specific forms of injunction. These issues are addressed in greater detail below. For now, it is necessary to return to the subject of obligations and, more specifically, how obligations are incurred.

### Sources of Rights and Obligations

It is not always difficult to give an account of how obligations are incurred. This is particularly the case when the attention is on inter-personal transactions. However, when the focus is on society as a whole, and especially on political obligation, then the issue looks intractable. Political obligation refers to a citizen's being strictly bound to obey laws and legal directives issued by a government. Similarly, obligations towards resistance organisations involve a corresponding right on their part to issue political decrees to the oppressed. The crucial issue is to give a satisfactory account of the organisation's right to support and a citizen's obligation to assist the movement. To answer this, it will prove useful to give a broad account of how obligations in general are incurred.

Hart (1967:53-66) gives a number of possible sources of what he terms 'special' and 'general' rights. Special rights arise 'out of special transactions between individuals' or 'out of special relationships in which they stand to each other'. The identity of the persons involved is crucial. A special right is a specific right owed by person (x) to person (y). Naturally, it may also include a group of persons. The crucial point is that it is not based on a relationship obtaining among an amorphous mass of people. There are several sources of special rights:

- i. **Promising** is a classical example of the voluntary incurring obligations. Through promises people voluntarily become obligated to others in respect of objects or services promised.



ii. **Consent**, too, creates special rights. Through consent, person (x), for example, accords to person (y) the right to interfere in matters which (x) would otherwise and ordinarily be free to determine for himself. (X) voluntarily surrenders rights to (y). This is of course the crucial point in the next chapter, and a revisit will be necessary.

iii. **Mutuality of restrictions**. This is only mentioned to complete Hart's account. He deals with it in a sketchy fashion because it really does not form the focus of his paper. Since it is a subject of intensive examination in subsequent chapters of this work, it will not be pursued further here. Suffice it to point out that it refers to what is now known as the **principle of fair play**, according to which people are obligated to contribute towards the costs of maintaining and supporting a mutually beneficial scheme.

According to Hart's (1967:64) analysis, general rights are not products of special transactions or relationships. They are not restricted to specific, identifiable people, but apply to all humans capable of choice. They generate obligations upon all not to interfere with one another. They seem to be correlatives of what Simmons calls duties. This is an important point for the rest of this work. If there can be natural rights, that is, rights that have not resulted from some specific transactions, then similarly there could be natural obligations or duties which are not be products of consent or agreement. What is the basis of general rights? According to Hart (1967:64), 'the assertion of general rights directly invokes the principle that all men equally have the right to be free'. This is the basis of Hart's conception of natural rights. He argues that if there are natural rights, then their basis would be the natural right each person has to equal freedom. The acknowledgement of natural or general rights would, in principle, account for obligations not based upon consent. This immediately creates problems for those who regard obligations as strictly products of some voluntary and intentional act. There are fears that people might suddenly be subjected to obligations invented by those in power.



Hart seems strikingly confused on this fundamental issue. He claims on the one hand that 'special rights are not only those created by the deliberate choice of the party on whom the obligation falls...' and again, 'not all obligations to other persons are deliberately incurred' (1967:61). On the other hand he concludes 'all special rights...arise from previous voluntary actions'. This is a very untidy formulation, especially when it is considered that this subject has been, and remains, a focus of debate. What he probably means may be illustrated as follows. (X) voluntarily hurts (y), and (y) sues (x) for damages. Although (x) voluntarily hurt (y), he did not deliberately incur a debt to (y). It was not part of his intention to incur this debt.

### Obligation and Ought

Even where there is no dispute about the existence of obligation, there may be other problems. Having an obligation is not a sufficient reason for acting in accordance with that obligation:

To say that an individual has an obligation or a duty is never, by itself, to offer conclusive reason for his acting in a certain way (Simmons:1979:10).

This is what essentially separates an obligation from what ought to be done. To say of a person that 'she ought to do x' is to imply that there are conclusive reasons for her doing x (Beran:1987:13). This question may be approached from a moral, prudential or economic viewpoint. This understanding is crucial for the rest of this work since it will be argued that, although people do have obligations to support the liberation struggle, this consideration alone does not constitute sufficient reason for their doing so, or being coerced into supporting the cause. To have an obligation does not necessarily imply that one **ought** to discharge it. This is the point of Socrates' dialogue with Cephalus about the obligation to return a dangerous weapon to its insane, but lawful owner

(*Republic* I:331). Even though one is under obligation to return property to its owner, there may be other overriding moral concerns why this should not be done. Such an obligation is simply one of the factors to be weighed before taking an autonomous decision. Similarly, people may perceive a need to obey political organisations even if they are not obligated to do so.

For instance, on the basis of the consent theory, the disenfranchised in South Africa have no obligation at all to obey the government. Yet, this does not imply that they should never under any circumstances obey. There may be other overriding moral considerations requiring them to obey. They might feel that greater loss of life is likely to ensue if the government, at a given moment, was flagrantly disobeyed. In the same way, although people may question the authority of certain anti-apartheid organisations, they may still continue to cooperate and support such organisations on other grounds. They might feel that although they have not consented formally to such groups, the latter nonetheless represent the only hope towards a greater good like liberation from oppression. Such a decision is made independently of the legitimacy, or otherwise, of a government or anti-apartheid organisation.

In this work, the reader is not provided with a blueprint of what to do if required to join the struggle. Nor is this a piece of strategic counselling to assist certain liberation movements. It establishes only one claim - namely that an obligation to participate in the liberation effort exists. Naturally, the nature and scope of this obligation needs to be spelt out in greater detail. This is done in chapter eight. Of course, there are cases where obligations to support the struggle may conflict with or be overridden by other obligations or moral considerations. Nevertheless, that is not an issue for this study since it raises a different question, about the relative force of such political obligations. It does not query the existence of the obligation *per se*. The practical implications cannot be discussed in vacuum. For example, two people with conflicting convictions regarding the

obligation may nonetheless agree on a common strategy of liberation. Similarly, people might share similar perceptions of an obligation to support the struggle and yet fail to agree on what this entails in practice.

It will be argued later that although the oppressed have an obligation to support the struggle, it may be prudent on utilitarian grounds to 'let others off the hook'. If the cost of liberation is high, as suggested in the introduction, then it follows that sacrificing the entire society for which one claims to be fighting hardly makes sense.

### Freedom and Authority

Assuming that the oppressed have both the right and obligation to liberate themselves, such an obligation would be owed by everyone to everyone else. An important question becomes, who has the right to enforce this obligation? It seems that without the ability to protect rights and enforce obligations, there would be no point in having the rights. This is where authority comes in. Such authority should ensure that society's rights are protected and its obligations fulfilled. For now, the issue is the nature of the authority of a liberation movement which may at best have the status only of a government 'in exile' or 'in waiting'.

What typifies authority, especially political authority? There is a distinction between **de facto** and **de jure** authority. **De facto** authority refers descriptively to one who exercises power, whether legitimately or not. The National Party government in South Africa is a **de facto** government. This is not a morally problematic interpretation of the situation. In contrast, **de jure** authority involves 'the right to command, and its correlate, the right to be obeyed' (Wolff:1976:4). This authority presupposes possession of power, although the converse is not true. For the purpose of this chapter, only the normative sense of authority is important. Authority implies legitimate use of power, or coercion; or a legitimate expectation of obedience. Authority and power are

intertwined concepts. Power is simply the ability to compel, while authority is 'the right to command, and conversely, the right to be obeyed'. Authority presupposes power, although the use of power is not the sole prerogative of authorities. In fact, thieves and murderers employ power, but can hardly be said to exercise authority. If authority means the right to command, it follows that people have an obligation to obey. On the other hand if autonomy refers to 'the refusal to be ruled' as Wolff suggests, then it is incompatible with authority.

In this study, the relevant conflict is between 'authority and liberty' and not between 'authority and autonomy'. Wolff's notion of authority is unnecessarily stringent. It makes the demands of authority morally definitive and overriding so that decision-making and deliberation by the moral agent are ruled out. The weaker notion of authority is defended here. It does not refer to the unquestionable right to be obeyed. It certainly involves some right to obedience and the right to make decisions binding on people. To have authority over people is to claim moral competence to make decisions which are binding on them. This competence or right creates an exclusionary rather than overriding reason for action. It does not override or outweigh other considerations - it merely discounts them in calculating what ought to be done (Beran:1987:13). It does not refer to a *de facto* ruler, but rather one whom people have significantly weighty reasons for obeying rather than disobeying. The notion of authority involves the legitimate employment of coercion in order to enlist submission. Normatively speaking, 'authority' and 'legitimate authority' are synonymous.

It is clear that even without Wolff's strong account authority is not a light issue. Any account of authority must involve, at the minimum, the right to compliance or obedience. Here it is contended that (contrary to Wolff) this authority may be challenged or defied without any contradiction. This authority does not dispense with the need to question or reflect on what that authority commands. At the same time, the authority's commands may



not be defied simply because they are inconvenient. 'Exclusionary' means that there is room for rejecting the demands of authority. However, it is understood that such a rejection requires justification, which should include something more serious than mere inconvenience or minor loss of utility. For example, if (x) marries(y), then (x) cannot justify not living with (y) because it is inconvenient or boring. However, (x) can justify not living with (y) because their careers require them to be in different cities. They are free to choose between (a) having an arrangement which allows them both to pursue their careers and (b) having an arrangement in which one sacrifices his or her career for the sake of living together.

In this sense authority would still limit freedom, in much the same way that, by definition, governments limit freedom. The demands of such authority are in no way morally overriding in the sense suggested by Wolff. The individuals retain the right to question and reflect on the demands of such an authority. In fact there are moral limits to exclusionary reason. Even a legitimately elected government has no right to demand the performance of atrocious and mindlessly ruthless activities from its citizens. Even more to the point, it does not have the right to stop its citizens from supporting any opposition party.

### **Autonomy and the liberation Struggle**

It was argued earlier that the fundamental conflict here is between authority and liberty, rather than between authority and autonomy. Still, there may appear to be a problem about the role of autonomy in respect to the struggle. How should autonomous adults view the struggle and the demands made upon them? It has been noted already that this problem takes many shapes, notably in the transition from (a) the admission of a general obligation to support the struggle to (b) the conclusion that such an obligation involves political participation in the sense of supporting a specific political organisation or adopting a certain strategy. Do

organisations have a right to coerce people into specific liberation activities?

In South Africa, the goals of the different movements were seen to be hardly identical, except in their condemnation of apartheid. The general concern about possible violation of freedom is based on the conception of a person as an autonomous agent. This has been an explicit tradition since Kant, and was recently restated strongly by Wolff (1976:12-19). By autonomy Wolff means that people are 'metaphysically' free and 'responsible for their actions'. This responsibility is based upon the fact that a person is a rational agent, a creature with the capacity to 'reason about choices'. The influence of both Sartre and Kant is evident in Wolff's account of responsibility and autonomy. What does autonomy mean? According to Wolff's radical anarchism, the notions of autonomy and authority are mutually incompatible (1976:18):

The defining mark of the state is authority, the **right to rule**. The primary obligation of man is autonomy, the **refusal to be ruled**.<sup>5</sup>

Autonomy can be understood in terms of the nature of a person. Biologically normal adults are capable of satisfying certain minimal requirements of rationality. They have the ability to review their beliefs and goals in the light of reason. Autonomous people not only make decisions but also act on those decisions. They are responsible for what they make of themselves and what they do to others. To be autonomous is not to be indifferent to others. People are neither perfectly self-interested nor completely altruistic (Beran:1987:27). They can and do act from a moral viewpoint, by taking the interests and views of others into account. They can make binding moral commitments, even if such commitments are not ultimately in their self-interest. There are moral constraints to choice but ultimately, and this is crucial, an autonomous person '**alone** is the final judge of those constraints' (Wolff:1976:13)<sup>6</sup>. Such an agent is not subject to



the will of others. He gives laws unto himself.

It is largely on the basis of such accounts of persons as autonomous agents that consent is considered essential for the generation of obligations. The requirement of consent is neither logical nor conceptual, but rather a normative prescription. People have a natural right to freedom and autonomy in certain areas **vis a vis** authority. This right is possessed by all people **qua** rational agents and is not a product of some voluntary act. People waive this natural right by specifically declaring the intention to enter into political society and incur civil obligations. In the light of this conception of autonomous persons, political bonds must be freely assumed. Obligation, then, is based upon the person's will.

Wolff's account of autonomy has important implications for responsibility. It is logically impossible to renounce responsibility, even after a person has surrendered autonomy to another. After such a renunciation of autonomy, a person remains responsible for what is done in her name. Wolff goes further. Autonomy is not simply a state of being, something that we are by nature. It is a moral goal, a refusal to be ruled. 'The moral condition demands that we acknowledge responsibility and achieve autonomy wherever and whenever possible' (Wolff:1976:17). Again, 'the autonomous man, insofar as he is autonomous, is not subject to the will of another. He may do what another tells him, but not **because** he has been told to do it'; 'moral autonomy is a combination of freedom and responsibility; it is a submission to laws which one has made for oneself' (Wolff:1976:14). This explains why authority and autonomy are mutually exclusive and incompatible.

This account of autonomy is fairly standard. However, it does not do the work that Wolff designs for it. Part of the problem is that Wolff confuses moral autonomy with freedom or liberty. It is true that there is conflict between freedom <sup>7</sup> and authority. Wolff's autonomy is something else. It is simply 'the power to decide' and this is not the primary concern of this essay. Given

this account, Wolff's juxtaposition of autonomy and authority is bizarre at best. Consider an autonomous bystander deliberating on whether to join the struggle or not. He might ask: What do the liberation movements offer me? Do they allow me to choose whether I support them or not, or do they intimidate me? He might answer his own question thus: 'I support a liberation movement, the ANC, not because it is legitimate but because what the ANC asks me to do coincides with my beliefs about what should be done. I do not do it simply because I was allowed or commanded by the ANC'.

This is a perfectly legitimate and mature form of deliberation. The individual's right to maximum autonomy is assumed throughout this study although it is not clear what is salvaged in so doing. There is no suggestion whatsoever that autonomous persons should delegate their power to decide and reflect to the liberation movements. Still it does not follow that society should act only in conformity to the demands and wishes of each and every individual. Consequently, an autonomous individual could, as a matter of principle, refuse to obey the laws of an elected government. While this decision is morally consistent, it does not follow that no action may be taken by the government against such a person. In other words, from considerations of moral autonomy alone nothing follows about the rights of governments or political organisations<sup>8</sup>. It is for this reason that Carr (1983:473) concludes that:

It is only in moral matters that the agent can be assumed to have the insight necessary to make possible an effective and adequate review of his actions.

To conclude, it will be argued that neither Wolff's sense of autonomy nor Hart's concept of 'equal freedom' implies the bystander's right to refuse to participate in a liberation struggle. What requires further elucidation is whether or not such a bystander is at liberty to decide what she will contribute to a particular liberation movement.

### Obligations and Liberation

What then is the relationship between obligations and liberation? Put differently, why is participation in liberation a moral problem? Part of the problem was mapped out in the introduction. Suppose a person is invited to support the liberation effort along the lines of the examples outlined in the introduction. What response is morally acceptable? Similarly, what can political organisations reasonably or justifiably expect and demand from such a person? Many of the possible answers may be subsumed under two broad responses. Firstly, there is a view that people are obligated only to contribute after they have **voluntarily** agreed to perform or refrain from performing certain actions. Secondly, and in conflict with the first position, is the belief that the **consequences** of people's action will underscore the presence or otherwise of obligations. Here, results rather than intention are important. Yet, while these positions have some merit, they oversimplify the situation. The issue will be shown to be much more involved.

What seems unmanageable are the following two positions. The first involves a non-formal 'member', that is, a member of the oppressed, though not a formal or registered member of a liberation organisation. For example, not all black people are members of or even support the major resistance organisations in South Africa. Yet in both concrete and symbolic terms they are members of the black community, or more generally, of an oppressed group. This is what is meant by 'social group' in this context. Membership of such a group is not voluntary and may be resented because of its political consequences. Nonetheless, such membership is more than simply conceptual. Race classification in South Africa is the cornerstone of everything else. It makes a difference between a decent and nightmarish life. In fact, as far as the government's racial policies are concerned, a person is fundamentally and essentially a member of a group, and everything else follows from that classification.

That there are political implications with respect to membership of a group needs no restating. The issue, however, is whether there are corresponding moral consequences arising from such sheer passive membership. Is being black ultimately not as seemingly neutral as being tall or male? Does sheer membership of the oppressed class confer rights and impose obligations? It is true that on one reading, mere membership could carry moral consequences, because the government has attached moral and legal consequences to being black as such. This issue is examined in greater detail in chapter three. For now it is sufficient to note that members of the oppressed group may be neutral about, indifferent to, or completely resigned to the repressive **status quo**. Such people, referred to as bystanders, may become convinced that they should not participate in specific political activities. Are there any obligations and rights arising from mere membership of a group? If so what are those?

The second position is that of 'political rivals'. These are registered members or formal supporters of rival liberation organisations. This is another hard case. There is something worrying about the suggestion that PAC or Inkatha members have an obligation to support or heed ANC directives. It should be noted that the distinction between the first and second positions is not as great as it might appear. Both the bystander and the political rival raise a fundamentally similar moral problem, namely, how do people incur obligations towards organisations of which they are not members? Both stand to be coerced by an organisation to which they do not belong. What is their relationship **vis-a-vis** anti-apartheid organisations demanding their support?

To conclude, this study is not concerned with the obligations of registered members of the anti-apartheid organisations, or of black collaborators. It is bystanders and rivals who raise difficult moral questions. Given that they have not assented to membership of such organisations, what claims could these groups have on them? Should they lend support to such efforts? If so, what precisely can be claimed here? It will be argued that

everyone has a general obligation not to harm others. Further, injustice and oppression constitute direct harm to the oppressed. What needs to be addressed now is whether the oppressed stand to one another in any special moral relationship and whether they are obliged to liberate themselves. More specifically, are they obliged to liberate themselves by participating in, or obeying, the strategies of a specific liberation movement?

NOTES

1. This is **not** simply an interesting qualification, as will be evident later. The less specific the entitlement, the more difficult it is to decide whether or not an obligation has been fulfilled. There was an allusion to this earlier in the introduction. People may have an obligation to love one another but the only clear cases are negative - not to kill without good reason.

2. This limitation applies, strictly speaking, only to freedom to **act**. An autonomous person retains throughout, freedom to make a **moral judgement**, even in the face of authority or obligations in conflict with his desires.

3. Emphasis added. This is a contentious issue in subsequent chapters. Part of the investigation undertaken is whether or not people may incur obligations without actual or implicit consent.

4. This excludes certain organisations, like the Broederbond whose members swear to obey **every** command.

5. Emphases added.

6. Emphasis added

7. What comes to mind here a typical liberal notion of negative liberty, defined simply as non-interference or doing what one desires (Berlin:1969).

8. On the contrary, from considerations of **personal liberty** something does indeed follow about the limits of a government or political organisation's demands on a person. There are at least three obvious inferences: (a) If persons are free, then their right to choose which parties to support should be respected; (b) Where governments or organisations override personal choice, any consequent coercive measures need to be defended and justified; respect for personal liberty makes it possible to object morally against apartheid. It is simply true (though irrelevant) that black South Africans have a general standard of living that is higher than that which obtains in many other countries where there may be democratic governments. The only successful defence of apartheid is that it treats blacks like children, that is, it denies them their liberty.



CHAPTER TWOSelf-regarding obligations - Are the oppressed obliged to  
liberate themselves?

A Kantian theory about respect for persons would run as follows: You have got an obligation to liberate yourself because you have to respect mankind in your own person as well. Moreover, if I am to respect myself I have to respect you. In order to respect you I have to take your liberty as one of the ends of my actions. Wolff (1976) would presumably concur. He says that the fundamental obligation of people is to autonomy, which he defines as a refusal to be ruled. Wolff does not explain why autonomy as defined should be regarded as an obligation rather than simply a necessary condition for people to be moral (and perhaps political) agents. However, perhaps an argument turning autonomy into an obligation could be formulated along the following lines: If I do not have to be autonomous, then I do not have to be moral. Why? I can be held accountable for only what I choose to do. I have an obligation to try to be moral because, if I do not, then nobody does and the institution of being moral breaks down and we are back to the state of nature.

Clearly, to non-utilitarians, there is something morally repugnant about the claim that people are at liberty to choose slavery, if they so desire. Are people obligated to liberate themselves? Hill (1979:134) defends the view that there could be self-regarding obligations, that is, obligations that people owe to themselves. His Kantian approach maintains that people have a duty to avoid being servile, that willingly opting for slavery is morally defective. His argument is based on three premises (1979:142-144):

- i. All humans have equal basic human rights. The sources and status of these rights differ. Not all are earned. Some may be renounced and others not. However, the right to equality cannot be legitimately and autonomously renounced. Those who attempt such

renunciation do so out of ignorance or fear and as such not autonomously.

ii. Servility is a result of lack of understanding of, and absence of concern for the right to equality.

iii. 'Morality, as a system of equal fundamental rights and duties, is worthy of respect and hence a completely moral person would respect it in word and manner as well as in deed' (Hill:1979:144).

These points are pertinent for what Hill calls 'Uncle Toms', those blacks with unhealthy deference for whites. Uncle Toms refuse liberation, not out of fear, but out of conviction. Fear can be a legitimate motive for not taking on a heavily armed government. The fearful are not Hill's targets. The point argued is not that it is always a duty to insist upon one's rights. If a person 'shuffles and bows to keep the Klan from killing his children, to save his own skin, or even to buy time when he plans the revolution', then, strictly speaking, he is not an Uncle Tom. What is insisted upon is that a minimal right to liberty cannot be waived. Consent to slavery renders such assent worthless. And when it is maintained that slaves have an obligation to liberate themselves, it is also recognised that sometimes it might be unwise to do so.

This argument stands or falls largely on the third premise. It is one thing to suggest that people should respect the sphere of morality, and another to suggest that they have an obligation to themselves. What does it mean to say that they owe it to themselves to be free? This is not contentious at all and in fact there are also other sound arguments against voluntary and involuntary slavery (Hare:1989). For example, slavery regards people as means rather than ends, it maximises pain and dehumanises. However, Hill's argument is expressly non-utilitarian. He essentially argues that the source of the oppressed's obligation to liberate themselves is 'their right to equality' (1979:146). Suppose though, that the oppressed were not Uncle Toms. They acknowledge that there are certain basic equal

rights, regardless of race and gender. Are they bound to liberate themselves? One way in which they may be obligated is on the basis that people - all people - have an obligation to fight injustice. The argument could take the following form:

i. I have an obligation to try to create a more just society.

ii. A society in which I am equal under the law is a more just society than one in which I am not.

iii. Therefore, I have an obligation to try to create a society in which all are equal under the law.

If liberation means the achievement of equality under the law, then I have an obligation to liberate myself. It is noteworthy that this formulation says nothing about **what** those obligations specifically are and **how** they should be fulfilled.

Oppressed people, and others for that matter, may also have an obligation to disobey, or to refrain from cooperating with an oppressive system. This need not be taken in a radical sense that an oppressive government must be opposed in everything. Although a system may be fundamentally unjust, this in itself does not imply that every rule emanating from such a government is necessarily unjust as well. In repressive states, cooperation with non-discriminatory traffic or health regulations might be essential, even for the disenfranchised group. It is also feasible to maintain that civil disobedience is a right, rather than an obligation. It is now a commonplace belief among non-utilitarians that people are entitled to maximum freedom, compatible with similar freedom for others. To say people ought to, or must pursue freedom is a much stronger claim. What would be the basis of such an obligation? One could argue that people have a natural duty to pursue justice. This is akin to the injunction that 'non-cooperation with evil is as much a moral obligation as cooperation with the good'. Debates regarding 'co-operation' with the system are endemic in political discourse in South Africa. For example,

'non-collaboration' with ruling class institutions is one of Azapo's cardinal tenets. In the past, within the United Democratic Front the debate surged occasionally about 'participation in state structures', a euphemism for the much-disparaged collaboration. What is involved before a person is labelled a collaborator? This is not a neat term, and its application produces some difficulties.

For some it refers to those involved in the implementation of apartheid. Such a general injunction leaves very few people out of the net. Teachers, university personnel, civil servants, the business sector, religious ministers and foreign diplomats are all, in one way or the other, involved in the implementation of apartheid, whether voluntarily or not. Strictly speaking, any 'law-abiding' citizen in that situation would be collaborating. For the sake of clarity, this group is referred to as the non-voluntary participants. However, it is obvious that this is not what is meant by collaboration.

A likely connotation is that of people who collaborate with what is expressly oppressive, and whose explicit mandate is to implement apartheid. The situation becomes clearer where such collaborators are heavily rewarded by the government. This would include Bantustan functionaries, black community councillors and security police. The ordinary uniformed 'criminal' police branch is much more difficult to classify. For one thing they too implement apartheid, especially in the enforcement of laws such as **Influx Control** and the **Group Areas Act**. They have also been used in dubious political roles like disrupting peaceful protests. On the other hand they are also doing work ordinarily done by police all over the world.

It is helpful to conceive of a class of 'voluntary collaborators', which includes people who, in principle, can avoid doing those jobs in a way that an ordinary person cannot avoid 'collaborating' with the **Group Areas Act** by living in Soweto. If Martin Luther King's non-collaboration exhortation is directed at the voluntary participants, it makes sense to maintain that they have an obligation not to collaborate. This obligation is based on

the amount of suffering their actions inflict upon their fellow citizens. People have a moral right not to be harmed. King's injunction is also sound when addressed primarily to the privileged members of an oppressive society. No person can be blamed for having been born white, any more than being black *per se* is intrinsically good. However, where unjust privilege is attached to natural features, this presents moral challenges to those who have profited on the basis of race at the expense of others. People who voluntarily live off the fruits of oppression, those who strive to maintain the system, or fail to oppose it, do indeed seem to have an obligation not to collaborate, on King's injunction.

If this is all that can be said about the obligations to fight an evil system, this does not carry the issue far enough. It is necessary to revert to the question about ordinary members of the oppressed - the reluctant co-operators. What could it mean to say they are under an obligation to liberate themselves? The above account of 'non-collaboration' deals with a small fraction of 'sell-outs', and those who are politically privileged, rather than with the reluctant co-operators who are the focus of this study.

In contrast to Hill, Singer (1961:311-318) dismisses any theory regarding self-regarding obligations for two main reasons. First, it makes little sense to maintain of a person that he is bearer of both a right and its correlative obligation. He denies that there could ever be self-regarding obligations. Such obligations, he contends, involve a self-contradiction. A duty against oneself necessarily implies a right against oneself and this is plainly nonsense. Second, one of the essential features of an obligation is that someone has to release you from it. A person under obligation cannot release himself from it. An obligation from which a person can readily release himself is no obligation at all. People can fail to meet their obligations, they can break promises, but they are never in a position to release themselves from such obligations. Consequently, he maintains, all talk of self-regarding duties is purely metaphorical. It refers to the strong determination people have to do something for themselves.



It means either that one has a right to something, or that he ought to do it in a prudential sense. In the same way, to say that the oppressed have a duty to liberate themselves is simply to suggest that they ought to do so, or that they very strongly ought to do so.

Singer makes a great deal of the claim that an obligation can only be one if it is binding, and only if somebody else can release you from it. He presents this requirement as if it were self-evident. In fact it is not and is one of the points in dispute. It is not logically inconsistent to maintain that obligations simply bind - and they might even bind in such a way that nobody can actually unbind the obligated. Imagine a judge who has to impose a mandatory sentence. This is how he might explain the situation to an accused pleading for clemency:

I am afraid that the mandatory sentence is part of the law and I am obliged to find you guilty and sentence you to death. There is no way I can release myself from this obligation. There is nobody who can release me from this obligation. Nobody has the power to change these rules - they are just rules. Under these rules we have fierce obligations and that is all we have got.

To make freedom an obligation (in the sense that it is enforceable) is to suggest that people can be forced to be free. Metaphorically, it is perhaps possible to do so, but literally 'forcing people to be free' is hardly an intelligible notion. It is part of the concept of autonomy that people should be at liberty to make their own decisions, even where their judgement is considered faulty or ill-advised. When workers in South Africa take a pro-sanctions position, it appears to be irrational. Indeed, it even looks suicidal that people might opt for measures that make life even more intolerable for themselves than had hitherto been the case. However, ultimately it is their choice. Some people might even choose to be slaves: '[Rousseau] is wrong if he means that men cannot place themselves voluntarily in a position of servitude and mindless obedience' (Wolff:1976:15). Of



course Rousseau did not mean anything of the sort. This too remains their choice, however pathetic.

It is difficult to give a non-metaphorical account of 'the obligation of the oppressed to liberate themselves'. For now it must be concluded that the obligation to liberate themselves cannot be explained simply in terms of what they owe to themselves. Possibly such obligations can be incurred by the oppressed if, for example, they make such an undertaking to one another. The undertaking can be express or implicit. It is a type of social agreement, and not an obligation arising from the nature of persons. As a result, whether people have such an obligation or not is an empirical, rather than a logical issue. The Kantian doctrine of obligation (and Hill's version of it) strikes a sympathetic note. In fact in chapter eight some arguments are provided support the claim that slavery is morally repugnant regardless of how content the slave might feel. Still, for the purposes of this work, this version of self-regarding obligation is unhelpful. It simply states that a person would be morally enriched if he were to liberate himself. In short it merely illustrates that people have a duty (the sense of the term suggested here) as opposed to an obligation. The present argument requires something stronger. Two features of obligation pertinent to this argument are worth restating - correlative rights and moral enforceability. In other words, do obligations to myself involve a right on the part of anyone to coerce me into meeting those obligations? Kant does not address this question. In effect Kant's theory is highly anti-paternalistic.

Ultimately, as it is argued later, the obligation people have to liberate themselves turns on the obligation all have to refrain from harming one another. Every person has a right not to be harmed. Although this obligation holds between all peoples, only the oppressed are the target group of this study. Jaspers (1978:32) captures the essential notion of this overriding obligation not to harm:

There exists a solidarity among men as human beings that makes each co-responsible for every wrong and every injustice in the world, especially for crimes committed in his presence or with his knowledge. If I fail to do whatever I can to prevent them, I too am guilty. If I was present at the murder of others without risking my life to prevent it, I feel guilty in a way not adequately conceivable either legally, politically or morally

One could therefore argue that injustice, such as apartheid, is injurious to the oppressed's right not to be harmed. The liberation struggle is thus conceived of as a self-defence mechanism requiring collective action of all the oppressed<sup>1</sup>. In principle, the duty to liberate the oppressed lies squarely on everyone's shoulder, although in practice the primary role is likely to be played by the oppressed themselves. In short, negatively the oppressed have an obligation not to harm one another and, positively, they have the obligation to bring about justice. The rest of this study is an attempt to sustain this thesis.

**Do the oppressed, qua oppressed, stand in any special moral relationship to one another?**

In an obvious sense there are moral obligations which apply to people solely as people. They are acquired by mere membership of the human race (Hart:1967). These are not targets of this study, which is concerned with the obligations and rights people are said to acquire simply through inevitable membership of a group within the human race. That group may be linguistically, geographically, racially, sexually or ethnically determined. In this sense, is blackness<sup>2</sup> a way of drawing a morally significant line (rights and obligations) whereas tallness and obesity are not? This study defends the view that it is possible for groups (the oppressed in this case) to have obligations towards one another, precisely on the basis of their blackness. This position depends on a crucial difference between blacks as 'blacks' and blacks as the 'oppressed'. The argument is based on a teleological approach.

However, to begin with, it is necessary to consider certain arguments regarding group rights and group obligations. There are several possible approaches, the first of which depends on a certain conception of society.

### Two Concepts of Society

In the first place, reference is made to an atomistic conception of society. It portrays individuals as rational, free and autonomous. As autonomous creatures they are personally responsible for what they do. As a result they should be held personally responsible only for what they do, rather than what they are. As far as society is concerned there is nothing more to it than simply an aggregate, a sum total of individuals. This atomistic model of individuals underlies much of the social contract theories of Locke (1966) and Hobbes (1968). According to this view, society is not a metaphysical entity with an independent existence or rights over and above those of individuals comprising it. In particular, the state is a voluntary creation of autonomous agents following a social contract to opt out of the state of nature. The basis of obligations according to this theory is consent, a concept addressed in greater detail in the next chapter.

In contrast to this position, there is a view that people are essentially members of a group with obligations and rights attached to that group. For convenience, this is referred to as a collectivist conception of society. Such thinking is often, though not necessarily, the cornerstone of racism and tribalism. In fact in South Africa this philosophy will be the last bastion of apartheid. Many other things have to go before the National Party capitulates on the dogma of the political and moral priority of groups.

At first sight, it seems difficult to conceive how being black, Jewish or female *per se* should engender obligations within members of those groups. This does not suggest that such obligations cannot, in principle, arise. In fact, it will be

argued that obligations could arise from the contingent fact of being black, female or Jewish. However, the basis of such obligations would have to be something much more significant than sheer natural features like race or gender. In other words, it is not necessary to ontologise such features. The same applies to being oppressed. For example, no black South African chose to be black. Membership of the black group is entirely involuntary. It is true that the oppressed might begin to interpret their blackness and oppression and give them political significance. This is partly what the black consciousness movement in South Africa is about. It attempts to transform blackness into a significant political factor. Still, this would not alter the fact that the blackness as such is something over which the oppressed have no control.

The atomist model rejects any account of the ontological priority of groups. If blacks are obligated by nature towards other blacks, why not the same with females, short and tall people, blonde women and so on? Besides, there are black people who resent being seen as blacks. They insist on being simply human and nothing else. This seems only fair. For one thing, blackness and whiteness are categories of racist institutions. They are indicative of a distorted political culture rather than of the nature of persons. They refer to nothing inherent in people's nature. To base obligations upon blackness as such is prone to engender some irrational reactions. This might restrict the people's choices, and their outlook. People, it would appear, are individuals and should be treated as such.

Central to this view (significantly shared by various anti-apartheid organisations) is the belief that people are equal and that characteristics such as colour and gender are as morally irrelevant as height and weight. What makes these features morally irrelevant? It is because 'people cannot by their own voluntary choices determine what skin color, sex, or IQ they shall have, or which hereditary caste they shall enter' (Feinberg:1973:108). Differences among people are morally relevant '...only if they are

differences for which their possessors can be held responsible'. Similarly, natural qualities or properties can be grounds for discrimination 'only if those persons had a **fair opportunity** to acquire or avoid them' (Feinberg:1973:108).

Misgivings about using colour and gender as moral criteria of social policy emanate from what Patterson (1986:80) calls 'a profound reluctance in the Anglo-American moral and legal tradition to accept the principle of group rights and claims'. Such concern seems understandable. Obsession with 'groups' rather than individuals easily leads to irrational and sometimes immoral policies like racism. After all, apartheid and nazism are based on a certain conception of the nature of groups and the consequent rights due to such groups. However, the moral equality of persons demands that people be treated as autonomous and responsible individuals.

That there may be moral and political implications for non-voluntary membership of a group is beyond dispute, and South Africa is a case in point. The issue, however, is whether or not there are **moral** rights and obligations resulting from sheer passive membership. As was pointed out in the previous chapter, the oppressed may be neutral about, indifferent to, or completely resigned to the oppressive **status quo**. They may also be non-sectarian in the sense of being politically committed to the cause of liberation though not necessarily to particular resistance organisations. Such people might choose to exercise political options through other channels such as religious or economic institutions.

Alternatively, they might reserve for themselves the right to decide which activities they will support in the various political organisations without pledging their loyalty to organisations as such. They might feel that choosing organisations is something for the next phase of the liberation effort, or believe that the organisations are in fact divisive. Such people are by no means unique. On the contrary, they may be representative of a multitude of persons. If there are any obligations arising from their mere



membership of a group, by virtue of, say, gender or race, what are they? It will be argued that although obligations could arise within groups, their basis and scope extend beyond the group as such. They may be part of moral obligations obtaining between people *qua* people, which happen to apply contingently to a particular group in specific historical circumstances. For example, from the moral obligations not to harm others or to establish and promote just social orders, may follow an obligation for the oppressed to cooperate in fulfilling this general obligation within their singular situation. In other words certain obligations may be confined to a group only in a derivative sense. This issue is developed further below.

In respect to involuntary membership, it should be noted that the position of the oppressed is not significantly different from that of ordinary citizens. Citizens simply are born into societies and states. Membership of states and societies is involuntary. It may be true that people may voluntarily choose to live in particular states, but they are not at liberty to be outside states.<sup>3</sup> Similarly, siblings do not choose to belong to the same natural family. It is partly on the basis of such considerations that the social contract theorists insist that until individuals meet in a convention, they have no positive obligations to one another. Positive rights and obligations are the result of this specific agreement.

If the foregoing analysis is correct, it follows that blackness as such should not be a moral category and therefore no obligation should arise from sheer membership of the oppressed class. Is the issue as simple and straight-forward as these arguments suggest? It would appear not. There are several instances which are said to militate against an inflexible commitment to individualism and its consequent distrust of the group rights notion.



### A case for group rights and obligations

There could be non-controversial notions of group rights (Patterson:1986:81). For example, states are considered legitimate actors in the international arena and are accorded certain rights under the United Nations Charter and International Law. Corporate groups like firms and trade unions enjoy similar rights. The problem is largely with non-corporate organisations like blacks, females and Jews.<sup>4</sup> They are not considered legitimate holders of rights and claims. Patterson argues that this creates some tension in social policy as, for example, in respect to freedom of religion. To grant a group such freedom is to confer some rights upon a non-corporate body since, by definition, religion is a shared activity in a community:

When we say that Jews have the right to practice their religion, we recognize the existence of a non-corporate group of believers.

This argument is useful only to the extent that it demonstrates that the notion of group rights is not conceptually absurd. However, nothing can be derived from this about the existence or otherwise of the obligation of the oppressed to liberate themselves.

There is another version of group rights and responsibility. This is particularly common in cases of social and political injustice. Sometimes the guilty group might even take collective measures to make amends. This is how, originally, the grounds for affirmative action programmes were formulated. Arguments for this version might run as follows: The apartheid system has discriminated unfairly against blacks and continues to do so. In this way, it violates their rights and does them injustice. On the other hand, whites have unfairly profited from the system that historically favours them. Consequently, this situation requires appropriate means to restore the balance. By preferring blacks to whites, society compensates blacks for past (and present) suffering and similarly punishes whites for the gratuitous advantages they

have enjoyed in the past.<sup>5</sup>

On the face of it, there is something plausible about this approach which appears to conform to the demands of natural justice. Legal systems impose penalties for undue and unfair advantages. Similarly, civil law prescribes compensation for unlawful harm caused. However, the aim in these cases is that only the guilty party is penalised and only the harmed person receives compensation. Does affirmative action, in this sense, meet these requirements? Obviously not. The problem here is that whereas affirmative action concerns classes (blacks and whites, males and females), its policies have to be applied with respect to individuals. The result is that blacks who may now benefit from affirmative action policies need not be, and often are not the same persons who have suffered in the past. Not all blacks suffered in this way. The converse is also true of whites.<sup>6</sup> A question raised is whether, for example, a white individual is obligated if his group decides it is going to repent by taking affirmative action.

### **Contingent and contextual group obligations:**

#### **A consequentialist account**

Suppose that, during a school boycott, the 'comrades' approached their teachers with this ultimatum: Either they all join the boycott or they will all be 'necklaced'. The boycott supports a demand for the dismissal of a headmaster who had just acquired a Mercedes Benz, and therefore betrayed the 'workers' struggle'. The comrades insist that such 'bourgeois' tendencies could easily subvert the values of 'people's education'. This necklace will be applied to all teachers even if only one of them fails to support the boycott. It should be noted that the ultimatum is flagrantly unreasonable and totally immoral even if restricted to those teachers who fail to meet the students' demands. It is even more outrageous if it is extended to those who comply. Why should they be held responsible for somebody's

'misbehaviour'. The ultimatum is also irrational because it provides no motive for others' observing the boycott once a single dissenter has been identified. However, this is not the crux of the matter. The issue is that the demand is morally reprehensible, regardless of whether it is efficacious or not. Suppose though that one teacher decided to resist the pressure and proceed to work. Assume further that the sole reason behind his behaviour was a personal conviction that, as an autonomous agent, he had the right to decide for himself whether or not to join the boycott. He was not going to surrender his autonomy to a bunch of immature youths. He finds the cause of the boycott particularly abominable. He chooses to die with pride rather than live with dishonour. He is willing to die and his family shares his idealism even though they would rather he lived. How would a consequentialist respond to this situation?

Let us assume that very few if any people would challenge his consternation over the ultimatum. In fact dismay is widespread both in the community and among the teachers. This much conceded, it would appear that, on consequentialist grounds, he nevertheless has the responsibility to other people who may not share his vision and courage (some would not call this courage but he deserves the benefit of the doubt). If other teachers were subsequently necklaced the culpability lies primarily with the comrades. There should be no doubt about that. On the other hand, it is not obvious that the heroic teacher is altogether innocent. It seems that he had an obligation to take into account the other members of the group, even though he had not entered into any formal treaty with them. He has chosen knowingly and voluntarily a path extremely injurious to others. The demands he rejected were both irrational and immoral. Yet he had an obligation to meet them only to save others. He had nothing but his personal pride and honour to lose. The others lost their lives as a result of his refusal to capitulate.

This argument proves something much broader than might appear at first glance. It demonstrates that the teacher in question had

an obligation not to harm **anyone**, including his fellow teachers. It does not prove that he should not harm the teachers simply because they are **his** fellow teachers. The obligation would have remained even if the potential victims were nurses or pupils from a foreign country currently visiting his school. At the same time this situation illustrates some important features of group obligations. **Ideally**, teachers' professional duties and obligations are restricted to those outlined in their conditions of service and nothing else. They stand in no other moral relationship to one another. They cannot dictate to one another political and moral views. **Contingently**, they may have to intrude into one another's private domains as is evident from the above illustration. This is commonplace. Travellers in an aircraft form an involuntary membership and owe one another nothing except what is provided in the rules. Thus, for the comfort of fellow travellers, they may not smoke in a non-smoking area. These conditions are explicit. However during a hijack a new moral situation arises which demands their sensitivity to one another's interests. One could worsen the situation for himself and for others simply by taunting or insulting the hijackers.<sup>7</sup>

The next section examines the context of oppression in South Africa, and possible obligations that may arise from this contingent situation.

### **Contingent obligations of the Oppressed**

The debate whether blackness (or gender) are moral categories is endemic in South Africa. The South African situation is an obvious example of the moral relevance of both colour and gender. The challenge is how to give an account of group solidarity without simultaneously embracing such irrational attitudes as 'my country right or wrong' or 'my black brother right or wrong'. Black consciousness movements exclude whites simply because they are white. Affirmative action also gives preference to blacks or females precisely because they are black or female. Critics of



black consciousness and the affirmative action programmes argue that these positions simply amount to inverse racism and sexism and should therefore be condemned as forms of prejudice.

It will be argued that blackness is a contingently but significantly morally relevant category. This is not how things should be ideally. Such moral relevance is an empirical rather than a conceptual imperative. Although blacks are accidentally and contingently classified as such, in a racist situation they have to deal with one another morally. Similarly, there is essentially nothing wrong with ethnicity, but in South Africa this is a significantly dangerous notion because it has been used to divide and rule the oppressed. In contrast, whereas religious affiliation is not politically significant in South Africa, it is so in Northern Ireland. In South Africa a person is first a member of a 'population group' and everything else follows from that. This is the thrust of the **Population Registration Act** whose function is to classify South Africans according to race and tribe. Indeed many argue that only when this Act is scrapped could one begin to talk of the end of apartheid. In short, if there is a government that distinguishes people on the basis of colour, then this invariably creates groups with potential moral significance. If blackness has been made the basis of an important political distinction, then it does make a moral and political difference.

This means that race and colour in South Africa are not merely morally neutral. On the contrary, they are highly politically and morally significant. For that reason, race and colour may be bases for political obligations within the oppressed. This is underscored by the liberation movements who persistently call for the unity of the oppressed or, as the BCM refers to it, black solidarity. It is too slick to dismiss such calls as simply reverse discrimination as critics tend to do. Both black consciousness and affirmative action programmes are under constant criticism precisely on these grounds.

Still, if blackness is the basis of moral and political rights, so whites should unite in supporting the **status quo**. After

all, the National Party government is precisely at pains to argue that groups are the basic political entities with rights and obligations. It has been argued earlier that gender and race **per se** are indeed morally insignificant. However, the present argument is that these categories can be **contingently** significant from a moral point of view. Wasserstrom (1980) provides powerful objections to the liberal analysis that racial discrimination is morally wrong because it is based on the 'irrelevant' criterion of skin colour. He argues that race (or gender), far from being irrelevant or trivial, is in fact often highly socially and politically relevant. He goes on to hold that discrimination is wrong for a different reason altogether, namely, because it is a form of **oppression**. Race and gender can be morally significant criteria of association and admission, especially in areas which have important social implications. So, in the programme of affirmative action, it would not be blackness **per se** that is being rewarded but rather what blackness has come to signify. Blackness and gender are 'reactive,' as opposed to 'technical' qualifications, that is, abilities and characteristics 'which contribute to job effectiveness by causing or serving as the basis of the appropriate reaction in the recipients' (Wertheimer:1983:100). For example, a woman may legitimately prefer a female to a male gynaecologist. Similarly, when blacks and women insist on greater black or female representation, they do not glorify race or gender. They simply insist on an end to discrimination.

It is tempting to equate affirmative action with racism because, in both cases, colour and nothing else is the deciding factor. A moment's reflection, though, should demonstrate that this comparison is misleading. While it is true that colour is the common factor, the picture alters when the intentions behind affirmative action and racial discrimination are taken into account. According to Wertheimer (1983:107),



...it is not always illegitimate to respond to purely innate characteristics...a preference is less legitimate if it is based on hierarchic judgements about social groups. A preference for racially segregated bathrooms is objectionable, not only because it is irrational, but because it is rooted in unjustifiable hierarchic beliefs. Preference for sexually segregated bathrooms may also be irrational but seems relatively unobjectionable because it is not rooted in hierarchic beliefs.<sup>8</sup>

Affirmative action makes no claim as to the racial or gender superiority of blacks and women. What is at issue is simply that at this stage choosing a black or female would be more helpful than choosing a white male (see also Meyerson-Taylor:1984).

To conclude, mere passive membership of a certain group does not necessarily involve obligations although it may. Where obligations exist they are not based solely on the involuntary membership of a group. Involuntary membership *per se* creates neither rights nor obligations and is morally irrelevant. What is morally relevant is what that membership has come to represent within a political culture. Where rights and obligation might arise within these groups they will be accounted for by some factor other than sheer passive and involuntary membership of a group. The rights and obligations themselves are not logical constructs from mere membership. They may be products of negotiation, convention or moral considerations. For example, if people implicitly or explicitly resolve to end their oppression, then they might incur obligations to support institutions and organisations that bring about that liberation. Even more important, such rights and obligations will be backed up by a type of teleological justification. They may be required if an important social goal is to be achieved. The oppressed might argue that if the liberation effort is to be effective people have to support it. The obligation is owed by everyone to one another. It has been shown that the issue is much more complex than is suggested in this argument.

Thus it is possible for the oppressed by virtue of being the oppressed to have an obligation to one another. However, it is not necessary to refer to group rights as though these were some kind of unpolluted, ideal, non-contextualised, moral universe. Such an attitude can at best look very suspect. To say that blacks can have obligations to one another is not to reveal one of the deepest moral truths in the universe. It is simply to express contingently and importantly significant facts about a particular oppressive (South African) situation. Such measures are what Wasserstrom (1989:52) calls instrumentalities, that is, 'permissible and appropriate ways by which to alter the social reality in order to bring about a greater congruence between it and the relevant social ideal'. The professed social ideal in black consciousness, affirmative action and the liberation struggle in general is a non-racial society. Black consciousness and affirmative action should not become ongoing or permanent features of society. They are merely temporary means designed to bring about an effective and fair move from the existing state of affairs to a closer approximation of this ideal. In an angelic moral universe such measures would be unnecessary (and presumably so would be morality as a whole).

Obligations of solidarity and collective action may obtain within the black community. Such obligation would be based on the contingent fact of blackness and 'being oppressed' as equivalents in a singular South African situation.

#### **Possible sources of obligations obtaining within the oppressed communities**

The previous chapter focused on general sources of obligation. This section looks at specific sources of obligations which the oppressed may owe to one another. There are several:

- i. The oppressed may decide to form liberation movements and overthrow a repressive regime. If the resultant organisations are products of consensus within the oppressed, then they have an obligation to support the

groups. Such obligations would be based on consent. This is examined in chapter three.

ii. Liberation may be viewed as a public good requiring collective action. Because certain indivisible benefits will be available to all and sundry in the event of liberation, it sounds only fair that all should carry the costs towards the production of such benefits. This is the thrust of the principle of fair play discussed in chapter four.

iii. People have a natural obligation not to harm one another. Those who fail to support the production of an essential benefit could be causing harm to society. More relevantly, the oppressed who fail to support the liberation struggle may harm other fellow-oppressed.

iv. If a liberation organisation is stable, organised, fair and displays some structural virtues, then the oppressed may be obliged to support it, even if they have not elected it or consented to its demands. This is akin to what Rawls (1971) calls the 'natural duty of justice'. This line of argument will not be pursued. An important thrust of this study is that obligations have nothing to do with moral virtues of the coercer or coerced.

NOTES

1. Naturally the means employed might sometimes push the liberation struggle beyond self-defence. For the moment I am concerned about the principle of self-defence, not its possible abuse.
2. The term 'black' covers all people who are politically disenfranchised, that is Africans, Coloureds and Indians.
3. Perhaps this last constraint is purely practical rather than logical (See Beran:1987).
4. It is true that in South Africa the ruling party insists on group rights. This is only because black tribes and whites are not merely social non-corporate groups; they are legal and political entities.
5. It is difficult to sustain the argument that affirmative action is required by natural justice (See Maphai:1989).
6. These issues have been extensively analysed in the American literature, especially Dworkin and Wasserstrom, and also by Meyerson-Taylor in South Africa (See bibliography). There are plausible utilitarian arguments in favour of affirmative action. However, it is a major flaw of many positions to explain affirmative action in terms of rights (Maphai:1989).
7. It should be emphasised that these arguments make sense only from a consequentialist viewpoint. A rule-based morality (Kant and Rawls) will not readily condemn the teacher's refusal to comply with the students' demands. They may argue that the consequentialist arguments similarly lead to the condemnation of Christ 'whose stubbornness led to the suffering of the Jews', or to Nelson Mandela 'whose initial refusal to compromise resulted in many years of incarceration and suffering for himself and his family'. Similarly, the Israelis have adopted a non-utilitarian attitude to hijackers - 'We don't negotiate with terrorists'. In most cases they win, even if they take enormous risks. If they loose, they will certainly be responsible for the death of hostages but it is not obvious that their stance would similarly be wrong.  
The above non-utilitarian concerns are not idle talk. Still, this is not the place to discuss the relative merits and demerits of consequentialist and deontological ethical theories. The point was simply to demonstrate that on utilitarian grounds, individuals may have obligations towards others in terms of how they conduct themselves.
8. Meyerson-Taylor (1984) effectively makes the same point when she says:

There is a relevant difference between excluding somebody on grounds of an unalterable characteristic he has which society deems no use to it, and excluding somebody on grounds of an unalterable characteristic he has which society deems contemptible.

This issue is also discussed extensively by Maphai (1989)



### CHAPTER THREE

#### What is consent? - An analytic-historical Survey

To recapitulate: This inquiry is concerned with the obligations people may have to liberate themselves, and the claims covert liberation movements may have on bystanders. Chapter two addressed the first part of this concern. This chapter deals with possible claims by liberation movements for support from bystanders who may share the broad goal of liberation, without explicit (or even implicit) adoption of party manifesto or code of conduct. Where reference in this chapter is to the 'legitimacy' of the resistance organisations, or to 'legitimate authority', this should be read as a shorthand for the considerations that entitle covert resistance organisations to demand support from bystanders. In other words, under what circumstances, if any, is consent a feasible basis of obligation towards resistance organisations? It is worth repeating that any such obligation excludes the obligation to join a specific organisation, or to promote aims and objectives exclusive to that group. The question is then reduced to this: When are bystanders obliged to give their support? A possible answer, examined in this chapter, runs as follows: If bystanders **consent** to supporting a resistance organisation, then such consent creates obligations on their part to render support.

One way in which the fact of covertness or undergroundness raises an interesting moral issue would be if consent were considered a particularly important, central and basic way of getting people under obligation. This is so because overt, publicly-discussed, genuinely voluntary ways of getting people under obligation look like self-evident paradigm cases of incurring obligations. Conversely, membership which is clearly covert, coerced, insecure, undiscussed or uncertain looks like a prototype violation of freedom of association. In other words, consent theory presupposes that an organisation which operates openly, which can recruit members and discuss its concerns publicly, would



have an easier task securing consent for its projects, and would thus be a genuinely voluntary organisation. If one takes consent seriously, the obligation of the members to go along with projects to which they have consented would be quite strong. This is in contrast to an underground organisation whose members and leaders are in constant danger of being attacked or arrested. In short, if an organisation is above ground, it can meet more of the requirements than if it were underground. Government critics, for example, insisted on the unbanning of the resistance organisations so that they could be legitimated by the consent of the population.

Clearly then, secret organisations raise questions about obligation which overt organisations do not. Besides the question of efficacy there is also a question about their moral grip on their membership, or their constituency. This is captured by Van Zyl Slabbert's (1987:93) portrayal:

A party or movement in exile or underground is forced into a different style of politics than one which facilitates participation in a process of negotiation. Exile politics is bound to generate more uncompromising, militant, charismatic and less accountable leadership than the kind which is bound to the ritual of constituency politics. The very fact of being able to communicate and discuss...must have a different impact on the style of leadership than under conditions of persecution or violent confrontation.

There is a sense in which it sounds frightfully unfair to say of a secret organisation that its moral claim on its constituency or membership is weaker than it would have been if it were not a secret organisation, when the secrecy is forced upon it by governmental oppression. They may rightly retort that it is not their fault that they have to operate secretly, that sometimes they have to cut moral corners. An obvious of argument is that covert arrangements form a weak basis on which to claim the clear, unforced, unfeigned, deep consent of an organisation's potential constituency.<sup>1</sup>

This argument requires careful examination. It may be that belief in the importance of consent is inflated to the point that one could not possibly do anything, no matter how hard one tries. Some theorists, such as Wolff (1976), set their standards for consent so high that no organisation, or even government will meet them. Wolff contrasts autonomy (refusal to be ruled) and authority (the right to rule). Against this proposition, it will be argued that if consent is a route to obligation, then neither is it the only one, nor even the most persuasive. It is worth emphasising that in any theory of obligation there are likely to be questions about covertness that cause trouble for the moral claims of covert organisations. The most obvious theory, and one which causes a great deal of trouble, is the consent theory. If consenting is all that obligation is about, then covertness is naturally a disaster because all the criteria for legitimate consent are going to fall on their noses. However, the question to be asked is how plausible consent is as a route, even where it is overt and public. It would help if the answer to this question is preceded by a brief survey of the social context of covert organisations.

### The social context of resistance organisations

South Africa has not had one single overriding liberation movement, commanding the overall support and loyalty of the oppressed. The African National Congress, the Pan Africanist Congress, the United Democratic Front, and the Azanian People's Organisation are currently the notable actors, with varying degrees of influence and support. The first two were banned in 1961 in terms of the **Suppression of Communism Act**. It was illegal for anyone to be a member of these organisations, or to further their aims and objectives. They were only unbanned in 1990. Azapo and the UDF have always been legal although since 1987 they could not function or pursue the aims for which they were founded. From that time, they did not differ substantially in legal status from the other organisations. Two other important groups were the South

African Students Organisation and the Black People's Convention. Both were instrumental in the major internal rebellion in South Africa in 1976 and subsequent events. Both were outlawed in 1977.

A feature common to all of them is strident opposition to racial discrimination, and a commitment to its downfall. This view was generally shared among other oppressed people, even though not aligned to any of the groups as card-carrying members. Underground resistance groups are typically not born out of referenda and voting. They issue from the initiative of a handful of people, who increasingly cast their nets further in an effort to boost their strength through numbers. They do not, and in practice cannot, seek a mandate from everyone before beginning to function. The nature of the struggle being waged does not permit this type of openness. Organisations simply establish themselves and only afterwards begin to campaign for legitimacy. If consent is the necessary condition for obligations, then clearly only a handful of people, the registered members, have an obligation to place themselves at risk.

Bystanders might be sympathetic to the cause, and be willing to support it. Where there is only one major organisation, they might find it easy to channel their effort through this organisation. However, where there are a number of groups competing for support, the issue becomes foggy. Which of the groups can legitimately make demands upon people? This becomes even more frustrating when people find themselves under pressure from all sides, that is, the government and its opponents. As a result, it is possible for people to deny obligation to any one group.

Underground work is inherently undemocratic. Its security and success depend precisely on ensuring that strategic plans evade police surveillance. Secrecy, at least in some important campaigns, is vital. This rules out a democratic consultation which would be tantamount to the advance release of war plans. Communication networks became sophisticated, and conducted by stealth. Pamphlets are distributed at night, while 'Radio Freedom'

beaming from foreign countries plays its part. However, such pamphlets and bulletins are not designed to get opinions from people, or even to provoke debate about the merits of their exhortations. They are meant to enlist support, to mobilise people into action.

Consultation is virtually impossible, except within a secret cell. The best the leadership can do is to keep an ear to the ground and attempt to capture the mood of the people. However, it could not enlist consent in any meaningful way. Yet, at the same time, its programmes have to continue, through the participation and support of the very people who have not consented. Related to the question of secrecy is the identity of the leaders themselves. If people are obligated, then they owe obedience to people whom they have hardly seen, or are unlikely to see. It is true that certain key political figures may be known, but these do not move from village to village testing opinion. They are not within reach. While the groups functioned legally, the leadership was known. However, even here there were severe restrictions on the leaders. After the declaration of the **State Of Emergency** in 1985, it was, until recently, impossible to hold political meetings without inviting the police armed with dogs and teargas.

The anonymity of leadership creates serious obstacles to consent. In a situation of confusion and upheaval, people receive all types of messages and instructions from unverifiable sources. Some emanate from criminal opportunists who collect money for alleged political causes. Others seem to issue from government supporters and are designed not only to cause confusion and discredit resistance organisations but also to unravel civilian support for the movements. Selous Scouts in Rhodesia were particularly adept at masquerading as guerrillas and terrorising people. The effect of this has been to discourage people from tacit or express consent to political obligation.

### Consent theory and resistance organisations

The insistence upon consent as a uniquely valid basis of obligations stems from a fundamental moral belief - the belief that autonomous adults ought not to be coerced into actions at variance with their desires or convictions without justification. Such justification takes various forms but, on the whole, involves appeal to another value of equal or more fundamental order. Indeed, one can autonomously, and for sound reasons, surrender liberty in respect of many areas of life. This in essence is what the social contract theory is about. It will be recalled that for Hobbes (1968), rational creatures in the state of nature were willing to surrender all their rights to an absolute monarch in return for security. Similarly, Locke (1966) argues that people were willing to give up part of their rights and freedom, in return for protection to life and property. There is another consideration, namely that 'power corrupts'. Unless authority is elected or accountable it is likely to become tyrannical.

The fundamental tenet of classical liberalism is that consent ought to form the basis of a legitimate authority. In other words, 'no man is obligated to support or comply with any political power unless he has personally consented to its authority over him' (Simmons:1979:57). This is a 17th century doctrine. Before that the Pauline doctrine held that all authority of governments, especially kings, derived from God. At its inception, consent theory, so taken for granted today, was a major revolution in political thought. It finds explicit philosophical formulation with Hobbes (1968), Rousseau (1973) and Locke (1966). Variations of the theory still enjoy currency among contemporary western philosophers like Rawls (1971). In fact it forms the philosophical basis of contemporary democracies.

What does it mean to maintain that a person has consented to the authority of a covert resistance organisation? What counts as a commitment? How do we recognise such commitments? According to Walzer, consent is signified by what people do or say.

Tacit consent is portrayed by silence or passivity (1970:xi):

Consenting acts can signify a variety of commitments: our intention to obey this or that rule or set of rules, our authorization of some persons or group of persons to act on our behalf, our belief in or readiness to stake our lives on 'these truths', whatever they are. We can signify any or all of these things by saying 'yes', or signing our names, or repeating an oath, or joining an organisation, or initiating or participating in a social practice.

On this account consent would signify the willingness to participate in the struggle when invited, or simply the choice to participate. However, this account of consent is not relevant to this discussion, which is concerned with bystanders - people not affiliated to, nor even intending to join a resistance organisation. What kind of liberation movement is **entitled** to their cooperation? What if anything legitimates this movement to demand their participation and support? There are various theories of consent. Each will be outlined broadly and its limitations with respect to covert organisations exposed.

### Radical Anarchism

According to Wolff's (1976:18) radical anarchism, the notions of autonomy and authority are mutually incompatible:

The defining mark of the state is authority, the **right to rule**. The primary obligation of man is autonomy, **the refusal to be ruled** ... there can be no resolution of the conflict between the autonomy of the individual and the putative authority of the state.<sup>2</sup>

Wolff (1976:23) recognises a theoretical solution to the dilemma of authority and autonomy:



a political community in which every person votes on every issue - governed by a rule of unanimity...every member...wills freely **every law**...he is confronted...with laws to which he has consented.<sup>3</sup>

Wolff maintains that the only legitimate exercise of power is in a unanimous direct democracy, where each individual is 'the source of the laws which govern him' (1976:22). In this system, every person votes on every issue. As Wolff is quick to note, this requires the imposition of intolerably restrictive conditions and requires consensus on every issue. For example, one person's veto invariably undermines the entire decision (Simmons:1979:71). Even those who voted for a specific measure may ultimately refuse to carry it out on the grounds that the authority was then illegitimate. After all, only unanimous consent would legitimate an authority. One would have expected Wolff to say that it also requires perfect harmony in society. In fact he does not go that far. He thinks that this is compatible with a society where there is 'sharp, even violent opposition' (1976:24). All that is required is that citizens should agree unanimously on laws to be adopted. It seems then that Wolff thinks that legitimate authority is in principle possible, but hopelessly improbable in practice. He finds the possible likelihood of its application in communities united by an all-absorbing and secular ideal, or where rationally self-interested people are convinced that the benefits of cooperation outweigh those of conflict.

There is no need to be detained by long textual analysis of Wolff's exposition.<sup>4</sup> Nevertheless, it raises issues crucial for this study. Firstly, if consent means literal agreement of each and every autonomous adult, then no resistance organisation, or worse still, no government can **in practice** be legitimate. Secondly, it would appear that where such consent is practically possible, then legitimate authority is **logically** impossible. This needs to be demonstrated. To begin with, it is worth recalling the moral problem that consent theory is designed to solve:

whether we can preserve in it the political authority that is essential to the existence of any government, at the same time devising some way to insure that its laws and policies somehow express the will of the governed (Taylor:1983:466).

Taylor concludes that these two cannot be reconciled. Actual democratic government is impossible:

Government will rest on the will of the people, but the price of that will be abolishment of government itself. By introducing the requirement of literal consent of the governed, we have thrown people back into the very condition of anarchy with which we began (Taylor:1983:461).

This is really the crux of the matter. When people literally rule themselves, then strictly speaking they are not subject to any authority at all. What they might need is a type of bureaucracy, a civil service to implement their decisions, but not to legislate, or to issue commands. This would not be authority as Wolff, or anyone for that matter, conceives of it. Authority is characterised by the right to rule and issue commands, to act on behalf of everyone else, whereas the civil service implements the commands. Although civil servants ultimately become a powerful empire, they are ideally **commanded** by the political authority and are therefore ordinary subjects of the country. Although Wolff regards a unanimous direct democracy as a logical possibility, his own theory demands that he rejects it. He cannot accept it unless he fundamentally alters his concepts of authority and autonomy.

There are other problems with Wolff's exposition which need not be considered here. However, its greatest merit is a reminder that if the will of the people is that which authorities claim to represent, then it is essential that they do just that. His account implies, though, that they cannot, logically and practically. In short, there is no substitute for the will of the people if the concept of consent is to make sense. The choice is stark: Either all governments are illegitimate, or consent is abandoned as a criterion of legitimacy.

What are the implications for underground movements? Unanimous direct democracy is a non-starter for these organisations. If it applies at all, it would cover only the minority of the people - those who have formally joined the groups (a class excluded by definition from consideration in this study). Yet, even for this group, it is highly improbable that such a cumbersome, inefficient and ineffective procedure would be adopted. Organisations mobilising in conditions of secrecy and alertness might have to restrict the flow of information for security reasons. Besides, they need to seize any initiative that presents itself, and if they wait till every member has been consulted they are likely to be ineffective.

For a bystander the situation is even less promising. For one thing such a person is not even a member of the organisation. The question of unanimous vote simply does not apply. If the limited class of formal membership is already faced with ponderous logistic problems, then the larger class of the oppressed must plainly be unmanageable. Furthermore, the class of bystanders is heterogeneous and includes potential informers, unmotivated members and even honest, but fearful members. It is not a monolithic group with an overriding common goal. In short, this type of consent is at best a theoretical possibility, and establishing revolutionary strategies on theoretical possibilities is hardly politically astute.

To conclude, unanimous direct democracy is, in fact, practically and conceptually impossible. That is why in practical politics people aim only at an approximation of the democratic ideal. It is time to turn to those approximations. An important point must be stressed at the outset. For the purposes of this chapter there is only one overriding concern: To demonstrate that the following instances are not genuine cases of strict consent. It should not, however, be inferred from the following analysis that these are, therefore, regarded as worthless political mechanisms. In a practical sense, they are probably more helpful than Wolff's unanimous direct democracy.

### Democracy by representation

In practice a substitute for unanimous direct democracy is representative authority. There are various types. First there is strict **agency**, which involves a specific mandate to an agent or delegates with explicit instructions on how to vote on specific issues. In fact, it amounts to voting by proxy. People issuing such a mandate would incur an obligation as if they were present at the time of the vote. Total agency is seldom encountered. Legal political organisations in South Africa such as the United Democratic Front and the Azanian Peoples's Organisation have a hierarchical and decentralised authority structure. Usually the highest policy-making body is the annual general congress. This consists of affiliates from regions which may comprise a number of branches. Participating bodies usually send delegates to annual congresses with a broad mandate. If an issue is particularly important and is referred beforehand to the regions, then delegates are often instructed on how to vote. This makes it look like an example of genuine democracy. In fact it is not. There is a fundamental objection to representation by agency. Just as was the case with unanimous direct democracy, there is no authority to speak of. The said delegate is just that - a delegate. She carries no greater authority than that of a messenger. Once more, it is evident that strict agency abolishes rather than legitimates authority.

Representative democracy takes forms other than democracy by delegation as described. Representatives may be elected for a period by a roster of voters. They are virtually armed with broad party principles. Contact between representatives and voters may be slight. For example, in South Africa, parliamentarians report back once or twice a year to their constituencies. They can seldom be recalled prior to the next election. They may defect to other parties and still retain their seats. In that case, whose will do they represent? It is difficult to talk of the will of the people if alleged leaders can vote independently, and sometimes take

secret decisions. Indeed, it is difficult to understand how elections can in a literal sense be said to represent the will of the people.

For underground organisations the prospect can only be worse. Delegates might simply disappear or be arrested, detained, or killed. In the case of resistance organisations still operating publicly, it is easy for the government to identify and eliminate their leadership. The leadership is hardly stable. Often, it operates from hiding, making representation even of the formal membership a farce. The broader society of the oppressed is unrepresented altogether. If it is difficult to maintain dialogue and consultation within the organisations, it will be doubly so where bystanders are concerned. On these accounts, representative democracy is not a particularly useful model for underground organisations.

### Majoritarian Democracy

This is a widely advocated type of democratic practice, and is generally considered unproblematic. It hardly occurs to some that this form of authority too requires some form of justification. Its rationale runs as follows: Unanimous decision-making remains an ideal, but one on which only a chronic visionary would insist. Consequently, in the absence of unanimity, majority rule is the next best option. It is based on the belief that it is better to satisfy many rather than fewer people. This system is supposed to work even better in a society within which sub-groups have open membership. This will ensure that certain persons are not permanently disadvantaged or advantaged. In short majority rule saves society from two burdens: That of being deadlocked because no consensus was reached, and that of having to use violence to settle disagreements. Furthermore, the majority is assumed to advance the common welfare where minorities would not. It is a fair system, according to its advocates. An individual who is in a minority on a certain issue has the opportunity to be in the



majority on another. There are chances to be both a winner and a loser.

These prudential and moral arguments are compelling and possibly conclusive. However, they are irrelevant to the point at issue. They do not establish the legitimacy of authority on the basis of consent. Majority and representative systems do not, strictly speaking, constitute government by the consent of the ruled. People's affairs might similarly flourish under a benevolent dictator (Wolff: 1976:40). More importantly, they do not distinguish majority rule from any other type of dictatorship. For a victim of robbery or domination, ultimately it does not matter whether the robbery or domination was inflicted by a group of people, or by only one person. Insofar as majority rule involves suppression of freedom for some, it cannot be an instance of consent. Majority rule may be fair to the extent that people unanimously accepted in advance that this would be a process of settling disputes. Any person who enters a soccer pitch does so on the understanding that the rules apply, regardless of his personal attitude towards them. However, if it is merely the fact that a person promised to abide by majority decisions that legitimates this type of authority, then a simple undertaking to obey a tyrant would similarly legitimate such a dictatorship. To appeal to a promise is to suggest that majority rule *per se* has no inherent virtue.

At best, the alleged advantages of majority rule provide reasons why autonomous people might support an illegitimate government. They do not transform such a government into a legitimate type. Similarly, people from neighbouring states in southern Africa might decide to work in South Africa. They might even think that this government must be supported in fighting Aids or protecting wild life. It may even be that the South African government had done an admirable job in these fields. To acknowledge this has absolutely nothing to do with the legitimacy of the South African government, at least not in terms of the consent theory. In short, there is nothing inherently good or evil

about majority rule, nor is it in any way an instance of literal consent to authority.

On the basis of this system, bystanders have absolutely no obligations to the liberation groupings. It is worth repeating that the discussion of the various types of democracies was intended to highlight only one factor - that these are not instances of consent. Nothing more was intended. Specifically, no value judgement about the various types of government is intended. To say a government is illegitimate (on the basis of consent theory, or any other theory for that matter) is not to suggest that it must be disobeyed or otherwise.<sup>5</sup> This point has already been established in chapter two. Obligations *per se* are not morally overriding, nor are they the sole motive for moral action. Sometimes in the light of other important moral values people may have to disregard their obligations. In the next section, the notion of tacit consent is examined. Typically, consent theorists seldom, if ever, insist upon literal consent for obligation. Reference is often to the tacit type.

### Consent by Implication

The problem of consent ultimately involves a satisfactory and credible account of what consent is, or what actions or inactions must count as consent. The demands of literal consent are too stringent to meet in an average political society. Various signs of consent have been suggested, and it is the purpose of this section to examine these. For example, Plamenatz (1967) and Raphael (1970) regard participation in democratic elections as a sign of consent. In general, the demands of consent in political theory are often expressed in terms of tacit consent. Tacit consent is not a second rate consent. It is consent and consequently considered as no less binding than express consent. What separates it from explicit consent is the manner in which it is expressed. Tacit consent is normally inferred because it is generally expressed by silence or inaction. Context is crucial

here; it is the setting rather than the action itself that defines implicit consent.

According to Tussman, consent is exemplified in accepting membership of a state. Most recently, Rawls (1971) and Hart (1967) treat the acceptance of state benefits arising from law abidingness as an instance of consent. Pateman (1979) regards participatory, rather than representative democracy, as a sign of consent. In practice this includes activities such as travelling on roads, or owning a house. This in effect implies that a person might consent unintentionally and unawares. It was Locke who dealt systematically with the notion of tacit consent (1966:119). According to him, tacit consent is presumed in the person who owns possessions in a country and enjoys the benefits of government. This stretches the concept too wide, and makes it liable to abuse. His definition of consent is so wide as to make consent virtually automatic, even through sheer residence under a tyrannical rule (Simmons:1979:85). The point of this comment is not that enjoyment of such benefits does not raise important questions regarding the possible obligation of the beneficiary. It might well do, and this issue is treated fully in subsequent chapters. All that is claimed at this stage is that these alleged benefits and activities cannot reasonably be lumped together under consent without trivialising this fundamental moral notion. Binding consent should not, and cannot be given unintentionally.

What would constitute tacit consent to the authority of resistance organisations? This is likely to happen where people collaborate with one of the movements by offering them moral or material assistance. By definition, such people would not be members of the organisation since a member's consent would be express rather than tacit. An important assumption here is that no threats or duress are involved. The acts signifying consent must be 'freely chosen, freely carried through, not imposed on me by anyone else or coerced or compelled in their course' (Walzer:1970:xiv). A person behaving in this fashion over time creates expectations. Rights and obligations may result from

expectations, from habit or recurrent behaviour. For example, workers who have enjoyed a certain privilege over an extended period, like free lunches, cannot be blamed for going on strike as soon as the privilege is withdrawn. They may have known throughout that it was a privilege, but the longer such a privilege persists, the easier it translates into a right.

There are other possible signs of tacit consent to the authority of one of the movements, namely, the enjoyment of benefits arising from their risky actions. If rents are reduced as a result of a prolonged boycott, then everyone enjoys such benefits. Bystanders do not renounce these privileges. Similarly, if the UDF, or Azapo, negotiates a deal for black students to study overseas, even non-members apply for such benefits. Is this a type of consent? Clearly not. These people may enjoy these benefits without knowing who was responsible for the reduction in rents, or the establishment of scholarships. Even if they knew, nothing follows about their consent. People cannot be said to have consented merely because they enjoyed a benefit imposed on them. It must be noted that this is not a denial of possible obligations arising from enjoyment of those benefits. This is an important issue that occupies a central place in this work. For now, it is merely argued that none of those actions symbolise tacit consent.

In the light of the foregoing comments, it is difficult to see what meaningful role consent plays in the relationship between oppressed persons and the resistance organisations. For one thing, the only people who have consented are the formal members of such groups, who invariably turn out to be a minority. They joined the party, enjoy certain membership benefits and stand to enjoy privileged positions if the party wins. They take part in the elections of office bearers. They can ordinarily be said to have given a mandate to the party. They incur obligations through their pledges of support and activism. They may occasionally disagree with, or even disobey the leadership but this should have no bearing on the organisation's fundamental claim to their obedience. Insistence upon consent tends to immobilise these groups.



Frightened and cowed people do not simply consent to resistance activity likely to provoke severe state reprisals against themselves and their families.

The role of consent has been examined in the case of governments and resistance organisations. The point was to illustrate that, if it works at all, it has to do so in the case of government. It has been shown to be problematic there as well. The aim is not to discard the role of consent - that would be fatal. Rather, it must be pointed out that consent alone does not seem adequately to account for possible sources of obligation.

On the basis of consent theory as set out above, it must be concluded that neither the existence nor the actions of resistance organisations in South Africa have been legitimated by the consent of the oppressed bystanders. Worse still, it seems that, given the repressive climate under which these organisations operate, it is unlikely that they will ever be legitimated, except by a different criterion altogether. What are the implications of this situation for the liberation struggle as a whole?

### **Consent - An obstructive Concept?**

As was demonstrated, in the absence of consent, bystanders would be under no obligation whatsoever to support the organisations. At best they may render support as a matter of benevolence. In practice, this implies a severe inhibition of the liberation struggle. A consent theorist might simply retort 'so much the worse for liberation if the price for liberation is the surrender of my already limited personal liberty to decide and choose'. While consent theory of obligation is internally consistent, as a cure it looks worse than the disease. Dictators must find such a moral theory not only convenient but also reassuring because it enables them to muzzle all opinion, make canvassing impossible among resistance groups, and still insist that such groups lack legitimacy because the silent majority has not consented. For a long time this was the attitude of the



National Party government. It questioned the base support of the anti-apartheid movements, while not even letting them organise openly. It seems then that insistence upon consent without qualification is dangerously counter-productive. Ironically, it is the repressive regimes who normally insist upon consent and democracy when dealing with resistance movements. They adopt what Ullman-Margalit (1977:44) calls 'norms for keeping people in a prisoner's dilemma situation'.<sup>6</sup> At the same time, it is precisely those governments which will not hesitate to act in a repressive fashion against the people. They will not take heed of the wishes of the people. Those who insist upon strict consent will have to furnish the resistance movements with an open forum, and let them organise openly. In that case the demand for democratic practices will be justified. In an oppressive environment, unqualified calls for a democratic practice could easily become an invitation to ineffectiveness. In what way can insistence upon consent serve as a norm designed to keep the oppressed in the 'prisoner's dilemma' situation?

When the South African government blames 'intimidators', it seems to be on fairly high moral ground. After all, democracy, consent and freedom are the moral and political catch-words. However, as far as the government is concerned, these values are designed only to keep blacks in the prisoner's dilemma situation. Such norms are intended to keep the oppressed 'in a state of affairs which, while disadvantageous to them...is considered beneficial to [the National Party supporters] as a whole' (Ullman-Margalit:1977:44). The government knows better than anyone that in the absence of some coercive means, the oppressed might be politically immobilised and harbour no urge to join the struggle. Political organisation becomes impossible. This is the function of the provisions of the **Internal Security Act** and the various **States Of Emergency**. Officially they are designed to ensure 'law and order', and the prevention of 'black on black' violence. However, their real motive is to prevent anything like organised political power on the part of blacks.

Consent theory also engenders a paradox, not dissimilar to that in the Hobbesian state of nature. It puts a major premium upon individual liberty. That is why it insists upon personal agreement before obligation is incurred. In the situation of oppression, people enjoy little or no liberty at all. Ironically, the insistence upon consent can, as it has been illustrated, serve only to stifle the struggle for political freedom. And yet the absence of consent might subject people to the whims of underground actors. In the social contract tradition, this paradox of freedom necessitated the formation of political society where part (Locke) or all (Hobbes) personal freedom was surrendered to the state in return for political benefits. Similarly, it seems, resistance movements may be formed after people have surrendered part of their freedom. They would therefore have to pursue freedom and security for all in return for this trust.

Of course the parallels are not as neat as this account suggests. A consent theorist might accept this and argue that, provided, as in the case of a social contract, people unanimously take part in the formation of these movements, then some obligation would result. However, none of these groupings is a result of mass democratic and unanimous decision. They almost always issue from the initiative taken by a few committed people. In fact this procedure applies to open and legal political parties as well. The American constitution is a good example: Jefferson and his party drafted this in a less democratic fashion than the Freedom Charter was drafted. Thus this problem of consent is not peculiar to covert liberation movements only, and yet it is they, rather than overt movements, that are frequently called upon to demonstrate their legitimacy through consent. The suggestion that ordinary bystanders among the oppressed have no obligation at all towards the liberation struggle runs counter to ordinary intuitions about fairness. It seems inherently unjust to expect only a handful of people to give up their lives, and subject their families to untold miseries, in order to bring about a mutually desired benefit. In fact there are limits to the explanatory force of consent theory.

According to Walzer (1970:9):

contract theory clearly applies best to those sects, congregations, parties, movements, unions, and clubs in which choices are made explicit, acted out in public fashion.

In short, consent theory in the sense of autonomous agents making informed decisions and obeying only themselves is an illusion both in principle and in practice. Its approximation is possible and workable. The cost for such effectiveness is partial sacrifice of consent, and the willingness to live with certain personally-undesirable decisions if this is what it takes to protect greater values in society. This much conceded, it means that the mere absence of consent does not rule out the need for compliance on the part of individuals, whether such compliance is with a government or a liberation movement's decrees. Yet, this does not mean that any claims can be made upon the individual. Whatever the claims, they require justification.

While genuine consent is ruled out altogether the values it tries to sustain should be protected. Organisations need to earn their claims. No government or group of resisters must be given a free hand to decide privately and autocratically on fundamental issues which affect society. Ultimately, the people's interest and wishes should be the focus of any political programme, whether initiated by the government or by underground organisations. If consent were really the route to legitimacy then one could see why covertness is such a problem. Consent is about openness, overtness, publicness, knowledge and autonomy. If this is what obligation is all about, then covertness is a disaster. It has been argued that consent is not the only relevant consideration. Although this takes the weight off the problem of covertness, it does not eliminate all problems of covertness.

To conclude, consent is not a usable general condition of either obligation or coercion. This applies in the case of legitimate governments as well as liberation movements. This is

because, however democratic a political system might be, the constitution which defines democratic procedures is itself not dependent for its authority on the actual consent of everyone living under it. Still, there are certain values which the theories of consent sustain which need to be taken seriously, for example, informedness of decision, autonomy and accountability. This requires the utilisation of an ideal related to consent, which can be outlined as follows: Even if people cannot choose their basic system of government and are for the most part born into it, the system is legitimate only if its structure is one which they **should** accept if they are reasonable and suitably respectful of one another's interests.

This includes those aspects of the system which determine how ineliminable disagreements are to be resolved (e.g. by majority vote) and when and under what procedures coercion is to be employed. This is as close to freedom under involuntary institutions as one can get, and it is supposed to be expressed in the hypothetical, as opposed to actual, contract tradition. For now, it must be pointed out that if established states have the right to coerce those who do not accept their policies or try to circumvent them or break the law, it must be on some grounds such as this: Whether the people actually agreed to the basic system or not, it would have been unreasonable for them to refuse agreement if they had been in a position to do so.

What remains to be seen is whether a parallel criterion can be developed for non-governmental organisations (including liberation organisations). For now, it should be emphasised that consent cannot be such an exclusive, central and unique basis of obligation. People wanting to argue about the dubiousness of the moral claims of a covert organisation would be well advised to rest the case on more than the fact that few had consented to its authority. This study will examine alternative bases of the legitimacy of resistance organisations. Such legitimacy would naturally involve obligations of cooperation on the part of the oppressed. Before this is addressed something needs to be said

about the obligations of the oppressed to liberate themselves.  
This is the subject of the next chapter.



**NOTES**

1. The term 'constituency' is misleading because it suggests that those whom liberation movements have identified as potential supporters have links with the movement. Strictly, a member of parliament's constituency consists of those who support his party, not everyone in the neighbourhood. However, in this context the term is not designed to cover a wider area than potential support.
2. Emphases added.
3. Emphasis added.
4. For one thing, the juxtaposition of 'autonomy' and 'authority' is particularly untidy. Autonomy refers to 'the power to decide', rather than simply freedom. The concern here is not with the moral right to reflect critically on the demands of political authority. What is at issue is whether demands may be legitimately placed by liberation organisations without infringing upon people's freedom.
5. It does not follow that a government is illegitimate because consent theory breaks down. All that this argument is designed to demonstrate is that consent theory is unable to legitimate a system of government.
6. The concept of prisoner's dilemma is explained fully in chapter four.

**SECTION TWO****Non-consensual Obligations**

The focus of **chapter four** is the principle of fairness. Essentially, it is argued that the oppressed have an obligation to participate in, and support the liberation effort. By withholding their support, they harm the community by depriving it of an essential benefit. Besides, the success of the struggle carries potential benefits for everyone. Possible objections against this model are introduced at the end of the chapter. The rest of the work is largely a response to those criticisms.

**Chapter five** examines coordination problems facing utilitarians. The choice between fairness and utilitarianism is studied closely. The chapter also constitutes a study of the generalisation argument.

The problem of harm and benefit is treated in **chapter six**. Although harm and benefit are intertwined, it does not follow that harm and non-benefit are identical. Only non-benefits of certain essential goods could possibly constitute harm. The point is also made that although harm is a violation of interest, not every type of harm justifies interferences with liberty.

**Chapter seven** spells out in greater detail, the condition, limits and nature of coercion sanctioned by the principle of fairness.

**CHAPTER FOUR****Liberation: Whose responsibility is it then?**

Three theses have been established so far:

i. A common experience of oppression among people as such does not necessarily create a special moral bond between them although contingently it may do so. Solely in virtue of their shared experience of oppression, the oppressed may owe one another natural duties though not necessarily obligations to cooperate in their liberation.

ii. If the oppressed have a natural duty to liberate themselves, this in no way implies a corresponding natural obligation to do so. If such obligations exist, they may have arisen from commitments made to one another, often implicitly.

iii. While consent is an important source of obligations (some would say the only one), it cannot be the basis of possible obligations where people may have to support an underground liberation struggle or to collaborate with the liberation movements.

Nothing declared so far leads to the inference that there are no obligations obtaining within the oppressed group. Nor is it suggested that the quest for liberty is unimportant. On the contrary, a fundamental premise of this study is that liberty in society is a value to be cherished by all. Therefore each one has an obligation to maximise liberty and minimise oppression. Every person has a duty to participate in the liberation effort for his sake and that of others. A society in which slavery is the norm, even with the consent of the enslaved, is morally impoverished. The assumption here is that liberty is the minimum a person can expect from society. This is in keeping with the postulate of the contract theorists, especially Locke (1966) and Hobbes (1968). They insisted that in a state of nature, people would give up liberty only in return for greater liberty and security. Hobbes may have curtailed individual liberty, but it was because he

considered security an important public good. Similarly, Locke insisted on the surrender of minimum liberty.

If liberty is so fundamental a value, whose responsibility then is it to ensure that people are liberated? Ordinarily, this is the function - indeed, the **raison d'etre** - of governments. This is the central theme in Locke and Rousseau (though not Hobbes): governments are designed to maximise liberty by limiting some liberty. In principle, all things remaining the same, a government which fails to guarantee liberty for everyone must lose any semblance of moral legitimacy. However, this study assumes a harsh situation in which the majority is disenfranchised and the government is elected by the minority. The government itself is a threat to, rather than a guarantor of liberty to the bulk of its populace. Consequently, in practice the responsibility, if any, to regain liberty must lie elsewhere. There are at least two possible **loci** of such an obligation. If one takes an altruistic perspective, and also believes that freedom is indivisible, then, by implication, the quest for liberty is **everyone's** obligation to one another.

In contrast if **self-interest** is the motive then the most obvious agency for liberation seems to be **those who will benefit as a result of emancipation**. This distinction is important and this study examines the responsibility emanating from considerations of self-interest. It raises the question whether the oppressed may enforce this obligation against one another. A possible answer is that, on the basis of their collective group interest, they may be entitled to do so. This is the contention under examination. Similarly one may ask: Given that everyone has an obligation to bring about a free society, could all South Africans collectively and coercively enforce this obligation upon one another? As far as the privileged in South Africa are concerned, one would not appeal to self-interest, since they perceive their self-interest precisely in the perpetuation of discriminatory inequality. Mutual coercion within the oppressed may be explained in terms of the principle of fair play, whereas coercion against the privileged could be

justified by appeal to the principle of self-defence. Therefore, although the obligation of the privileged to bring about justice in South Africa is acknowledged, it is not the focus of this study. Rather, it is asked whether, out of self-interest, the oppressed could coercively involve one another in the liberation struggle.

### The Principle of Fair Play

At its barest, the principle of fair play maintains that, in a situation where benefits are attained as a result of some effort, those who enjoy them should contribute to their attainment. This is how Hart (1967:61) expresses this principle:

When a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions have a right to a similar submission from those **who have benefitted by their submission.**<sup>1</sup>

It is noteworthy that Hart seems to regard mere reception of benefits as a ground for obligation. This of course is extremely problematic as will become obvious from the study of Rawls and Nozick. The question of 'similar submission' is also unexplicit as far as the liberation struggle is concerned. It would have to be distinguished from that of 'uniform submission' in the sense of acting uniformly and adopting identical means to liberation. Rawls (1964:9-11) essentially accepts Hart's position although he adds two further requirements:

Suppose there is a beneficial and just scheme of social cooperation, and that the advantages it yields can only be obtained if everyone, or nearly everyone cooperates. Suppose further that cooperation requires a certain sacrifice from each person, or at least involves a certain restriction of his liberty. Suppose finally, that the benefits produced by cooperation are, up to a certain point, free: that is, the scheme of cooperation is unstable in the sense that if any one person knows that all (or nearly all) of the others will continue to do their part, he will still be able to share a gain from the scheme even if he does not do his part. Under these



conditions a person who has accepted the benefits of the scheme is bound by duty of fair play to do his part and not take advantage of the free benefits by not cooperating.<sup>2</sup>

The two Rawlsian additional requirements are that, firstly, the institution in question must be just: that is, it should 'satisfy the [Rawlsian] principles of justice'.<sup>3</sup> Secondly, one should voluntarily accept the benefits of the arrangement or have taken advantage of the opportunities it offers to further her interests. In short, the justice and voluntariness are preconditions for the generation of obligations under the principle of fair play; 'it is impossible to be bound to unjust institutions, or those which exceed the limits of tolerable injustice'.<sup>4</sup> Rawls (followed later by Simmons 1979:125) makes an important distinction between accepting and receiving benefits. For Hart the principle seems to generate obligations, whether or not a person has solicited those benefits or even consented to them. Rawls's reference to 'accept' suggests that mere receipt is not enough. One has to seek the benefit actively. While this distinction is important and useful, nevertheless its significance should not be overstated. It will be maintained that the distinction helps in limiting cases in which enjoyment of benefits creates obligations. The contention that only benefits accepted, and not merely received, create an obligation will be questioned.

A thesis defended here is that consent cannot account for certain obligations, especially where enjoyment of benefits cannot be accepted or rejected. To demonstrate this contention it is necessary to distinguish between types of goods.

### What is a Public Good?

The easiest and least controversial are **private goods**. According to Buchanan (1964:50) private goods have the following characteristics. Each unit produced is equivalent to a unit consumed by one person. Its production or consumption has no relevant spillover effects on persons other than the direct consumer. For example, it is impossible for two people to consume the same loaf of bread. Further, the distribution of private goods is controllable and can be restricted to those who have paid for them. This means that they are often voluntarily and deliberately enjoyed. For example, if people enter a restaurant and order meals, they are obliged to pay. After all, they specifically and voluntarily took measures to acquire the meals on commercial terms. Consequently, in this case the obligation to pay is based upon consent.

**Collective and public goods** constitute the second and third types of goods. Common to both are two attributes, namely **jointness** of supply and **impossibility of exclusion**. Olson (1971:14) lumps common, collective and public goods together, defining them as: 'any good such that, if any person...in a group...consumes it, it cannot be feasibly withheld from the others in that group'. Fundamentally the problem of public goods is not whether it is logically or empirically supplied by all or one, but rather that it makes no sense for an individual to supply it. It means that whether people pay for a collective good or not, such a good cannot be withheld from them. It is impossible to exclude them from consumption. The benefit is 'inseparable and generalised'. The provision of public goods is largely, though not exclusively the state's function. Such public goods must be available to everyone if they are available to anyone. Examples are defence, internal security, law and order (Olson:1971:14), and economic infrastructure.

Although Olson lumps them together, a useful distinction can in fact be made between collective and public goods. Collective

goods correspond to Simmons' (1979:128) open benefits which 'while they can be avoided, they cannot be avoided without considerable inconvenience'. For example, a neighbourhood provides a system of public entertainment through a loudspeaker, such that this can be avoided only if one remains indoors and seals the windows to prevent oneself from hearing the sound (Nozick:1974:95). Other potential consumers can avoid these goods only at a considerable expense. There is a subsection of collective goods, namely 'readily available' benefits which can be avoided without considerable inconvenience. An example is that of special personal and property protection by the police after some explicit threats.

In contrast a public good is such that if it is supplied to anybody, then its enjoyment cannot be withheld from anybody. This is the crucial element. It has to have these features if the problem Olson encounters is to emerge. Persons cannot be charged individually as they consume it. For example a lighthouse at sea warns all navigators, including those who have not contributed towards its maintenance. It could be substituted with a coded beacon in which cases navigators have to buy a receiver. Similarly, a television set holder can watch all programmes on South African television without obeying the requirement to buy a license. However, M-net requires special subscription. What makes public goods interesting is that they defy the standard selective incentive for a good: 'if you don't pay for it, you don't get it'. On the face of it liberation seems a pertinent example of a public good. Once achieved, it is available to all and sundry, including those who actually impeded its achievement.

### **Co-ordination problems for large Groups**

This section deals with coordination problems and public goods. The relationship between the two concepts is best captured by Hardin (1982:20):

The central relationship between the analysis of public goods and the problem of collective action, then, is that the costliness or **de facto** infeasibility of exclusion from consumption of a collectively provided good usually eliminates any direct incentive for individual consumers to pay for the good.

One explicit lesson to be derived from the 'prisoner's dilemma' is precisely the difficulty of coordinating the actions of just persons. Securing agreement between them may prove to be an almost intractable problem. The situation must be even more difficult with a large, anonymous and indeterminate community such as the 'oppressed', who are not a static and closed community. It is characterised by the coming into being and the passing away of members. These considerations make it different and similar to the prisoner's dilemma model. Size is important not only in terms of physical volume, but also according to **perceived effectiveness** and **noticeability**. In a large group size can cause a rational person not to contribute towards the goals of the group, especially where actions of other members are noticeable. Unlike Olson, Sweeny argues that actual size **per se** is irrelevant to the ability of the group to reach optimal results. What is required is simply that the individual should be aware of the presence of others. It is not necessary that he sees them, or they him. A group is large if individual contributions to it make no perceptible difference. For Olson size as such is crucial as will become evident below in the discussion of public goods.

In a large community, unilateral deviation is not as injurious to the community as in the micro model exemplified by a two-person prisoner's dilemma. If one person, or even more, evade tax, this does not necessarily result in a harmful situation. This is explained fully by the principle of individual insignificance according to which no individual dominates the system, and contributions from persons are more or less equal (Ullman-Margalit:1977:28). This is how Olson (1971:44) describes this condition:



...in a large group in which no single individual's contribution makes a perceptible difference to the group as a whole, or the burden or benefit of any single member of the group, it is certain that a collective good will **not** be provided unless there is coercion or some outside inducements that will lead the members of the large group to act in their common interest.<sup>5</sup>

This condition of individual insignificance has important consequences for the resistance movements. It is prone to generate free-riding. This temptation to evade participation is based upon a simple consideration that evasion does not seem harmful at all. The impact of individual action is such that non-participation would make no difference whatsoever to the production of the benefit. Consequently it does not harm anyone. Besides, in a large group non-participants are not likely to be noticed. Detectability carries harmful consequences because it can easily undermine the morale of others. It will be recalled that both a nervous and reluctant cooperator are willing to support, but only on condition that everyone else or most people do.

It is possible for people not to take the trouble of bearing costs they can avoid. It was pointed out earlier that the motive need not always be ignoble. Honest and rational people may not be keen to get involved in schemes which are either doomed to failure, or in which they will be taken for a ride, or that they do not believe are the best strategy. The most striking exception seems to be in religious organisations. People tend to contribute and cooperate selflessly, regardless of what others are doing. Even this limiting case is not decisive. For one thing, such people may be encouraged by God's omnipresence and omniscience. However, secular organisations do not enjoy this prerogative. Even a state which enjoys maximal patriotism cannot survive without compulsory taxation.

While there are differences between a large society and the two-person game, the dilemma remains essentially the same: how to protect a jointly beneficial, yet unstable state of affairs from deteriorating (Ullman-Margalit:1977:28). The best solution is that

which successfully eliminates the temptation to deviate. It must be a strong deterrent or a strong positive incentive, especially where the costs are high. Of course the matter is much more complex than this, as will be illustrated. The crucial point is that the Olson problem comes about where each person gets more from his share of the public good than each person would have to contribute to create the public good if each person were taxed on some equitable basis for the good's production. Only in this case does the following puzzle arise. The puzzle is: How can these people, for each of whom the good is a good bargain, fail to provide it?

The answer is: Because it is impossible to discriminate between who gets it and who does not. Each person can then say to himself: If the others produce it I shall get it, so I am better off without contributing. If on the other hand the others reason like me and do not contribute I will be irrational to put my investment on a voluntary basis because the benefit is not going to come. This explains why size matters, because in the case of size it is easier to say: My contribution to the good will not be decisive in making it either happen or not happen. My failure to contribute towards liberation is not going to be the crucial issue that results in the success or failure of the struggle. If enough people participate, then there is no need for me to do likewise. If too few contribute or participate, then I also do better not to join. Therefore, whatever they do, it is better that I do not participate. This is the puzzle. Public goods involve benefits and services regarding which people find themselves in the prisoner's dilemma situation. Private firms have incentives to produce private goods, but have none whatsoever to produce fully public goods (Braybrooke:1987:182). Therefore, leaving public goods to be provided by private charities raising funds from voluntary contributions simply gives **carte blanche** to free riders.

If the provision of public goods is a function of organisations (usually a state), then such groupings cannot simply rely on voluntary contributions from their members. This is the



function of taxation. Similarly, 'neither can other large organisations support themselves without providing some sanction, or some attraction distinct from the public good itself, which will lead individuals to help bear the burdens of maintaining the organisation' (Olson:1971:15-16).

These features have important implications for the theory of obligation. In the first place, unlike private goods, public goods cannot be rejected at will, in the sense of refusing to consume them, without possible dire consequences for the rest of society. They are simply available. They can only be received. Even when an individual claims to reject them, he can continue to enjoy them whenever he feels like it. As a result it makes no sense to appeal to consent. How can people be said to have consented to pure air, or to the absence of fatal epidemic? If there is any obligation here, it cannot be explained in terms of consent. Consequently, either there is no obligation at all for the production of public goods or, if there is, it can be explained only in terms of the benefits themselves.

### The Prisoner's Dilemma

This is the scenario: Imagine two prisoners in detention over a serious murder charge. The police lack irrefutable evidence to press charges, but suspect strongly that the two have committed the alleged acts. On the other hand, they have conclusive evidence against both to convict them on a less serious charge of motor vehicle theft. If found guilty of murder, the prisoners face 30 years' imprisonment. For the motor car theft they will serve only a 5 year jail sentence. They are kept in separate cells to prevent them from communicating with one another. The interrogator makes them an offer. If one becomes a state witness and gives evidence against the other in the murder charge, then the charge on which police have conclusive evidence will be dropped. The witness will then go free, while his fellow inmate gets the mandatory thirty years. If both refuse to confess, then the state will press ahead

with theft charges and convict them for 5 years. If the two confess, then both must go to jail for 10 years each, instead. This situation is portrayed in figure 4.1. below.

**P - Two**

Non Confession      Confession

Non Confession

**P - One**

Confession

- 5	0
- 5	- 30
- 30	- 10
0	- 10

4.1

The dilemma raises two immediate questions. What are the prisoners likely to do? What is the best possible outcome in their circumstances? The first question cannot be answered without a major assumption that each prisoner deliberates solely in terms of self-interest in protecting his interests. In that case, naturally the temptation for both is to confess. This option offers the safest or least disastrous outcome, regardless of what the other prisoner does. This is what is meant by 'dominant' choice. When both prisoners choose the dominant action, then you have a state of

'equilibrium'. It means the state of affairs is stable (Ullman-Margalit:1977:18-20). The situation can only deteriorate for both if either deviates from this equilibrium unilaterally. Why is confession attractive? The worst outcome for either prisoner is thirty years' imprisonment (-30). This fate awaits the one who refuses to confess while the other does. Ten years (-10) imprisonment is the result of dual confession. However, confession also carries the possible prospect of freedom (0), should the other prisoner refuse to confess. In other words, the worst that can happen with a confession is -10, whereas -30 is a possible, if not probable aftermath of non-confession. Given that the prisoners are motivated solely by rational self-interest, it makes sense to confess, regardless of what the other person does. Non-confession requires absolute certainty that the other party will not confess. Where doubt reigns, it would be unwise not to confess. In short, confession offers the best or least disastrous consequence for each prisoner, regardless of what the other does.

However, the likely outcome does not correspond to the optimal outcome in the circumstances. Clearly, it makes sense to opt for five years (-5) rather than ten years of imprisonment. However, this requires mutual non-confession, an option already found to be elusive and irrational without firm guarantees. The whole presentation so far takes place against the background of non-communication. What would happen were this barrier to be lifted and the prisoners allowed to communicate? Suppose the prisoners, as rational agents, concluded that non-confession is the only fair and rational choice. Will the dilemma begin to unravel? In fact it will not because the incentive to default will still persist. Firstly, one might distrust the other afterwards, and fear possible thirty years' incarceration. Secondly, he might trust the other, and harbour no fears of possible betrayal. However, precisely this trust tempts him to choose confession in order to be released at the expense of the other. It must be noted that similar thoughts go on in the other prisoner. Confession again emerges as a dominant choice. It would appear then that the prisoners require

something that holds the agreement in place, and that cannot simply be promise or trust. Their dilemma simply amounts to the challenge: How to protect a jointly beneficial, yet unstable state of affairs from deteriorating (Ullman-Margalit:1977:28).

The most common solution would appear to be **agreement** enforceable by **coercion**. This is based on the Hobbesian (1968) well known dictum, 'covenants, without the sword, are but words; and of no strength to secure a man at all'. Coercion is a method, one form of exercising power. By power is meant the ability of a person, A, to get another person or persons B to perform action C if B would normally not do it. In a coercive situation, A alters the incentives facing B. He attaches something B desires to an action B would normally not do. For example, if B wishes to stay alive and keep his job, A urges him to boycott his work, or join a march towards machine-gun happy police. The goal is to change the pay-offs so that non-confession becomes a dominant choice. Like previous attempts, coercion is intended to alter attitudes and preferences in such a manner as to make a mutually desired goal attainable. In addition though, it also ensures that any agreement reached is guaranteed to be observed. This is how the prisoners might resolve their problem. They realise that their most desirable outcome is freedom from incarceration (0). However, this outcome is simply unattainable unless one offers not to sacrifice while the other does. This blind altruism has been ruled out by the original assumption that the prisoners pursue only their individual self-interest. As long as each insists upon the best possible outcome for himself, he will at best receive the third best option.

Rational persons will soon remember that while mutual non-confession does not offer maximum utility, at least it prevents maximum disaster. It ensures that each gets only five, rather than ten years' imprisonment. How do they ensure that the instability of solidarity and friendship are avoided? To achieve an enforceable agreement they might, for example, enlist the services of a notorious underground hitman. For a fee he could be

authorised to track and eliminate either of them in the event of default (confession). Alternatively, something even more brutal might be contemplated. They might agree that whoever confesses will have his house petrol bombed, possibly with his entire family inside. If both confess, the hitman is authorised to reveal to the police conclusive evidence of another heinous crime in which they were both involved. So far, this other crime is altogether unknown to the police. If convicted on this, as they are definitely going to be, the sentence involved is 25 years. It is interesting here that coercion is enlisted, not to dominate one another, but to pursue an elusive and unstable but mutually desirable state of affairs. It is a route to, and a guarantee of utility. Secondly, the more brutal the penalty for desertion, the stronger the appeal of the agreement because the threat it stabilises is a mutually desired position. The introduction of enforceable agreement alters the payoffs, as figure 4.2 below illustrates.



P Two

Non Confession                  Confession

Non Confession

P One

Confession

- 5	-20
- 5	- 35
- 35	- 25
- 35	- 25

4.2

The introduction of the coercive measures changes the pay-off matrix drastically (4.2). Confession no longer represents a dominant choice. It involves death or a long jail sentence. Non-confession now becomes the dominant choice for both. It minimises the temptation to diverge from the agreement. The dilemma seems to be solved now, and both are guaranteed of the optimal outcome in the circumstances. There is a variant of the coercion solution, namely irrational indignation or the rage of being taken advantage of. Suppose A is tempted to confess when B does not. A might react as follows:

'B is in jail and I am out but my God when he comes out he is going to even it out with me. It is not clear to me that fifteen years contemplating death is the way to spend my life. I think that perhaps I better not confess. He is going to be pretty enraged, so that even if he cannot get somebody to kill me, when he gets out he will do it personally'.

The irony here is that it would be irrational and even dangerous for B to pursue this vengeful option against A. After all the damage has already been done - and B has already completed his session in jail. What motive does B have for wishing to have A killed? In strict cost-benefit terms there is nothing to be gained unless B simply derived sadistic pleasure from seeing A suffer and die. Nevertheless, A's knowledge of B's probable irrational response could help the bargain stay. It would appear then that such irrational traits may have some social utility by helping people to cement social agreements. The paradox is that, strictly speaking, such irrational traits are not worth putting to use. Yet it helps if a person is known ahead of time to be capable of employing them. The only assurance that people have that an agent is likely to employ them is if he is sufficiently irrational to employ them. On the other hand, if a person is believed to be sensible and considerate then this solution would not work. There is an obvious dis-utility in this 'solution'. Irrationality is not the type of attitude one would wish to engender on a large scale. Irrational people cannot be turned on and off at will and the cost of harbouring such people may be higher than the guarantees they supply.

To summarise, the crucial thing is that each prisoner gets the third best option because the second best option is always unstable. This instability is the result of the availability to each of them of what is for each individual, though not for both of them, the best option which on the assumption of pure self-interest they are bound to strive for. What they both want most is the first option. What each of them has to see is that the price of one of them getting the best outcome is the other inheriting the very worst. The joint value of the second best option is higher than the joint value of all the others so that spread between them are 10 jail years if they do not confess, as opposed to twenty if they do, and 30 if one confesses and the other does not.

How could they compromise then? The second option is a better

compromise than the third alternative. It does not require either to sacrifice himself drastically to the other. Both do better in (2) than they do in (3). Only if they behave sensibly would each of them do better than what they will get if they fail to cooperate. The paradox lies in the fact that each of the two self-interested persons ends up worse than he otherwise could have. There would be paradox had one of them done better than the other. The paradox is precisely that for each one of them it is worse to be at (3) than at (2) and yet they cannot attain that goal. In fact, there is no unequivocal best outcome. There is an unequivocal better outcome, namely (2) is better than (3), if one understands the game to be played in a Pareto universe. According to Pareto (Hardin:1982:91) the only situation in which something is better than the other is when someone gains while nobody loses. (1) is not better than two unequivocally. It is better for one prisoner and worse for the other. The same applies to (4).

The foregoing comments also reveal certain distinctive features of the prisoners' dilemma (Ullman-Margalit:1977:23):

i. If both prisoners confess, the result is detrimental to both of them.

ii. On the other hand, non-confession heralds advantages for both.

iii. Individually, the most rewarding option is confession.

iv. The dilemma cannot be solved without cooperation between the prisoners.

v. There is a price to be paid for cooperation. Both must abandon their dominant individual choice (0), in favour of something less attractive and less disastrous (-5). It involves sacrifices at the minimum and risks at worst.

vi. The temptation to confess is overwhelming, and requires stringent measures to contain it.

vii. If one confesses while the other does not, the injury to the confessor is phenomenal.

What is the link with society in general, and the liberation effort in particular? The dilemma represents in a micro context dilemmas and relationships obtaining in the broader society. There are activities which promote common interests, but which in turn require sacrifices and cooperation. There are numerous examples in literature. A strike by workers involves risks of dismissal and loss of earnings. Yet, it also holds a prospect of improved benefits. It is tempting for workers secretly to violate the strike by turning up for work. Clearly, very few sane people would participate in a strike unless a substantial part of other workers did likewise. Tax evasion is tempting too. In a democratic society taxation enables the government to provide common services. Yet it also makes little sense to contribute if no one else, or very few people in fact do. Public goods like security in the face of external threat, internal law and order, education and infrastructure (roads and bridges) are generally provided by the state. Even avowed capitalists accept that 'while it is not the case that the state ought to interfere where individuals do not, or cannot act **efficiently**, it ought to interfere where individuals will not act at all' (Ulmann-Margalit:1977:49-50).

### **Prisoners' Dilemma, Public Goods and Liberation**

Certain gains made after a hard political struggle cannot be denied those who did not contribute to the effort. When the government relented on the 'Afrikaans issue' in 1976 all students gained, considering that the imposition of the language would have resulted in an intolerable burden on students who were already educationally and socially disadvantaged. The teachers benefitted too, since a substantial number of them were not qualified to handle content subjects in Afrikaans. In short almost everyone benefitted, including those who had not supported the protest. Similarly, the respite on the 1984 township rent boycott was extended to all affected, including those who clandestinely continued to pay. When Soweto arrears were eventually written off

in 1990, this benefit was extended to all the people, including the 'free riders'. During bus boycotts against rising fares, some people trudged to work. Others managed to sneak into the buses, and saved themselves the inconvenience and pain of walking long distances. When the fares were reduced, the beneficiaries included everyone, regardless of their contribution. The extension of this argument is that, in the event of national emancipation, even the traitors, the selfish and the fearful will reap the benefits. In short, the situation of the oppressed may be explained usefully in terms of the prisoner's dilemma and the notion of public goods.

Also common to the prisoner's dilemma and a liberation struggle is the suggestion that egoism, the mindless pursuit of narrow self-interest to the exclusion of the interests of others, is ultimately irrational. If this happens, everyone loses and no one gains. In short both require unity of action and cooperation. They do not require ideological uniformity. Cooperation is possible between sworn enemies. If no one participates in the struggle, oppression can only worsen. There is no point in pushing ahead with the struggle if no one, or only a negligible number, is willing to support it. That is courting a disaster. Even though people desire liberation, they are not always keen to take the heat that goes with political resistance. Others might be keen to support, but only if the rest make their contribution. The dilemma for a bystander is how to reconcile the requirements of liberation with the instinct of self-preservation; how to achieve the mutually desired, but unstable state of commitment to emancipation. Perhaps at this stage it will be useful to juxtapose features of the political struggle with those of the prisoner's dilemma. Inevitably this involves enormous oversimplification, but this is subject to a subsequent review:

- i. Confession corresponds to the reluctance to participate in the struggle. If no one takes part in the struggle, liberty will never arrive.



ii. However, participation foreshadows advantages for everyone. If strikers stand together, they are likely to get what they want. Labour history abounds with examples. The people's resilience during rent boycotts had impressive and unexpected results. Consumer boycotts have led to the recognition, however informally, of important community leaders. Universal non-cooperation with apartheid by blacks is likely to expedite the demise of the system.

iii. From the point of view of the individual, it pays not to participate. Such a person can safeguard her job in the event of strikes, her home in case of rent boycotts, and the children's education during school boycotts. This motive is dominant, regardless of whether others observe the boycott or not.

iv. The dilemma cannot be solved without cooperation among the oppressed and those opposed to slavery.

v. There is a variety of prices to be paid for liberation: harassment, loss of jobs, dismissal from school, loss of homes, detention, torture, and death. At the minimum there are sacrifices and at worst, perils. The burdens need not necessarily be uniform or evenly distributed. In fact, they never can be. An anti-smoking law produces different types of pressures on smokers, from mild irritation to severe craving. Actual burdens are not always the same.

vi. The temptation not to cooperate with the liberation effort is overwhelming. Except for a minority of committed martyrs, in general people would rather have liberation without the cost it involves.

vii. If a substantial section of the oppressed is not committed to fighting, those who fight incur overwhelming hazards.

The problem can now be stated more specifically. Suppose a rational bystander is faced with the decision to support the struggle or not. There are four possible scenarios to choose from: (a) universal cooperation, where every person contributes; (b) widespread cooperation, where a substantial number cooperate; (c) widespread free riding, where many people evade contribution and finally (d) universal non-cooperation, where no one cooperates. What is the rational response to these positions? It seems there

are grounds for the bystander not to cooperate.

Given that the struggle requires widespread, rather than universal cooperation, there is no need for him to cooperate on the basis of (a) and (b). In both cases, the struggle will continue without him. He might argue that too many cooks spoil the broth. Widespread non-cooperation (c) makes the production of the public good highly unlikely, while universal non-cooperation makes its non-production an absolute certainty. It seems too that in cases (c) and (d) the rational bystander should not cooperate either. These concerns will be addressed fully in conjunction with public goods. However, they point to real and potential problems for cooperation and participation in the liberation struggle.

In the light of the above, it becomes evident that a stabilising mechanism is required. Such measures should involve an enforceable agreement, that is, a deal backed up by coercion. Coercion is required to ensure that people do their part, and that others are not taken for a ride because, ultimately a successful struggle requires collective action. The subject of coercion is pursued in greater detail in chapter seven.

### Objections To The Principle Of Fair Play

Nozick (1974:93-95) trivialises, derides and ultimately rejects the principle of fair play. He argues that it is logically incapable of generating obligations:

...even if the principle could be formulated so that it was no longer open to objection, it would not serve to obviate the need for other persons' **consenting** to cooperate and limit their activities.

Nozick, it will be argued, misses the point altogether. This will be evident from a careful scrutiny of his examples which are reproduced **verbatim** below.

Suppose some of the people in your neighborhood (there are 364 other adults) have found a public address system, and decide to institute a system of public entertainment. They post a list of names, one for each day, yours among them. On his assigned day (one can easily switch days) a person is to run a public address system, play records over it, give news bulletins, tell amusing stories he has heard, and so on. After 138 days on which each person has done his part, your day arrives. Are you obligated to take your turn?

Nozick concludes that there is no obligation involved. Although you have benefitted, you may not consider the benefit worth the effort. Secondly, even if the benefit is worth the cost, others might derive more from it than you do. On the basis of this, he concludes that 'one cannot, whatever one's purposes, just act so as to give people benefits and then demand (or seize) payment'. This is particularly the case where one also benefits in the process, as the following example suggests:

...suppose that your best way of getting exercise is by throwing books into people's houses, or that some other activity of yours thrusts books into people's houses as an unavoidable side effect.

The inference that Nozick draws is that, even in this case, the beneficiaries are not bound to pay for the books. He is presenting three arguments here. First, an obligation does not arise except through the deliberate consent of the autonomous individual. Second, it is even more inconceivable that an obligation without consent arises where the cost of the benefit exceeds the value of the benefit itself. Thirdly, it is even worse if that benefit were negligible and dispensable. It will be argued that only his second and third contentions are sound. The first argument has already been addressed.

A utilitarian might object to the principle of fair play on the grounds that it leads to minimisation (or dis-utility) rather than maximisation of utility. In an efficient system what is required for the production of public goods is not universal cooperation, but only participation by a sufficiently large portion

of the group. Consequently, there is no need to prevent all free riding.

A third objection is that the principle of fair play may easily lead to paternalism. It gives to a handful of people the right to decide on the political goals and means, and to impose them on the rest of society. In the case of a liberation struggle, it 'forces people to be free'. What happens if the oppressed prefer to live under apartheid, rather than under an alternative system? People have a right to remain even in the Hobbesian state of nature, if they so desire. This is addressed in chapter nine.

Dworkin (1986:193-195) discusses the principle of fair play in the context of political obligation. He rejects the principle on the following grounds. Firstly, a fair play argument assumes that people can incur obligations simply by receiving what they do not seek, and would reject if they had the chance. For example, a philosopher cannot reasonably demand payment for his broadcast 'of a stunning and valuable lecture from a sound track'. Secondly, there is an ambiguity regarding the very basis of this principle, namely, 'benefiting from a situation'. A person is said to have benefitted if her 'overall situation is superior under the organisation to what it would otherwise have been'. The problem, according to Dworkin, is the 'bench-mark' to be used, or the meaning of 'otherwise'. The result is that the principle becomes too strong or too weak.

The principle is too strong if it justifies nothing, for example, if it requires showing that every citizen is better off under the existing resistance organisation than he would be under any other system that the principle is meant to embrace. It is too weak if it is too easy to satisfy, for example, all that is required is proof that the person is better off under this system than in no system at all (such as the Hobbesian state of nature).

It might also be objected that coercion is not the only solution to the prisoner's dilemma. There are moral and other incentives that may be equally effective. The last objection is addressed first.

### Morality and Non-Coercive Solutions to the Dilemma

Non-coercive strategies for coping with the dilemma involve cultivation of certain attitudes and moral principles which offset the costs of cooperation, for example trust, friendship, conviviality, solidarity, in-process incentives, and inculcation of certain moral values. These measures are thought to be capable of bringing about restraints on choices and altering the preference orders of the prisoners. Trust, in-process benefits and general morality will be dealt with consecutively. Trust occupies a special place in society and the persistence of a worthwhile society depends on the amount and level of trust between its members. It is perhaps 'the most important ingredient in the social glue' (Buchanan:1979:71). It is interesting that in the black townships 'stokvels',<sup>6</sup> an old system of joint capital accumulation, survives largely on trust. People collect money and provide loans to one another without any security at all. Some minimum trust is essential if such organisations are to work.

However, on their own, moral measures cannot be effective stabilising devices. Like friendship, trust is likely to be tenuous and even more elusive in a large and somewhat divided group than in a small circle. Promises, trust and solidarity are not generally effective if they involve people who have hardly encountered one another personally. They might work within the cadres and other officials of liberation movements but, even here, continuous vigilance is called for. The community of the oppressed is large and indeterminate. South African resistance organisations operate on the assumption that there is at least one police spy in every group. This is not idle speculation, but is borne out by painful experience. Some of the spies turn out to have been the most trusted members, or even top officials of organisations. Moreover, trust does not offer the type of absolute certainty required in the prisoner's dilemma. Friends can and do betray one another, not necessarily out of malice but from pressure. Some people simply crack during torture and release crucial information



unintentionally during interrogation. Solidarity might at best be an indication of how people feel about one another or how they plan to support each other, but not a guarantee of how, in fact, they will behave under trying conditions. The same may be said of trust. There are trustworthy people, but even they might succumb to temptation to betray the trust. For less innocent reasons trust might be the precise motive for betrayal. A shrewd and unscrupulous prisoner might in fact confess precisely because he trusts that the other will not. On the basis of the prisoner's dilemma, such a schemer will be released from jail at the expense of a trusted fellow in-mate. While intense solidarity exists within the oppressed class, there is another reality: That of competitive egoism and individualism. There is competition for jobs and houses. This explains why there were some politically naive people who bought the homes belonging to those evicted as a result of the township rent boycotts.

In-process benefits are 'certain goods intrinsic to the process of [revolution] such that the individual will gain [them] from the process of participation itself regardless of the outcome of the process' (Buchanan:1979:69). Olson refers to them as 'selective incentives'. For example, a labour union might negotiate certain special deals for its members. They might be entitled to certain discounts at stores, receive bursaries for their children, be offered training abroad, and receive sickness and death benefits. Although non-members may benefit from some of the union's activities, such as increased remuneration, they also lose out on certain attractive in-process benefits which, by definition, are confined to active members. Once sufficiently strong, a union might also establish a 'closed shop', that is, get firms not to employ non-union members (Barry:1978:26). Essentially such benefits result in cooperation for its own sake, that is, for the sake of realising the values inherent in the cooperation itself, regardless of whether the effort will realise the public good. The **process** itself is a rewarding experience which offsets the cost of production. In view of this a deep atmosphere of trust



and solidarity can be engendered among the oppressed and the process of, or participation in the struggle itself could become a fulfilling end-in-itself. This is how Nolan (1988:160) portrays the South African situation:

People are so angry with a system that is merciless and unreasonable that they become highly motivated to do something about it. But it is the struggle that helps them overcome their natural fears. The experience of solidarity and support together with the example of others gradually enables a person to overcome fear and to act with confidence and courage.

In-process benefits play an important role and their importance cannot be overemphasised. However, there are limits to their effectiveness. What kind of in-process benefit must there be so that it could offset the costs of participation, of detention, torture and possible liquidation? The unions could include special discount rates for their members, or preferred membership to certain beneficial institutions. One could argue that even if their members paid membership dues, what they get out of the union outstrips their financial contribution and is therefore worth it. Yet, what can joining the ANC or PAC offer which could offset the dangers that come with membership? Certain members of the liberation movements might receive preferential treatment in overseas scholarships. In fact there are bursaries reserved only for refugees. However, a moment's reflection illustrates that this is not sufficient to attract bystanders. There are many other such opportunities for non-activists in South Africa. In fact such non-activists do even better, because their academic performance is likely to be better than that of activists.<sup>7</sup> So this fact alone cannot be a sufficient motivation for joining the struggle. It might explain, though, why there is pressure that social and political commitment should become a paramount consideration in the allocation of bursaries. If solidarity, community and fraternity is all that can be offered, surely these can be obtained elsewhere and inexpensively for that matter. One could join some welfare and

philanthropic organisation or, even less worrying, Jimmy Swaggart's ministries.

There are other possible in-process benefits but one needs to be a cynic in order to harbour them with any degree of earnestness. The struggle could provide some spiritual and emotional home for 'the unemployed, unloved, unnoticed, marginalised and all social casualties' (Becker:1982:145). Similarly, one could join the struggle in a quest to assure himself a heroic funeral and a place in the annals of South African history. That there are such people around cannot be doubted, but it would be unreasonable to judge political commitment on the basis of such eccentric people. Given the costs of the struggle, in-process benefits would involve precisely such eccentrics. People with such motives would be joining the struggle for the wrong reasons altogether. In particular, they are likely to harm and be harmed by the cause. The temptation to become unnecessarily reckless is particularly strong within this group. No one would seriously suggest this as a noble or even rational reason for supporting the cause. Furthermore, in-process benefits make sense only insofar as they are not the primary goal. One joins a union not primarily to get additional in-process benefits. The primary aim is to be protected as a worker. A union that offers members free soup but fails to protect them from unfair dismissal is hardly worth the name. In other words, there should be an independent goal which is cherished by all. In-process benefits make sense only in the light of that goal. Similarly anyone who joins the struggle solely in search of self-realisation is treading on dangerous ground. The struggle may have its light and humorous moments. However for the better part it is full of frustrations and humiliation, and might shatter the hopes of those who joined for wrong reasons. In addition, in-process benefits are not always forthcoming. A strong sense of solidarity can easily be replaced by disillusionment, especially when trust is betrayed. There are cases where spies were some of the most trusted members of an organisation. If resistance organisations provide solidarity, that is not the end of the story.

They also are forums for spying and selling out. Traitors and informers have been discovered within groups believed to be held together by a strong sense of solidarity.

The moral solution involves the cultivation of some generalised principles imposing duties. These duties may include cooperation, trust, keeping promises, building just and humane societies and promoting free social and political orders. According to Barry (1978:32) 'an alternative moral position which might lead to participation in collective action would be a simple utilitarianism'. On this basis it might occur to someone that the increment of benefits (or incremental probability benefit) produced by his contribution would be greater than the cost incurred by himself, so there would be a net benefit (not to himself, of course, but to the human race as a whole) if he contributes.

Ultimately it does not matter how strong arguments in favour of non-coercive measures are; they will always be subject to one limitation. They cannot prove, conceptually and empirically, that coercion will always be dispensable altogether. In other words, even if it were proved that all people here and now were trustworthy, it does not follow that they will always remain so. A case for coercion does not rest on the belief and hope that people have to be actually coerced. The fundamental issue is that they have to be coerced **if necessary**. In other words, the secret lies in the threat rather than the actual employment of coercive measures. Coercion is a safeguard of community values, rather than a motive for those values. Consequently, to argue that people require no coercion is not to make a significant case against the role of coercion in the prisoner's dilemma. Supporters of coercive measures need not believe that there will always be untrustworthy people. They need only point out that there could be some - now or in the future.

One could argue further that in order to be effective, coercion itself presupposes precisely those shared normative values like trust and solidarity. Education and moral consciousness are necessary but not sufficient conditions for political action.

Coercive measures may supplement and cement them. On its own, coercion cannot easily be a primary motive for action. The South African situation is a case in point. Massive state reprisals, detention, torture and assassinations have not abated the uprisings but have instead precipitated resentment, anger, resolution and intensified resistance because such coercion is not designed to protect people's shared concerns and values. In contrast, when the United States treasury tracks down tax defaulters, then the community throws its back behind the government. In this situation, few serious Americans would complain of coercion and suppression of individual liberty. All in all, in certain situations coercive and non-coercive measures should not be construed as antitheses. They are often complementary. Morality without coercion may be unstable, and coercion without morality is terror.

The moral solution would ultimately be the most effective. Morality, especially in the Kantian sense of the categorical imperative, demands that certain people perform acts contrary to their immediate self-interest as a means towards greater mutual advantage (Ullman-Margalit:1977:43). A moral person acts out of conviction, regardless of what others in her situation choose. She would not betray the cause, even if she could do that with impunity. According to Hardin (cited in Sartorius:1982:212), people who respond to the demands of 'conscience' would voluntarily contribute towards the production of public goods. However, he recognises clear limitations on the role of morality in the solution of the prisoner's dilemma. This is largely for two reasons (Sartorius:1982:212):



i. ...the long range consequences of such a policy would be self-defeating, because those who would be responsive to such appeals would be eventually outbred by those who are not - the wicked would inherit the earth, and in excessively large numbers to boot.

ii. ...calling on people voluntarily to [cooperate in the production of public goods] would place them in an undesirable psychological 'double-mind'. They would either fail to cooperate and feel guilty for doing so, or cooperate and feel that they were being played for suckers by those who did not.

The first point is odd, to put it mildly. It suggests that altruism (morally) is genetically determined. If this is so, and if 'ought implies can', those who are not altruistic cannot help themselves. They are genetically biased towards selfishness in the way that individuals are biased towards alcoholism. Here we are back to the Wolffian problems: 'I am accountable only if I could have chosen to act differently'. Genetics apart, some disenfranchised people acknowledge that freedom from apartheid is a public good but argue that, in their situation, there are more immediate goods to strive for - like educating their children. In fact both points provide weak considerations. Is the first claim empirically or conceptually correct? Surely it cannot be a necessary truth because one can deny its claim without contradiction. As an empirical statement, it is unsupported. There is simply no empirical evidence to support the contention that there will be more evil than good people on the earth. The effect of the second contention is that people should not be expected to behave morally where sacrifices are involved. If the role of morality is to be rejected, some stronger argument is required. Olson bypasses these problems by again appealing to group size, especially with regard to the impact of individual contributions in a large group. He argues that even an altruistic and benevolent person would have no reason to contribute towards the public good, because 'his own contribution would not be perceptible' (1971:64).



To conclude, morality does not eliminate the need for coercion. If all people are moral then obviously there is no need to employ it. If they subsequently degenerate then coercion is handy. Further, even if all people were moral, this fact in itself is worthless unless it became general knowledge. Coercion is a safety mechanism which need not be enforced, but which could if it needs to be.

### Fair Play and Consent - Equivalents or Substitutes?

#### A reply to Nozick

In the light of the foregoing, it is possible to respond to the Nozickian attacks on the principle of fair play. It will be argued that the overwhelming importance of a public good and the fair procedures of its production appear to be legitimate substitutes for consent. It is worth recalling that for Nozick the principle of fair play is [logically] incapable of generating any obligations, regardless of how it is formulated. His position is simply that consent, and nothing else, is the basis of political obligation. Whether this is correct or not, it certainly does not follow from any of the arguments he advances. Nozick's style is particularly crucial here. He attacks this theory simply by providing some intuitively emotive examples. In fact if his examples were modified they would result in different intuitions.

In the first place, is a person obligated to contribute towards the public address entertainment described above? Nozick maintains that this is not the case. The reasons are obvious. The person was not consulted beforehand. His name was merely posted. Although he enjoyed the entertainment, this is certainly a luxury he could do without, if he knew beforehand that he had to pay. This is an open benefit, which he can avoid at some considerable cost - for example, by moving out of the neighbourhood until the entertainment is over. While this is true, it proves very little. It demonstrates merely that you cannot impose **entertainment** gratuitously on people and later demand payment for it. Nozick

seems to derive from this the claim that you cannot impose **any benefit** and later demand payment for it. Suppose this neighbourhood was located in an earthquake-prone area and that the public address system was used not only for entertainment, but also for emergency announcements. Is it obvious that people are not obliged to support it?

Essentially the same applies to the 'books' example. Books are private goods which can be rejected or accepted. If a person is offered an unsolicited gift, it follows that he cannot be later expected to pay for it. Nozick's objections make sense always when they apply to private goods and (sometimes) to open benefits. Open goods cannot be denied to others in the neighbourhood, and yet are also not essential. They are the type which reasonable people may be willing to forego. If the principle of fair play imposes obligations on people for merely **receiving** or **enjoying** private and open benefits, then it is prone to generate extreme and obnoxious types of paternalism. In this respect Nozick's criticism is solid.

Is this, however, the only possible version of the principle of fair play? It seems not, and for this reason it is useful to return to Hart and Rawls. Rawls specifically contends that only a person who has **voluntarily accepted** the benefits is obligated. Nowhere does he specify what he means by accepted. However, 'voluntarily' suggests that the benefits were not merely passively received, but actively pursued (Bell:1978:67-71). Hart's position is not straightforward. While he refers only to benefits having been received (as opposed to accepted?) he also maintains that people conduct a 'joint enterprise according to rules'. This seems to imply a degree of accepting the rules, as opposed to having benefits simply imposed. Still it seems those who have accepted the rules may demand payment from those who simply benefit, regardless of whether they accepted the rules or not.

What then does acceptance of goods mean? Simmons (1979:129) attaches enormous significance to the distinction between receiving and accepting (the a-r distinction), and defines acceptance in terms of two essential features:

- i. either a person must have tried to get (and succeeded in getting) the benefit;
- ii. or he must have taken the benefit **willingly and knowingly**.<sup>8</sup>

Clearly, there is no way that enjoyment of Nozick's books and public entertainment would constitute 'acceptance' of benefits. These are straightforward cases where a benefit is simply imposed. So, Nozick's criticism should not hold against Rawls who explicitly stipulates that the goods must be accepted if an obligation is to be incurred.<sup>9</sup>

The a-r distinction proves too much, especially where benefits must be accepted 'willingly and knowingly'. What is it, for example, that the beneficiary must **know** in order to incur obligations? According to Simmons (1979:132) this involves 'an understanding of the status of those benefits relative to the party providing them'. The status may plainly vary, from an unsolicited gift, a priced item of merchandise or a conditional gift. People sometimes issue 'gifts' only as a form of bribery. Suppose that with all the background information, one goes ahead and takes the benefit. If this constitutes acceptance, then such a person is obligated.

The a-r distinction is clearly a convenient device for ensuring that obligations are not simply incurred at any turn, but only where private goods have been accepted. However, it is precisely this feature that makes the distinction counter-productive. To accept something in Simmons' sense is to **agree** to the conditions of its issue. Consequently, the obligation arising from this transaction is not based on the enjoyment of benefits as such, but fundamentally on agreement to accept them under specific conditions such as shouldering the costs. If this is correct, then consent rather than fair play accounts for the obligation. In this way, the principle of fair play collapses into consent, and is

consequently superfluous. This is a major flaw in Simmons and Rawls' approach, although Simmons (1979:128) seems oblivious to it:

...the principle of fair play does not collapse into a principle of consent. While many participants in cooperative schemes will be bound to do their parts because they have consented to do so, many others will be bound because they have accepted benefits from the scheme. The obligations of the latter will fall under the principle of fair play.

Ironically, the distinction seems to provide an adequate response to Nozick's criticism. In fact, it does so only by unwittingly abandoning the principle of fair play. Nozick's position seems unassailable. It is solid against Rawls and Simmons who re-introduced voluntariness. Now it looks even stronger against Hart for whom mere enjoyment of benefits can be a sufficient reason for incurring obligations. There is a twist of irony here, because it is precisely Hart's account, with some modification, which provides some hope out of this impasse.

There is a common flaw running through Nozick, Rawls and Simmons which Hart may have avoided. All three focus on the beneficiary's state of mind, whether he has voluntarily accepted the benefits or not. This has been shown to be generally helpful in accounting for obligations although it does so at the expense of the principle of fair play as such. The beneficiary's choice, intention and desires are indicative only of his consent or agreement. The principle of fair play should be a substitute for, and not a variant of consent theory. Consequently, in order to apply the principle, it is futile to enquire into the consent or lack of it on the part of the beneficiary. The only feasible reply to the Nozickian attacks is by focusing on the **nature or type of benefits**, regardless of how the beneficiary feels about them. One could then plausibly argue that if certain types of benefits are merely received then the obligation arises. Certain goods, as Miller and Sartorius (1979:130) point out, cannot be accepted in the Rawlsian sense:

... the principle [of fair play] may be invoked against any individual only when it may be claimed that his acceptance of the benefits in question has been intentional and fully voluntary, **a claim which is quite dubious when what is at issue are public goods which are available to all within a large community, including those who have little option with regard to the question of continued membership.**<sup>10</sup>

In the light of this, Arneson (1982:620-621) concludes that:

where pure public goods are supplied, voluntary acceptance of benefits is impossible and so, unnecessary to generate obligations according to the principle of fair play. Mere receipt may suffice to obligate.

This suggests that Hart's initial intuition may have been correct. The principle of fair play need be based only on the mere enjoyment of benefits. However, Hart did not spell out the details of the nature of benefits.<sup>11</sup> However, since he uses this principle to account for political obligation, it is likely that he had collective and public goods in mind. After all, government officials do not move about throwing books into people's yards. The provision of public goods is generally the domain of the public sector.

In the light of the foregoing discussion, it is concluded that the principle of fair play is a genuine source of obligations. It is not contended that enjoyment of any public good generates obligations. For this reason liability is restricted to **pure** public goods. Mere enjoyment of pure public goods is sufficient for incurring obligations. Pure public goods cannot be accepted or rejected. They are merely enjoyed. However, there are four other important conditions to be met before obligation is incurred (Maphai:1987:78):



i. The goods must be sufficiently important for, if not essential to, everyone's welfare. Consequently, everyone has a vested interest in their being adequately financed and produced. It should not be simply a beneficial, but dispensable luxury. It is possible for a benefit to be non-excludable while remaining non-essential. However, a pure public benefit should be both non-excludable and essential.

This is crucial. If people are going to incur enforceable obligations non-voluntarily, then what is at stake must be of vital welfare to the community. It has been conceded that overriding individual consent is a serious moral challenge which can be justified only by another value, of an equal or more fundamental order. Nozick is correct to insist that imposing classical music on people, beneficial as it might be, is not a genuine ground for demanding payment in return. However, the demise of oppression and the establishment of a democratic, non-discriminatory political system would seem to meet some of the requirements of **pure** public goods. The distinction between public goods and pure public goods is crucial for the rest of the argument and can therefore not be overemphasised. People have a moral obligation to maintain public goods. In addition to a moral obligation, they have a social and political obligation to maintain pure public goods. The principle of fair play is restricted here to pure public goods and not to all public goods.

The quest for liberty has become an overriding concern for the oppressed. Should the good be of benefit to each and every one? In practice, the provision of an essential benefit may naturally entail disadvantages for others. For example, comprehensive and successful inoculation can incur some financial losses for doctors. A decrease in crime similarly augurs badly for lawyers. However, no one should dispute that a healthy and crime-free environment is, overall, a benefit in which society in general has a vested interest. In fact, lawyers may have to be taxed in order to support a crime prevention project, just as doctors could also be required to contribute towards primary health care and education. On the other hand, an unhealthy and crime-infested environment is

a danger to the doctors and lawyers as well. Is there a doctor who has no vested interest in the elimination of Aids? If there are disadvantages occasioned by the provision of public goods, they are likely to be of a minor nature. At best they are a nuisance, but neither harmful nor injurious.

ii. The benefit should be worth the costs.

No person, however oppressed, is obliged to confront a repressive and ruthless government if the cost of doing so is likely to be out of proportion to the anticipated resultant benefits. It is true that political rhetoric exhorts people to give up everything, including their lives. Giving up lives may be worthwhile if there is light at the end of the tunnel.

iii. The benefit should be fairly distributed.

This is the most difficult of the conditions. What precisely is it that needs to be fairly distributed and what counts as fair? It raises general questions about distributive justice and an answer to such a broad range of issues is hardly worth an attempt here. Suffice it to emphasise that in this context a demand of fair distribution of benefits makes no ideological assumptions regarding the future economic system and the country's notion of justice. There have to be certain minimal requirements, such as political rights, optimal liberty and equality before the law. Fair distribution of benefits raises problems when juxtaposed with fair distribution of burdens. Should people contribute equally to the struggle, or only according to their ability and means? Similarly, does fair distribution of benefits imply that, to those who contributed more, more of the cake will be given and **vice versa**? It would clearly be dangerous to argue that those who get more from the system have an obligation to support that system even more vigorously than those who are getting less.

iv. The provision of such benefits must be essentially the function of groups rather than individuals.

Lighthouses and decoded television services are open goods that the private sector can provide. Liberation cannot be provided by the private sector or individuals. Even if a private mercenary group were hired, it would still have to be paid by contributions from the community. This is not a conceptual requirement. However, only a bizarre neighbour would undertake to clean the streets free of charge for other neighbours. Similarly, it would require an exceptional messiah to wage a lone liberation struggle on behalf of the community. Further, the quest for liberty involves human and material costs. It seems only fair that the beneficiaries - the entire society - should shoulder the responsibility of creating a free, non-racial society. Consequently, where the stakes are high, and consent is not available, obligations may still arise. There is nothing radical about such a claim. In fact it confirms some common moral intuitions. The overriding importance of human life, for example, is sufficient for imposing obligations to respect it, regardless of the desire of some to lead a more piratical life.

To conclude, non-consensual obligations are possible, as the principle of fair play demonstrates. In some respects at least, the struggle for liberation may be expressed in terms of public goods. However, it remains to be seen how such an imprecise concept as the 'struggle' can be explained by means of fairly precise terms like 'public goods'. This conclusion raises other intricate questions: Who, for example, defines liberty as a public good? Who decides on the allocation of the costs? Can there be an equal allocation of costs in the political struggle? There will always be some conflict between meeting needs and respecting liberty. Rich people sometimes get taxed heavily for collective goods that they do not require, or use less than others. These questions are raised already at this stage, although they are

addressed in the coming chapters. For now, it should be acknowledged that they raise genuine problems for this argument.

**NOTES**

1. Emphasis added.
2. Emphases added.
3. The principles are: (A) Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all; (B) Social and economic inequalities are to be arranged so that they are both (i) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (ii) attached to offices and positions open to all under conditions of fair equality of opportunity.
4. For problems raised by Rawls' justice condition see Simmons:1979:109-114.
5. Emphasis in the original.
6. Also variously known as 'syndicates' or 'societies'.
7. This is an untested assumption. There seem to be activists who do much better than those who confine their visits to academic libraries. Whether they are exceptions to the rule or not cannot be established here.
8. Emphasis added
9. It should be mentioned briefly that the distinction between receiving and accepting is not as neat as Simmons suggests, but this is not something that should divert attention at this stage. For an elaborate study see Maphai:1987:75. Still, there is some analytic merit to this distinction.
10. Emphasis added.
11. In fairness to Hart, it must be pointed out that the principle of fair play was not his major focus. He mentions it briefly in the context of natural rights.



## CHAPTER FIVE

### Utilitarianism and Fair Play

The principle of fair play may be based on two possible ethical bases, namely, deontology and consequentialism. A deontological perspective condemns free riding as intrinsically unfair whereas a consequentialist objects to free riding only if it is socially harmful. This chapter deals with the debate between utilitarianism and fair play. The problem is that free riding may be simultaneously required by, or condemned on utilitarian grounds. The central dogma of utilitarianism is maximisation of total or average utility. On the other hand, the principle of fair play insists that all who benefit should cooperate in the production of the benefit, that is, the class of beneficiaries should be identical to that of cooperators. The principle of fair play is based upon **just distribution of benefits and burdens**, while utilitarianism is concerned with **optimal utility**. The result is that whereas the principle of fair play prescribes universal participation, utilitarianism might require only widespread selective cooperation. It will be contended here that there is no inherent and irreconcilable conflict between fair play and utilitarianism. They are contradictory only if one examines free riding from a deontological position. The relative claims of both the deontological and consequentialist approaches towards free riding will be examined. In the end, it will be demonstrated that, even if from the deontological approach free riding were intrinsically evil, this itself would not justify coercive enforcement of cooperation (that is, the prevention of free riding). One would still have to fall back on utilitarian considerations by demonstrating that such intrinsic wrongness was also socially harmful.

To recapitulate, free riding could be condemned for two reasons, namely, that it is potentially harmful (utilitarian), and it is flagrantly unfair (deontological). However, what justifies

coercive measures against free riding would not be its intrinsic immorality, but rather its potential for public harm. Society has a right to protect itself from harm, but it is not its prerogative to force people to behave morally. In other words, legal moralism is not an acceptable liberty-limiting principle, except where there is a link between the (im)morality and public harm.

### **Problems with utilitarianism**

Three criticisms are levelled against the utilitarian basis of the principle of fair play. First, and this is ironic, utilitarianism can in fact undermine the principle of fair play. If everyone had to deliberate and act like an act-utilitarian, then this would result in massive disaffiliation from say, a liberation movement. The threat of such a failure is constant. Second, from a deontological perspective, utilitarianism is blatantly unfair. It is indifferent to the demands of fair shares of burdens and benefits. The benefit might eventuate with optimal but extremely unfair methods. Third, utilitarianism may not be as efficient and cost-effective as it claims to be. On the contrary it could be impractical. To summarise, both fair play and utilitarianism pursue and protect certain fundamental values. Utilitarianism aims at efficient and rational cost effectiveness. Fair play focuses upon a fair distribution of a public good and a fair allocation of costs.

Briefly, utilitarians argue that universal cooperation leads to non-optimal consequences; that it is not necessary for each and every person to be involved in the liberation effort, nor is it necessary that all those who have benefitted from a scheme contribute towards its maintenance. What is required is only that some, probably the majority should cooperate. The crux of utilitarian complaints is that it is foolish to have a benefit at a higher price than one needs to pay because the optimal outcome is to get it at the lowest cost possible. If more people contribute than is necessary more is being paid for it than is necessary. As

a result there is a smaller utilitarian surplus than there would be if fewer people contributed. The best utilitarian outcome is if the minimum number of people sufficient to produce a surplus contribute. Consequently, free riding is not necessarily wrong, especially where no harm results. On the contrary free riding may be prescribed or even **demand**ed by utilitarianism.

Why is there a problem in the first place? Why should cost-effectiveness and fair play be mutually exclusive? It is necessary to recall some relevant features of free riding and public goods. There are essentially two different types of free riding (Griffin:1985:120). One adds a real, though often minor, extra burden on members of a scheme, whereas the other involves no extra load whatsoever. It is the latter that raises problems for utilitarians. Public goods were seen to be those in respect of which people find themselves in a prisoner's dilemma situation. Consumption of such goods cannot be restricted to those who have paid for them. Because the condition of individual insignificance is satisfied in the case of public goods, it is tempting to become a free rider. This is the dilemma from an individual's viewpoint: 'If others produce the public good, I shall get it. If on the other hand they deliberate like me and fail to contribute, I will be irrational to put my investment on a lost cause. Consequently, whatever everybody else does, it is better that I do not contribute'. This is the paradox that both utilitarianism and fair play must address. How do they respond?

Utilitarians opt for the optimal outcome, that is the minimum price because this maximises the surplus. What is their attitude towards universal cooperation? There are two possible answers. Either (a) they dismiss fair play as irrelevant or (b) they take it into consideration as a separate issue altogether. The alleged irrelevance of fair play is evident in the following argument

(Sumner:1971:116):

But this [the principle of fair play] is an unfortunate principle in the sense that universal conformity to it necessarily produces a non-optimal outcome, thus requiring unnecessary sacrifice on the part of some members of the community. Those who make it a point always to follow such a principle and seek no method for bringing about an optimal outcome are to that extent wrong-headed. If Dogood waters when all others are refraining as a consequence of their adherence to such a principle then he is in a perfectly good sense taking advantage of them...and if they are, as we are assuming, conscientious then he is taking advantage of their conscientiousness. However steadfastly they hew to their principle, the point is that a better outcome may be possible if they abandon it; this is a measure of their foolishness in being thus steadfast. When others are being foolish and wrong-headed is one required to be foolish and wrong-headed as well?

How does a utilitarian take fair play into account? Such fair play would be based on the theory that if there are not any procedures for fair distribution of the surplus then there are well-known human characteristics that result, like bitterness, resentment and the desire not to be taken for a ride. Therefore, it is possible to prescribe on utilitarian grounds that there should be some fair share procedure. Still, where conflict occurs between utilitarianism and fair play, then utilitarianism would take precedence. Utilitarians argue that to prevent everyone from certain potentially harmful activities, when there are feasible ways of permitting others to perform those activities without harm, is senselessly severe. Broad (cited in Lyons:1965:168) is explicit about this:

There may come a point where it is better that some people should refuse to co-operate although this involves an imperfect distribution, than that they should by co-operating produce a much smaller net-balance of goods though perfectly distributed.

The rest of the chapter proceeds on the assumption that fair play

is taken into consideration by utilitarianism, but only as a separate issue altogether. It can no longer be assumed that the latter is indifferent to the requirements of fair play. In that case what would separate fair play from utilitarianism? The following illustration provides a clue to a possible answer.

Suppose that a group of persons hired a jumbo jet which holds 400 passengers, at a total cost of R80 000 payable six months **in advance**. Assume further that the flight is of prime or overriding importance, such that they cannot afford to cancel but for exceptional reasons. They elect a committee to plan and arrange the flight. The conditions are as follows: Once an individual has paid, the journey is guaranteed for that person. If he withdraws subsequently from the deal, the initial payment is non-refundable. If the full price is not covered from individual contributions, committee members have to make up the shortfall from their personal resources. If more has been collected than was necessary, then the surplus is shared by the committee members. This agreement creates legal rights and obligations between the committee and the members. Assuming that the committee consisted, not of rugged capitalists but rather of utilitarians, how should they calculate a fare per passenger? Two options come to mind:

i. One approach (utilitarian) results in the price of R200 per person (R80 000 divided by 400). This is optimal and fair. No waste is involved.

ii. The other alternative (fair play) might require R250 per person. This is also fair, in the sense that this is what everyone pays. However, it is non-optimal, i.e. travellers pay more than they need to.

Which then is the correct price? The answer depends on a host of factors. Suppose that all the passengers paid and turned up on the departure day (this fact could not have been known in advance). The utilitarian price would definitely be the best under these circumstances. However, it depends on other preconditions. Firstly, there has to be sufficient passengers to occupy each and



every seat. If not, the organising committee runs the risk of carrying additional costs. Had the committee not been obliged to take responsibility for possible extra costs, the situation would have been worse. It may have become necessary to cancel the journey or to ground the jet until every available seat had been taken. At this point the patrons might consider other modes of travel. In other words, while the utilitarian solution is financially optimal, it is nevertheless extremely unstable.

Utilitarians also face what looks like an imponderable information problem. However, in some cases, given certain relevant information about the cost of a public good, it should be possible to calculate fairly the cost to each one. The example above clearly demonstrates that this is possible. In short, what utilitarians need to do is simply to calculate the minimum cost required. This strategy results in salience. It ensures that every action has implications for the scheme, and that each knows that unless he participates, then it will result in a disaster. There is no condition of individual insignificance (Tuck:1979:150). What becomes an issue then is the fair play or otherwise of the procedures by means of which free riders are chosen. Such free riders might be decided by lot, or by a system of rotation. The above dilemma is similar to the one which Tuck (1979:151) provides about the number of people who may cross the lawn without causing damage to it:

Assuming that each member of the community is a utilitarian and knows that his fellows are the same, and that each person can work out independently what the utilitarian optimal<sup>1</sup> allocation is, then it should be possible for them so to co-ordinate their activities that the allocation is achieved. Suppose they calculate that the optimum number to walk on the grass is 10., and there is a population of 100, then each member of the population can independently give himself a probability of walking on the grass such that if they all give themselves the same probability, the number walking on it will ordinarily be 10.

Part of the problem with utilitarians stems from the type of examples with which they work. They involve people agonizing over whether to cross a lawn or not, to litter or not, to water a garden or not, to pick up flowers or not, to raise a room temperature from 50 to 60 degrees or not. With such items and objects it is relatively easy to calculate costs and distribute them optimally and fairly. Yet there are problems even in these cases. For example, where calculation of costs is possible, as was evident from the jumbo jet example, utilitarians cut their scheme too thin by making it too unstable and too susceptible to minor deviation. In the long run this might prove costly and inefficient. Besides, the establishment and monitoring of such procedures might prove too unwieldy.

However, to make the kind of calculation they need in respect to public goods, they require a degree of knowledge that is not readily available or even conceptually possible. For example, how could anyone possibly compute the costs of a liberation struggle?

Does it make sense to compile a definitive final shopping list: 200 tanks, 6000 hand grenades, 4 weeks for a national strike, 20 national demonstrations, 18 calls for sanctions, 20 000 casualties, 50 school boycotts, and 30 consumer boycotts? On the utilitarian optimal principle, accurate calculation is necessary so that no disutility follows. Moreover, as Tuck (1979:152) points out, ultimately the difficulty involves far more than data. It is a 'slippery slope' problem:

At what point do you recognize the threshold, or when does a heap become one? There is not such a clear cut criterion. In fact, the free rider problem arises precisely because public goods are characteristically not like that - the amount that they can be bought for is indefinite, because what is being bought is essentially indefinite.

Similarly, how does any government define the borders of a good health service? This is not merely an information problem as utilitarians seem to think. What is at issue is a logical riddle.

Until this riddle is resolved (by logicians) no utilitarian shall ever be in a position to provide a satisfactory cut-off point.

There is some truth, then, in Sartorius' (1982:214) contention that cooperation under the act-utilitarian banner would be limited to the following conditions: (a) no significant threshold effects are involved<sup>2</sup>; and (b) the individual is in a position to act in a manner that will have a perceptible effect on the welfare of others. This formulation confirms the contention that the bigger the contributing group the less difference non-cooperation makes. There is a further possible anti-utilitarian consideration, namely, that the utilitarian position is internally inconsistent; that it is impossible to sustain it even in a community consisting entirely of utilitarians. Such a community would be incapable of cooperation since it sanctions free riders. To appreciate this concern, it should be recalled that fair play does not necessarily insist on each and every single person contributing regardless of personal circumstances. There are possible exceptions. However, the onus rests on such exceptions to demonstrate how relevantly different they are from other contributors to deserve special exemption from communal obligations. For this reason, the poor and incapacitated may be exempted from payment. There is a morally relevant difference between them and other members of the community.

The utilitarian position is much more radical than this. It wants to exclude all who feel that a contribution is unnecessary, even though they can afford it. In other words, whereas fair play permits 'free riding' as a counsel of prudence, utilitarianism prescribes it as a moral imperative. For utilitarians, the problem becomes the mechanism of deciding who should contribute, and who may be left 'off the hook'. This problem should be explored against an earlier assumption - the assumption that fair play has been added to utilitarianism. Suppose this dilemma occurs in the society inhabited only by utilitarians: Who should free ride and how is that decided? What utilitarians recommend here is an equitable chance to everyone for exemption.

However, the method of calculating costs of public goods is likely to be suspect. The criterion for such assessment could be nothing more than personal discomfort. A utilitarian 'wimp' could be tempted to exaggerate the cost of liberation so that his non-cooperation might seem morally respectable. This could be a purely subconscious process and there is no need to assume malicious motives on the part of utilitarians. Besides, for three-quarters of the world's population, the types of benefits cited (well-trimmed lawns, rising temperatures and beautiful flowers) are dispensable at best, and unattainable luxuries at worst. This may be asked: Is it judicious to subject fundamental public goods like liberty to utilitarian whims? Further, the type of 'occasion-by-occasion' calculation required by act-utilitarianism presupposes the availability of leisure to which many oppressed people have still to gain access.

Lastly, as it was suggested earlier, much of this calculation takes place against the background of either total ignorance or insufficient information. In a large community it is often difficult to predict what the others will do. Utilitarians do not provide an unconditional and unqualified support for a public good. Their decision to cooperate or not depends largely on what others are doing. In that case, they 'should then try to form an estimate about the probable number of cooperators and choose to cooperate if that number is on an increasing part of the average utility curve' (Elster:1985:150). For them to be able to do this, the principle of fair play should assume a more central position. They require a guarantee that there would at least be others who will always cooperate, regardless of the circumstances, that is, those who regard the duty to cooperate as something close to a categorical imperative. Without this basic presumption, the utilitarian probability approximation would rest on a precarious foundation. Consequently, a rational utilitarian seems to be parasitic on the presence of non-utilitarian, deontological moralists. Of course, this is not a problem. A utilitarian is someone who, amongst other things, knows or tries to determine how

many deontological moralists are around.

To recapitulate, what justifies coercive measures against free riding is not its 'intrinsic immorality', but rather its potential for public harm. Society has a right to protect itself from harm, but it is not its prerogative to force people to behave morally. The issue at this point becomes: What constitutes harm? This is the subject of the next chapter.



**NOTES**

1. Optimal utility is that in which only the **required minimum** take part. There is no unwarranted and unnecessary addition of burdens (Sumner:1971:109). This note is not found in the original quote.
2. Threshold effects are those consequences of individual action that result or fail to result depending on whether or not a sufficient number of others are acting in the appropriate way.

**CHAPTER SIX****An analysis of the concept of Harm**

In this chapter, it is demonstrated that free riding is potentially a socially harmful activity and that, consequently, it calls for some form of social intervention. That harm is a genuine liberty-limiting principle is assumed without argument. However, harm is not a tidy and problem-free concept as the following illustrate:

- i. To harm someone is to damage (thwart, set back or defeat) their interests. To have an interest in something is to have a stake in its being well maintained. A person stands to gain or lose in respect to the interest because of some investment of energy or goods (Feinberg:1973:53)<sup>1</sup>. This is essentially Hare's position as well (1972:25).
- ii. To harm is to do what most people do not want, and we think they are right in not wanting it (Lucas:1966:172).
- iii. Harm is a severe loss of a valued thing, and the violation of rights (Goodrum:1976:329).
- iv. Harm is a violation of a legally protected right (Kleinig:1978:27).
- v. In a moral sense to harm a person is to wrong him, or treat him unjustly (Feinberg:1984:34).

These definitions call for some preliminary comments. All are incomplete or vague as they stand. However, they all include some important concepts linked with harm. The first (i) raises the question of **interests** which is central to the notion of harm. Similarly **wants** or **desires** play a prominent role in (ii). Also suggested is that only violation of **legitimate wants** constitutes harm. There is a **moral** sense to the concept. Harm presupposes wrongful conduct. **Rights** and **justice** are also suggested by (iii) and (v). The notion of harm presupposes some theory of rights.

Goodrum's account is broader on the question of rights than Kleinig's and covers a wider area than legal rights, by including both moral and natural rights. This should be distinguished from the view that only violation of legal rights constitutes harm as asserted by (iv). Such a theory is too narrow because it excludes slaves and others without political and legal rights from the class of possible victims of harm. Worse still, it would legitimise questionable but legally protected rights in a repressive and discriminatory system. Clearly some laws are deleterious and confer rights which morally ought not to be respected. Existing rules in an unjust and discriminatory society can cause harm, and the South African society is a paradigm case.

Now for some examples of harmful behaviour. Generally, the concept covers a wide variety of individual and collective actions. Common examples are wilful homicide, assault and battery, robbery (Feinberg:1973:25); bodily injury, fraud, theft, destruction of property (Goodrum:1976:329 and Taylor:1973:56); mental anguish or pain, physical pain, hurt and suffering, grief, sorrow and the loss which had occasioned it, and malicious and untruthful gossip (Kleinig:1978:27); imprisonment, exposure to infectious diseases, a tarnished reputation, loss of jobs, being kept in ignorance, and being corrupted (Lucas:1966:172); malnutrition, starvation, emotional disturbances, illness and disease, vulnerability to attack and homelessness (Lyons:1979:7); loss of something desirable (Goodrum:1976:240); a deprivation of more valuable aspects of living (Thomson:1987:37).

It should be evident that the list constitutes an untidy maze. It gets even more indeterminate than this when collective harms or harms to public interest are added. Private harm is generally directed at individual interests. In contrast, public harm entails damage to institutions and systems considered to be in the public interest. It is not essential to the notion of public harm that specific people should incur visible and concrete injuries or harm. What is required is that institutions in which the community has a stake should be undermined or threatened (Feinberg:1973:25). It is

also possible to base a conception of harm on the need for common values. In this case, harm simply means the violation of common values of the community and its ideal life patterns (Lucas:1966:173): 'Unless there were some things generally regarded as harm, there would be...no basis for any community at all'.

Hart (1961:189-195) conceives of public harm against the background of 'certain rules which any social organisation must contain if it is to be viable'. The need for these rules is explained largely in terms of three features of human nature:

i. Firstly, because of natural **equality** and **limited altruism**, humans are vulnerable to bodily attacks and killings from fellow humans. This was also one of the fundamental assumptions of the contract theorists regarding people in the state of nature.

ii. Secondly, unlimited wants for **limited resources** like food result in the need to control property.

iii. Finally, **commercial deals** necessitate rules to make promises and contracts binding.

In the light of these facts of human nature, harmful conduct comprises the infringement of those rules, and the impairment of those institutions, necessary to the viability of society. This account of harm has moved a long way from mere bodily injury to societal harm.

### Interest and Desire

Harm entails the interrelated concepts of wants and interests. Interest partly involves the frustration or non-fulfilment of desires. For Barry (1965:176) interest means what increases a person's opportunity to get what he wants. Interests are potential means to ultimate ends. They do not satisfy immediate ends, but rather put one in a position to satisfy wants. What is interest and how is it related to desire? In this context the notion of

interest acquires a specialised meaning, different from the psychological phenomenon suggested by the phrase 'X is interested in'. Such descriptive connotation usually refers to the inclination to pay attention to something, or some person (Kleinig:1878:27). For example, someone might be interested in the results of a tennis tournament.

The harm-related concept of interest is normative. To start with, an intelligible distinction can be made between two concepts of interest, both of which are captured by the expression 'X has an interest in.' There is a **subjective** concept, according to which interest refers to anything which is the object of human desire. Unfortunately, this is too wide a conception to be of use because, in principle, people can desire anything and everything. This means that the frustration of any desire, however outrageous, bizarre, trivial and non-essential would amount to harm. If members of the **Afrikaner Weerstand Beweging** or of the **Blanke Bevrydegings Organisasie**<sup>2</sup> desire the extermination of blacks or Jews and are prevented from fulfilling their desires, then on this account they would be harmed. Consequently:

...desires must be subject to some form of assessment or criticism before they can be used to define the value of primary goods in a theory of well-being and harm (Thomson:1987:44).

In contrast to subjective interests there is an **objective** concept, according to which interest refers to whatever is truly good for a person, that is, whatever promotes his welfare, regardless of how he feels about it (Feinberg:1984:42). Here interest is construed as a generalised means, often indispensable to the advancement of ulterior interest (this concept is explained fully below). This distinction, useful as it might prove to be, raises an immediate question regarding objective interests. If they represent 'what is truly good for a person regardless of his wants', how are they established?

While interests are not reducible to wants, the two concepts



are not unrelated either. Whatever the relationship between the two, it is impossible to deal with interests without addressing the question of wants (Hare:1972:98):

It would scarcely be intelligible to claim that a certain thing was in a man's interest, although he neither wanted it, nor had ever wanted it, nor would ever want it, nor anything that it was a necessary or sufficient means to, nor might any of these things be the case.

It is plainly incorrect to reduce all interests to wants. After all, it is not logically inconsistent to claim that 'although A desires X, X is really not in A's interest'. Not only can a person desire what is not in his interest; conversely, he might also abhor what is in his interest.<sup>3</sup> This could be said of a heart patient who desires to improve his condition but nevertheless smokes and fails to take regular physical exercises. A person might act contrary to his interests for a number of reasons such as irrationality, immaturity, ignorance and impatience. What then is the relationship between interests and wants?

An instructive distinction can be made between ulterior and welfare interests. Ulterior interests are a person's more ultimate goals and aspirations such as artistic or scientific achievement, high political office, successfully raising a family, and personal glory. Typical of ulterior interests is that they function as ends in themselves (Feinberg:1984:37). They are intricately linked to wants in a manner that welfare interests do not seem to be. Welfare interests are instrumental and non-ultimate in the sense of being necessary conditions for the fulfilment of ultimate interests. They may also be basic, especially in poor and underdeveloped countries:

...even some human beings - at certain times and places, **most** human beings - have as their highest good something resembling mere welfare. For these souls, **just making it**, surviving from day to day, is triumph enough...mere welfare is the same as well-being.

In the case of ulterior interest, wants seem to play an essential role. In fact ulterior interests seem reducible to wants

in the manner other interests are not. For example, how could a person have an interest in political life without simultaneously wanting such a life? Still, wants do not account for all interests, as is evident from welfare interests. Welfare interests are non-trivial and interference with them usually amounts to more than a failure to benefit. In some countries they are protectable rights, thus making their enforcement and protection appropriate. The following would be examples of welfare interests: bodily and mental health, normal intellectual development, adequate material security, stable and non-superficial inter-personal relationships, and a fair degree of liberty, life, physical health and vigour, integrity, emotional stability, freedom from interference and coercion, minimal income and financial security, tolerable social and physical environment, resources, economic assets, and political liberty. They are, according to Kleinig (1978:30) 'privative' that is, their opposites are logically primary. A term is privative if it is defined as 'the absence of those qualities which are constitutive of its opposite'. For example, 'health' refers more accurately to absence of disease, than to abundance of good health. Privative notions presuppose 'normalcy'. Good health is the norm: it is the disease or ill health that calls for an explanation. Welfare, then, consists in the absence of defects and irregularities with respect to some conception of its normal functioning. Welfare interests are shared by nearly all people. They are minimal, but non-ultimate - serving rather as necessary means to ultimate ulterior interests (Feinberg:1984:37).

On the whole, welfare interests are typically instrumental. They constitute **basic** requirements of human beings, but by no means all of well-being. They are necessary if people are to have any chance in life at all, a chance of achieving other goods. This is what makes them more important than ulterior interests in the sense that if they are defeated, so are a person's more ultimate goals. This fact makes it possible to maintain of any person, that he may not necessarily be the best judge of his own welfare. It is true that an athlete might be more concerned about his success, but his

trainer might be a better judge of what is required for that success. To determine welfare interests, one needs judgment and some expertise. Although personal feelings are not altogether dispensable in the account of interest, still they are not decisive either. This is essentially what Barry (1965:177) implies in reference to drug addicts, alcoholics and compulsive gamblers:

And if someone isn't himself able to make the rational calculation others can try to think their way into the man's value system, or impute what seem reasonable values to him (based largely on the value systems of more rational people) and prevent him from doing things he will regret later or make him do things he will be pleased later to have done.

The harm principle defended here is intended to be both narrow and effective. It must be limited to the prevention of harm to others, and not include the prohibition of the harmless but undesirable actions of others. The harm prevented must always be grave - so serious that the cost to the person who is interfered with must be negligible compared with the harm his actions would precipitate. How is such a concept possible? First a brief look at the relationship between benefits and harm. The fundamental thesis here is that, in general, people may be coerced in order to prevent them from harming one another. They may, however, not be coerced into providing benefits. This will require some clarity on the differences between non-benefit and harm.

### **Harm, Benefit and Non-Benefit**

According to Feinberg (1973:30) harm refers ultimately to unmet needs. To harm a person is to deprive that person of needs. On the other hand, 'non-benefit' refers merely to a denial of benefits the person does not need. A public good would be an example of a benefit that is not necessarily a need. On the other hand, a pure public good is always an essential need. To deny a

cerebral palsy patient phenobarb is to harm him, because he is unlikely to survive seizures without it. On the other hand, to deny the same person an opportunity to study abroad simply amounts to failure to provide a benefit.<sup>4</sup> The concept of need can be ambiguous. On the one hand, it refers to a necessary condition for other interests. For example, liberty is a need in the sense that it is a condition for the exercise of other important human faculties. A need may also refer to a fundamental and crucial requirement, such that in its absence, survival becomes impossible. Food and water are needs in this sense. They are prerequisites for a normal biological functioning. Of course, it is possible to draw up a list of needs, and then settle the issue of which are more fundamental than others.

The trouble with this 'unmet need' account is its implication that, for example, a rich person is not harmed by a minor larceny. This would conflict with the definition of harm as a frustration of interest. Clearly a millionaire has a stake, and stands to gain or lose if her money is tampered with. Feinberg resolves this issue by concluding that such a minor theft still amounts to harm, though not to actual injury.<sup>5</sup> The 'unmet need' criterion is a test of whether a threshold of 'actual injury' has been met. For Feinberg, even where the loss is trivial, it would still be harm. To many this might appear too extravagant.<sup>6</sup> However, this need not be an issue at all. What Feinberg needs to maintain is simply that a trivial loss is still harmful, but not so seriously injurious as to warrant interference. In other words, not all harms require intervention.

It should be evident now why the area of welfare interests is so crucial here. This is an area of possible harm. It covers fundamental (friendships and love) and survival (food, water and air) needs. Survival needs are fundamental needs, but fundamental needs also includes areas of personal freedom and security. Further, the concepts of harm and of interest presuppose morally acceptable action. Even in a political context, the notion of harm is not ethically neutral. It does not serve a descriptive function

only. Of course there are certain purely descriptive features, common to the various accounts of harm. For example, there must be desires and interests, and these must be frustrated or violated. However, these are only formal requirements. The **content** of desires and interests is crucial in the ascription of harm. 'Harm', like 'murder', is ethically and normatively loaded. Both assume culpability. Strictly speaking, only the innocent and the righteous can be harmed. Social harm is no exception. It presupposes some notion of what an ideal society or person should look like. In this sense, harm becomes a violation of 'ideal-regarding' interests (Feinberg:1977:287). Such ideals are analyzable in terms of what would be ideal, or best for people, their wants notwithstanding. When apartheid is condemned as morally reprehensible, this is done from a moral perspective of what a good society should look like. Once again the notion of rights becomes helpful. People are harmed if they suffer a gratuitous diminution in their set of entitlements.

### **Free Riders and Harm to the Oppressed?**

It was pointed out that harm presupposes a moral context. The moral context in the case of the oppressed was the presumptive case for liberty. This is the assumption underlying this work. The assumption simply amounts to a claim that autonomous adults may not be coerced, unless there are serious moral considerations prescribing such constraints or limits to their freedom.<sup>7</sup> As Feinberg puts it, freedom is an intrinsic good. It is not merely good because of its consequences. In fact the consequences of freedom might be undesirable. Apartheid interferes with people's material and moral welfare interests. It undermines their capacity as purposive, self-reflective and moral agents. It violates not only people's interests in liberty, but in other fundamental and basic goods. Worse still, by outlawing open anti-government political activity, and harassing its opponents, the government has ingeniously devised norms designed to keep the oppressed in a



prisoner's dilemma situation.

Free riders harm the oppressed if their non-cooperation leads to an escalating effect of non-cooperation, to the point where the liberation effort is stifled. They need not make the situation worse, but could contribute to keeping the oppressed in a harmful condition. Consequently, Lyons (1979) is correct in the claim that 'harm might lead to requirements of cooperation'. Normally the avoidance of harm to others is not a sufficient justification for coercion. The prevention of harm may on balance be deemed an inadequate reason for imposing certain constraints. This will largely depend on what is at stake. If what is involved are essential goods - pure public goods - then coercion might be appropriate. In short, free riding could be harmful by obstructing a common quest for an essential benefit.

### The Amended Principle of Fair Play

It should be possible now to demonstrate that the basis of compulsory contributions under the principle of fair play should be something more than mere gratuitous enjoyment of benefits. There is something implausible, if not irrational at times, about the usual accounts of the principle of fair play as a ground of enforceable obligations. The issue is presented as sheer enjoyment of benefit - such enjoyment resulting eventually in the incursion of obligation. Previously free riding was condemned for two reasons; namely because it is (a) potentially harmful (utilitarian), and (b) grossly unfair or intrinsically evil (deontological). The first concern (a) will be addressed as a basis of coercive measures against free riders. An undiluted principle of fair play, based solely on the enjoyment of public goods, argues that free riding is intrinsically wrong. Usually, the basis of the wrongness is the belief that no one has a right to benefit at the expense of others, or through the sacrificial work of others. There is certainly nothing intuitive about this concern. For example, the present generation benefits through the

sacrificial work of its fore-parents (scientists, philosophers and so on). It hardly makes sense to say that unless one has contributed directly (or indirectly) to the scientists' work, then one is not entitled to benefits that the works offer in areas like travel, health and nutrition.

However, even if it were possible to portray the intrinsic wickedness of free riding, this in itself would not justify any intervention, either by the state or the liberation movements. In other words, one might still agree that 'what is wrong with free riding is not that it is harmful, but that it is unfair' (Tuck:1979:148) and yet oppose coercive measures against free riders.<sup>8</sup> Compulsory contributions based on the belief that free riding is intrinsically unfair is a species of legal moralism, and is thus not a legitimate basis for community intervention.

A basic assumption in this argument is that intervention to prevent social harm is more easily justified than other liberty-limiting principles like legal moralism, paternalism and perhaps even offence. Needless to say, this is not to suggest that an action is wrong **only if** it is socially harmful. Free riding is a specific variety of socially harmful behaviour. It has an escalating effect beyond a certain threshold. If free riders persist then there is a real danger that an important benefit to society will cease, as other members are tempted to withdraw their voluntary support. 'The process [of free riding] will continue until either a very expensive equilibrium is reached, or, what is more likely, the whole project collapses' (Feinberg:1973:52).

In delineating the concept of harm one faces immediate problems regarding definition and scope. What counts as harm, especially social harm? If a proper conceptualisation of harm could be established this would go a long way towards justifying compulsory cooperation in the event of pure public goods. Harm is a generally accepted liberty-limiting principle. Whether it is the only one is a matter of constant debate. For the purposes of this argument, it is not intended to go beyond the moderate claim that it is a justifiable principle (though not necessarily the only one)

of social intervention.<sup>9</sup> This position need not be defended here because it is not central to this argument. Still, it is worth devoting a paragraph or two to it, if only for the purpose of clarifying why harm, rather than benefit, is the basis of the principle of fair play.

It is common to include a series of other liberty-limiting principles such as legal paternalism, legal moralism, welfare and offense (Feinberg:1973). There is a common feature in all of them, namely that ultimately they appeal implicitly to social consequences for justification. Take paternalism for example - the belief that a state could rightly intervene to prevent people from self-inflicted harm or to promote their own personal welfare. Paternalism begins with a moral condemnation of self-regarding harms, like addiction to drugs and failure to use car seat belts. When critics insist that autonomous adults have a right to control their lives, then the harm principle lurks beneath. Supporters of the paternalism principle often then appeal to the social costs of incarcerating or rehabilitating drug addicts and the misery such abusers are likely to inflict upon their families.

Similarly, those involved in motor accidents without using seat belts are said to draw unfairly on limited community medical resources. In short, paternalism begins with the acknowledgement of self-regarding actions, fails to make its point on the basis of these acts, and then eventually rejects the idea that those actions were self-regarding anyway. On the contrary, the actions are said to carry consequences for the community beyond their perpetrators. However, to admit that actions were not self-regarding is to abandon paternalism which relies precisely on the differences between other-regarding and self-regarding actions. In other words, except in a few cases, when paternalism is employed to justify state intervention it turns out to be a disguised form of the harm principle. This seems perfectly legitimate. Where no harm can be proved it is difficult to defend interference with individual liberty. Essentially similar parallels can be traced in other principles but this will not be demonstrated here.

Something along the above lines is proposed for the principle of fair play. It should thus be understood as a species of the harm principle. Although this interpretation is probably intended by many writers, surprisingly few of them explicitly put it in this manner. Certainly Rawls (1971) and Hart (1967) respectively refer only to the acceptance and reception of benefits. This explains partly why Nozick (1971) could so easily scoff at their positions. Ullman-Margalit (1970 and 1976) comes closer to referring expressly to harm as the basis of the principle of fair play. Feinberg (1973:53) treats the principle as a 'hard case for the harm principle' and concludes that it is justifiable where 'there is no other practical way of supporting [a public service], and [**the loss of such a service**] would be a harm to those who do not want it'.<sup>10</sup> In other words, interference with people's liberty requires much more serious justification than simply the fact that a person has enjoyed an important benefit. Such free enjoyment should also carry potentially harmful social consequences.

Indeed, if the enjoyment of benefits were the sole basis of obligation, then potential free riders might have good reasons for not participating in the struggle. For one thing, no one has yet enjoyed a benefit. Such a benefit remains to be seen - and even this is a matter of faith rather than certainty. By solely engaging in a cost-benefit analysis they might consider that, in the short (and even long) term, the benefits of the struggle are outweighed by its costs. The struggle might leave many people dead, maimed, or socially dislodged. Liberation might not even materialise during their lifetime. Even if it did, the newly liberated people might still be caught up in the process of reconstructing society, after scars caused by sanctions and wars of liberation. The physical, economic and political infrastructure might be in ruins. In other words, engaging in the struggle entails benefits only for future generations and dangers for those currently taking risks ('death now - liberation later'). Victory is remote and when it finally arrives, it might only usher in another undesirable system.



In short, those who do not or will not benefit need not contribute. Consider the case of successful, powerful and wealthy middle class blacks in their fifties. Why should they give up what they already have for an uncertain future? These are the obvious consequences of focusing on the enjoyment of benefits by those who incur obligations. Unless the principle is modified it must necessarily carry some undesirable, though unintended consequences. It reinforces the reasons for free riding rather than participation. A possible way out of this impasse is to focus less on the benefit than on the harm occasioned by free riding. A free enjoyment of a benefit does not always result in an obligation. At the same time people may be obligated even though they have not enjoyed, or are not even going to enjoy any benefit. This can hardly be captured by the principle of fair play as it is traditionally stated.

A version of the principle which remains faithful to its classical formulation but escapes the consequences of such a presentation is required. Such an amended principle of fair play (APF) should run along the following lines. In a community, people may have an obligation to support a jointly beneficial and mutually desired initiative. The obligation is strong particularly where the following other **minimal** conditions obtain:<sup>11</sup>

- i. the initiative is already established, morally non-objectionable, fair, effective and promising;
- ii. the benefit at issue is a pure public good (not simply a public good);
- iii. follows directly from (ii), namely, that the absence or removal of such a benefit constitutes a serious harm to society.

It should be clear now why it was insisted earlier that the **type** of benefit at issue is crucial in the role of the principle of fair play. Only pure public goods (the absence of which, **ex hypothesis**, constitutes a serious social harm) are relevant to the principle. In fact they define the scope of its applicability. The



significance of the distinction between pure public goods and public goods becomes evident once again. While the frustration of pure public goods **necessarily** involves serious social harm, this is not the case with ordinary public goods. For example, efficient public transport is a public good, though not a pure public good. It entails a public benefit but a person is not necessarily harmed by carrying on without it. Understood in this sense the amended principle of fair play makes no radically new or counter-intuitive moral claims. It only extends a generally accepted (though by no means unproblematic) liberty-limiting principle of harm. This extension takes the form of a fourth condition:

iv. the case for obligation is even stronger where a person has also benefitted from, or stands to benefit from a cooperative scheme.

Condition (iv) does not constitute the core of the obligation. The basis remains harm to others. In this context, this means that everyone has an obligation not to harm the oppressed - positively by perpetuating oppression, or negatively, by undermining their liberation effort through withdrawal of support. This obligation stands regardless of what benefits or inconveniences ensue to particular individuals. As a result 'the fallen heroes of the liberation struggle' should not complain because they have not enjoyed the fruits of their labour. Naturally, common courtesy demands that future generations revere their fallen martyrs, but certainly not that they should feel chronically indebted to their forbears. After all, each generation lives off the efforts of the preceding ones (and conversely, sometimes has to carry liability for the misdeeds of its forbears).

This analysis provides a number of obvious advantages. It places the obligation towards liberation on everyone's shoulder, including the privileged South African and the international community. The obligation is not the sole prerogative of the oppressed, although the latter are the target group of this study.

Further, it is based on a generally accepted liberty-limiting principle of harm. While there may be disputes about what constitutes harm, there is general agreement that prevention of serious harm is a ground for interference with individual liberty. The account also avoids Nozickian attacks on the principle of fair play. Unless the principle of fair play is restricted to both harm and pure public goods, then much of what Nozick (1971) claims begins to make sense. In some sense it may even reconcile Nozick (1971) and Hart (1967). According to Nozick (1971) all obligations must be created by some sort of positive act of voluntariness, except the obligation not to harm others (to violate their rights). If Nozick is willing to consider free riding as a form of harm, then he could perhaps accept the amended principle of fair play.

The principle also enables society to act rationally, to know when to pursue free riders and when to ignore them. It reduces the significance of irrational motivations based upon envy, vindictiveness, authoritarianism and legalism. In a community where free riders are ridiculed, dismissed as cowards, thieves and weaklings, or derided in cartoons, then surely they do little harm, except to themselves and their reputation. Intervention is required only where harm - actual or potential - occurs regardless of whether the benefit is enjoyed or not. People are restrained from assaulting, maiming and robbing others even when no benefits accrue to them as a result of the restraining measures. They are restrained simply to prevent harm.

Similarly, it might save somebody substantial overhead costs to run a brick factory in his back yard, rather than to rent premises elsewhere. Yet health regulations prohibit such a practice because of its harmful effects on the neighbourhood. The community intervention involves no benefits for the industrialist when he obliges, and yet such a prohibition remains essentially fair and warranted. So, ultimately it should be harm to others, rather than sheer enjoyment of benefits that accounts for obligations. This approach also circumvents the problems associated with consent, insisted upon by those who feel that only

accepted benefits should be the basis of obligation. Harm remains harm, regardless of whether or not it was inflicted intentionally or voluntarily. In other words, it is not necessary to determine the free rider's state of mind in order to determine harm.

These examples should suffice to clarify the status of condition (iv). It is evidently not essential for the generation of obligation. What it does is simply to provide **additional**, and **supplementary** grounds for cooperation in a mutually beneficial scheme. It strengthens the case for obligation. On its own, the principle of fair play is incapable of justifying coercive intervention. All that the APF establishes is the following: Cooperation may be justly demanded of someone to prevent serious social harm, even where this involves a loss or no compensation to that person (refer to the brick industrialist). Consequently, where some benefits accrue to a person as a result of cooperation, this independent fact provides additional grounds for cooperation (see also Lyons:1979:6). To sum up, the role of benefits is both direct and indirect in the scope of the principle of fair play. Where society is denied an essential benefit, a pure public good, and is therefore harmed through free riding, the principle applies directly. Where an individual benefits through **enjoyment** of a public good, this indirectly serves as an independent and supplementary source of obligation. The same may be said of other harm principles as an extended version of paternalism illustrates. What justifies coercive state anti-drug measures is certain socially harmful consequences. The fact that **in the process** the victim also harms himself is an independent supplementary consideration. On its own, it does not justify state intervention. Does this mean that the principle of fair play is therefore superfluous, once the harm principle is in operation?

The answer is both positive and negative. Positive because it is only the harm principle which is the basis of obligation. However, this obligation is strengthened by the presence of additional benefits accruing to the individuals whose activities are restricted. On the other hand, harm and non-benefit are not

altogether distinct concepts. Certain types of non-benefits constitute harm. Denying children cheese is a non-benefit, but denying them food is a non-benefit which is equivalent to harm. In the same manner, free riding is a specific form of harm different from assault and murder. One could therefore argue that it makes sense to have supplementary principles for the various types of harm. Ultimately, the distinction between harm and fairness is methodological rather than substantive. The harm principle is too wide and (some would say) too all-encompassing. There is consequently a case to be made for a separate and supplementary principle to the harm principle. It should be obvious that the harm envisaged in the principle of fair play differs from that involved in grievous physical assaults.

This chapter concludes the discussion on the principle of fair play. It makes for clarity to recapitulate the main steps from the principle of fair play to the amended principle of fair play:

i. Either acceptance or mere reception of benefits generates obligations to contribute.

ii. Acceptance of both important and trivial benefits is the basis of obligation where benefits involved are private goods. Consent is essential here. However, because acceptance involves conscious agreement to the conditions of issue, the obligation arising from this transaction is based on the principle of consent. Acceptance does not generate obligations under the principle of fair play.

iii. If the principle of fair play is to operate anywhere, it has to be a substitute for, rather than an extension of the consent theory. This means it applies where consent does not. Consequently, it is in respect to the reception, rather than enjoyment of benefits that the principle of fair play applies.

iv. Where the good is of overriding importance to society, and fair procedures are involved in its production, then mere enjoyment of that benefit generates obligations. Here consent is dispensable.<sup>12</sup>

- v Free riding is wrong both intrinsically and in terms of the social harm it breeds. However, social intervention to prevent free riding is justified by the social harm it causes rather than because of its moral impropriety.
- vi Finally, for the purposes of coercive measures, what is wrong with free riding is its potential for social harm rather than the brute fact of its being immoral.

Even if one admits the obligation to participate in the liberation struggle, so far it is not clear what is entailed in this obligation. For example, does it require that every person joins a specific political organisation, or simply supports some liberation movement? As it stands it compares to the duties people have to love their neighbours. It is ambiguous, wide and imprecise. Acting out of such a duty, people may arrive at conflicting conclusions about what ought to be done. Further, what happens if a person honestly and seriously indicates that he has no objection against apartheid; that he is perfectly happy with the **status quo**, despite its repressive nature? Should this person be 'forced to be free'? Should he be forced to free others, and risk his life and well-being even though he does not care for liberty himself? In other words, what right does anyone have to drag unwilling Hobbesian citizens out of the state of nature?



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### NOTES

1. See also Kleinig (1978:28). Generally, **harm is interference with, or invasion of a person's interest.**
2. These are extreme, exclusively white right-wing organisations. Their English names would respectively be: Afrikaner Resistance Movement and White Liberation Organisation.
3. This question is discussed extensively below.
4. Naturally benefits and needs differ from context to context. A chance to study abroad might be a need for someone who cannot undertake such studies in her home country.
5. For an opposing view on this issue, see Goodrum (1976:240). He does not regard minor inconveniences and thefts as small harms.
6. Kleinig (1978:30), in contrast to Feinberg, does not believe that every interference with interest constitutes harm.
7. It was already pointed out that the need for maximum social and political freedom is assumed, and will not be argued. For a more detailed study, see Feinberg (1973:1-19), Hill (1979) and Hare (1989).
8. In fact the position taken here is in direct contrast to Tuck's, as the previous chapter illustrates.
9. This should not be confused with the claim that society **has to** intervene to prevent each and every harmful act.
10. Emphasis added.
11. These are minimal conditions. Others are added as the work progresses.
12. This position is closer to what Rawls (1969:334) calls 'Natural Duty Of Justice' which is divided into two parts. 'First, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves'. There are slight differences though between Rawls' and my position. First, whereas he regards this as a duty, I would consider it an obligation. Second, it is not clear what he means by 'little cost to ourselves'. If this refers to mere inconvenience, which can be a little cost, then my principle is stronger than this. The struggle involves far more than little costs.

## CHAPTER SEVEN

### Coercion and Obligation

Although coercion is a central theme of this study it has so far received cursory treatment. Coercion among the oppressed in South Africa evokes images of necklacings, killings and early-hours arson on private and public property. This is not what is going to be defended. Perhaps such measures are defensible but this is not what this essay is about. Although violence is a form of coercion, coercion is not reducible to violence. In this chapter, two problems will be dealt with: The problem of obligation and the problem of coercion, and the relationship between the two. In the previous chapters emphasis was laid on the relationship between them in respect to the liberation struggle. Much more space has been devoted to the problem of obligation than to that of coercion. In fact, very little has been said so far about the problem of coercion, which is a difficult matter on its own account. How is coercion related to the 'rights-obligation' discourse? It will be recalled that rights are 'moral claims whose enforcement would be appropriate. There is with respect to rights [and therefore, obligations] a special congruity in the use of force, or the threat of force' (Hart:1967:55). In other words, rights and obligations are **prima facie** grounds for coercion. Consequently, if one could demonstrate that resistance organisations have a right to be supported, this would justify, in the absence of other overriding moral considerations, the employment of coercion by the organisations to enforce their rights.

It is tempting to push the argument even further. One could insist that the conditions for coercion and obligation are different and that, in some cases, the existence of obligation is neither a necessary, nor a sufficient condition for the legitimacy of coercion. In fact this point has already been made in chapter one. In other words, the existence of rights and obligations does

not automatically imply that the employment of coercion would be morally acceptable. Similarly, even where obligations and rights are not at issue, there may still be grounds for legitimate use of force. For example, it may be appropriate to take a neighbour's car without permission if this was required in order to rush a severely injured person, or a woman in labour to hospital. It may even be illegal to do so. It could also be that the two neighbours did not particularly get along well with each other. For the time being at least, the exigencies of the situation may override considerations of property rights and poor neighbourliness. Similarly, in an emergency, a person may forcibly be removed from a cool and shady spot in a public park, to make room for someone who has just fainted. The assumption is that this takes place in a public park where people are free normally to lie wherever they wish.

Of course, it is possible to dismiss the preceding arguments as purely semantical. It could still be argued that in both cases, rights and obligations are at issue. In the first example, it is possible that two rights were in conflict: the right to property (of the car owner) and the right to life (of the injured person). Similarly, conflicting rights are at play in the second case, between the right to life (of the fainted person), and the right to free movement and non-interference (of the person in the shade). It could be that in taking the neighbour's car forcibly, one is suggesting that such a neighbour has an obligation to save life, and that this obligation is morally prior to the owner's right to property. In this case, the owner was coerced into saving life.

While this approach may deal with the problem in part, it still fails to dispose of the matter entirely. Obligations arising as a result of the principle of fair play do seem to run into problems as grounds for coercion in a liberation struggle. In the preceding chapter, some conditions which would legitimise organisations and give them the right to make certain demands on people, were outlined. Even if there were organisations which met those requirements, it is not clear that this would establish them

with any right to demand support. At best such features provide **prima facie** grounds for cooperation with the organisation, but would not as such give them the required right to coerce people legitimately into liberation. Moral worthiness as such confers no rights. Imagine an eligible bachelor who is also intelligent, handsome, loving, faithful, generous, pampering, and diligent. In short he meets all the criteria set by prevailing wisdom for an ideal husband. Does it follow that this person is entitled to a woman of his choice regardless of her concern? Surely not. None of these credentials establish possible rights in respect to any woman. It may in fact emerge that the best favour any woman could do for herself would be to marry this man, but this is beside the point. One gains no rights whatsoever simply by being moral. It is logically possible for a public good to be delivered comfortably and competently by an evil government, just as the apartheid system may be overthrown by a movement with no record of democratic practice. It is possible for a morally reprehensible movement to be the most effective.

The argument so far is that consent is not a plausible basis of political obligation. Similarly, the principle of fair play may be a ground of obligation, but it does not spell out in any incontrovertible fashion who has the right to enforce the obligation. Furthermore, in chapter one it was argued that the existence of the obligation as such does not provide conclusive reason for action. This means that even if the right and obligation (and their holders) were proved beyond doubt, this in itself would prove little in terms of what ought to be done. Indeed, perfect and complete obligations are rare, especially in political life (Walzer:1965:xi). Ultimately, either the obligation exists or it does not. If it does, nothing follows about the course of action to be adopted. Similarly, if no obligation exists to do X, it does not follow that people ought not to do X. Therefore, even if people have no obligation to take part in the struggle it does not follow that they ought not to participate. So far this marks no major theoretical advance. The issue is whether

resistance organisations have a right to demand participation and clearly they do not. Yet, once more, nothing follows from this about what they may or may not do. For one thing, it is not always wrong or immoral to demand things to which one is not entitled. Similarly, it may not be inappropriate to coerce people into doing actions they are obliged to undertake. In such a situation values become distorted and in the process moral corners may appear to have been cut.

It is worthwhile returning to the original question, whether the oppressed are justified in coercing one another into certain types of liberation activities. This was translated into a question involving the **obligations** of the oppressed, and the **rights** of the coercer (often, though not exclusively liberation movements). This approach was based on the understanding that rights and obligations are **prima facie** justification for coercion. However, it is evident now that even in the absence of rights and obligations, coercion might still be justifiable. In the light of this it may be appropriate to reformulate the question. Instead of asking whether liberation movements or any other person have a right to demand cooperation, it could be asked whether they are **justified** in coercing people into activities which those people are not ordinarily obliged to undertake. Just as it may be wrong of people to enforce their rights, similarly it may be right for them to make demands to which they are not entitled. Perhaps if the principle of fair play is prefaced in this manner it could begin to be helpful. If coercion towards liberation is wrong, the wrongness lies in something more significant than simple interference with personal liberty. Similarly, if people are entitled to decide on their political rights that entitlement alone does not exclude the possibility of their coercion. There is more to morality than rights and obligations.

In other words, it may be a proper thing to do, to demand of people things to which we are not ordinarily entitled. This is an emergency situation which defies analysis solely in terms of traditional concepts of liberty and individual rights. The person



in the park had the right to remain in the shade and to refuse when asked to move. He had the right to use violence to protect his right to be where he was regardless of what was going on. His rights were clearly violated when he was forcibly removed. Similarly, the liberation struggle should be viewed, as was the person in a faint, as an emergency situation.

Reference to an 'emergency situation' should not provoke unhealthy parallels with the South African government's **State Of Emergency**. The two previous examples should help explain the difference. Firstly, in the case of a neighbour's car the aim was morally unquestionable: To save life or lives. The same applies to the person in the park. He was asked to move away from the shade in order to save another person's life. Secondly, those whose rights were violated were not asked to engage in activities disproportionately injurious to themselves. It would have been unacceptable if the car's owner were asked at gun point, to drive a black patient to a hospital largely used by violent anti-black right wing elements in the country. In the same way the person at the park would have had legitimate reasons to resist moving if the only way he could have done so was through jumping into a deep river even though he could not swim. In these examples, no person's life is being sacrificed solely for the comfort of another. The principle applies where a value more fundamental than personal liberty is at stake.

This explains why there should be limits to what people can be coerced into doing. Since risk is built into the struggle one can hardly demand that people should not be exposed to any risks whatsoever. At worst people in our examples suffered inconveniences. In the struggle people will incur more than simple inconveniences. Yet there are varying degrees of risks. The greater hazards should be reserved for the lion-hearted.

Coercion

It was concluded in chapter four that in a prisoner's dilemma, a stabilising mechanism is required. This should involve an enforceable agreement, that is, a deal backed up by coercion. Coercion was required to ensure that the prisoners did their part, and that they did not take each other for a ride. The hope of a successful struggle, it was argued, lay largely in collective action. Typically, coercion involves four elements: (a) The **coercing** agent, (b) the **coerced** agent, (c) the **goals** of action, and (d) **methods** adopted. (A) and (b) have been identified respectively as representatives of certain resistance organisations, and a bystander. (C) and (d) have still to be addressed. What is required now is something more about the concept of coercion itself.

Coercion requires justification for a number of reasons. Firstly, it violates personal liberty. To coerce people is to exercise power over them in order to get them to do things that they would otherwise not have done. Secondly, coercion may be harmful. Thirdly, it may be both psychologically and physically painful. Fourthly, it is degrading: 'to coerce a man rather than persuade him is to treat him as a thing, governed by causes, rather than as a person guided by reason' (Wolff:1972:144). In short, coercion, and especially violence, always present moral problems as Nolan (1988:166) points out:

**...violence causes suffering.** However, we also know that in extreme circumstances, in order to prevent far worse violence or in order to put an end to an intolerable excess of suffering, some people may be called upon to resort to measures that cause a certain amount of suffering. The best example of this is the surgeon's knife. Surgery causes pain and suffering, but we regard it as justified when its purpose is to prevent far worse suffering and hardship.

There is another concern about coercion, and such concern is particularly pertinent for liberation efforts. Coercion during

liberation can easily contribute to a future climate and tradition of intolerance. Those who have come to rely on coercion over the years, increasingly find it difficult to adjust to the new rules of the game. Even more worrying is the fact that a liberation movement with a long tradition of coercion raises doubts regarding democratic prospects when such a movement is in full control of the state coercive machinery. In short, coercion is not a matter to be taken lightly.

Chapters four to six were attempts to provide some general justification for coercion. Wolff (1972:144-146), however, harbours serious misgivings about coercion. He questions the belief that coercion is neutral (1972:144-146), insisting that if that were the case, then:

... why seek to eliminate, or at least minimize coercion, if it is **not** intrinsically evil? And why view the use of coercion as a tactic to which one **resorts** if other tactics have failed? Presumably because coercion is **not** morally neutral (as persuasion perhaps is) but morally evil, and hence requires justification.

### Coercion or Duress?

It should be noted that throughout this study reference is to 'coercion', and not simply 'duress'. There is a normative dividing line, however thin, between the two notions. One can compare their relationship to that between 'killing' and 'murder'. Morally, murder and duress are unacceptable. In fact, to refer to something as murder is already to impute some moral condemnation, a sense of an illegitimate termination of life and use of force. Similarly, duress implies gratuitous exercise of pressure upon an autonomous moral agent. Against these notions, killing and coercion are ethically 'neutral', in the sense that no value judgement is implicit. They require justification and, until then, moral judgement about them is suspended.

Wolff (1972:144) regards coercion as intrinsically evil, not merely because it is painful, but because it is **degrading**; to

coerce a person, he argues, is to treat him as a thing governed by causes rather than as a person guided by reason. At the same time, it is clear that he does not make the moral distinction adopted here between coercion and duress. Nevertheless, he does not condemn coercion outright. For example, he contends that 'the evil of coercing men is frequently outweighed by the good which flows from coercion' (1972:145), and also that 'coercion can serve positive and creative functions - as a foe of the **status quo** and friend of the excluded and disinherited' (1972:145).

Ultimately Wolff seems to concede that coercion with the sole aim of oppressing people is morally different from coercing with the aim of liberation. Similarly, killing with the intention to rob is morally distinguishable from killing in self-defence. It may be conceded that, from a deontological perspective, coercion can be seen as **intrinsically** evil, provided this does not imply that (a) it is so regardless of motive, circumstances and consequences or that (b) it is equivalent to the claim that 'it ought never to be done'.. If, indeed, all coercion **qua** coercion were an evil, it would then follow that interference with a harmful action itself constitutes harm. For example:

If a group of religious fanatics prevent others from practising their different religion, the fanatics harm others by interfering with their non-harmful conduct. But now, if the state coercively stops the actions of the fanatics, this is interference with their harmful conduct (Ten:1980:58).

Ordinarily, one would like to maintain that coercion, **qua** coercion, is unjustified where it restricts non-harmful actions. Otherwise, Wolff is committed to defending the existence and persistence of harmful behaviour at all costs, and condemning the use of coercive measures to prevent harm. This is an unlikely position for him to adopt. However, something can be subjectively **undesirable**, unpleasant or painful and still be morally acceptable. Apparently this is what Wolff meant. Coercion as such, then is



neutral until context, intention and consequences give it some moral determinacy. When coercion is described as neutral this is to suggest only that it is neither intrinsically good nor bad. There is a sense in which it is not neutral. Coercion is **intrinsically unpleasant** and **subjectively undesirable**. Few, if any, autonomous persons genuinely desire to be coerced. This fact illuminates a fundamental flaw in Wolff's assumptions. He seems to presume that only immoral actions require justification: 'coercion is **not** morally neutral...and hence requires justification.' This contention needs to be supported by argument, because it is far from self-evident. Indeed Wolff substantiates (rather poorly) his claim that coercion requires justification. However, he fails to demonstrate that only immoral actions require justification. Surely other amoral actions may require justification, - actions that are unusual, embarrassing, unpleasant or undesirable.

What about the concern that coercion is painful? Once again this is not always the case. There are cases when coercion is both effective and tacitly welcomed by people who are unable, or unwilling to take personal responsibility. Acceptance is also possible when a goal intended through the coercive measures is clearly defined, and people generally identify with such a goal. Coercion is likely to be necessary in the early stages of resistance. As Walzer (1970:37) points out, democratic practices do not always operate well in the beginning, when people are easily gripped by fear and uncertainty. South Africa is replete with telling examples, such as **Sharpeville Day, June 16th** and consumer boycotts. On these days and occasions, activists usually demand that people stay away from school and work, and refrain from buying in white business outlets. Invariably there are people who refuse for various reasons to participate in the boycotts.

During political strikes, activists will man the streets and force people back home, sometimes violently. Some violators in fact died at the hands of the monitoring youths. However, with the passage of time, people began to respond voluntarily, and less coercion became necessary. Further, originally employers responded



with heavy handedness to work stayaways, dismissing workers or reducing their wages. Since then, many employers have come to accept these days as public holidays, and some of them even urge the government to do likewise. While scenes of violent confrontation between citizens and the police on these days still persist, they have on the whole subsided. As time goes on, special memorial days are marked by uneasy quiet and subsequently, serene silence as people stay home as a matter of course. Little enforcement is required.

The position adopted in this study is that personal liberty is a fundamental, but not an inviolable value. Such liberty may be overridden with sufficient justification. At times, coercion might prove the only viable route towards freedom. In fact this is how government coercion is usually justified - to resolve the paradox of freedom - the belief that unless freedom is curbed in some respects, this might lead to greater threat to freedom itself.

To complete the assessment of coercion, it is necessary to look into both the goals and the methods of the coercer. The goals of coercion will be dealt with first, and the best route is through the prisoner's dilemma analogy.

### **Coercion and Political Goals**

In chapter four it was demonstrated that, individually, the oppressed rightly have no incentive to confront the state. On the prisoner's dilemma model liberation is a public good, with the resultant motivational problems such goods generate. This situation necessitates the employment of coercion.

Coercion may take various forms. It may be employed during the struggle against those who refuse to participate. Alternatively, it could be used after the revolution as a punishment against those who did not participate. For example, such free riders may be sent to re-education or labour camps. Yet, retributive punishment is unnecessary as far as the principle of fair play is concerned. The primary motive behind the principle of

fair play is to enlist and ensure support, and not to punish retroactively. The role of coercion here is to stabilise a mutually desired situation - the acquisition of a public good. It should reinforce people's desires by assuring them that each one will contribute to the establishment of the required good. It should not force people towards a pre-selected normative goal. In this way, it is hoped that sanctioning coercion does not invite unwarranted paternalism. It is crucial to emphasise that coercion alone will not suffice. The motivation for the cooperation in the struggle cannot, and should not be solely fear of reprisals by the resistance movements. Education and political consciousness remain important tools towards a revolutionary effort. People should be politically literate, in order to identify with the cause. Yet, education and political awareness *per se* are not always sufficient to spur people to action. They are necessary, but not sufficient conditions for revolutionary motivation.

To be explicit: Coercion here serves a specific function. It reinforces the need for participation. It is designed to guarantee members that non-cooperative behaviour will be detected, recognised and prevented. It presupposes that there are many others in society concerned and serious about liberation. Its function is to prevent present harm to the liberation process. It is not designed to introduce goals and desires in people, but to protect the goals and desires that people have formed independently. It would make little sense to coerce people if they massively saw no need for the proposed liberation programme. It would also make no sense to postpone coercion, and threaten free riders with coercion after liberation. This is inappropriate for three reasons. Firstly, it is irrationally vengeful. Secondly, it may also be ineffective. A person for whom only the present counts is not likely to be impressed with threats of future punishment. A student keen on obtaining a medical degree and leaving the country will not be concerned about a possible spell in the 're-education centres'. In short, the coercion is not a motivation - it is a supplement to motivation. The motivation remains the desire for liberation.

Thirdly, and this is ironical; after the revolution it is precisely the free riders who might be in demand. They are likely to be more technically qualified. After all, they would have expended their energies towards self-improvement rather than towards the liberation struggle. They are 'safe' bets for any government. They have no history of violence or of overthrowing governments. Indeed a new post-revolutionary government might be less concerned about past free riders than about former 'comrades', who may have been useful in undermining unpopular governments but not particularly helpful in building up an economic base required for a stable society. Coercion has to provide the assurance that those who contribute to the struggle are not investing in a lost cause.

### Coercive Methods

This question (d) investigates whether coercive methods are, or are not morally justified. Which coercive actions, if any, are morally justifiable ways of getting my support? Which kinds of non-violent action? Which kinds of psychologically or physically violent actions? These questions arise, not merely because individual liberty is at stake, but largely because a person might be **harm**ed. The type of coercion to be utilised should be subject to certain moral bounds. The important guideline is that coercion should act as a deterrent against free riding. People who require severe large scale deterrence are probably not particularly committed to the struggle. In other words, where a heavy dose of coercive measures become a norm, then there is cause for concern, and the likelihood is that bystanders see no value in the proposed course of action which they are demanded to support. In that case, the whole enterprise requires re-evaluation. Similarly, although it is acknowledged that it is the function of a legitimate government to maintain law and order, there is something suspect if the government relies solely on coercion to achieve that goal. In fact, it is a sign of the wrongness of the policy of coercion

(though not an infallible one) if too much of it is needed in support of a cause.

Coercive measures should not include killings of bystanders, especially brutal murders such as 'necklacing' (burning a person alive by means of a tyre soaked in petrol, and placed around the victim's neck). In fact, any method that unduly brutalises, or contributes to a tradition of ruthlessness must be avoided. Further, bystanders are perfectly justified in refusing to undertake actions that require their participation and where they are exposed to disproportionate dangers in respect to their fellow oppressed. Their refusal is even more justified when they have moral qualms about what they are being asked to do. For example, an individual may not be coerced legitimately into placing a bomb anywhere, physically attack or wound a policeman or informer, or assault other free riders. Such activities raise serious tactical and moral problems and if they have to be taken, they should only be undertaken by those who voluntarily do so.

Coercion should be a safe-guard against free-riding, rather than a daily dose. Its role is to prevent the instability that results from fear of being taken advantage of by free riders. Threats are best deterrents, especially when they are not carried out. The sight of comrades roaming the streets to monitor a stayaway is sufficient to keep people indoors. Unfortunately, such threats become effective only after an example has previously been made. Ostracism and ridicule can become painful psychological tactics to get people into line. During a boycott, blockading streets and making roads impassable are possibilities. In short, direct physical harm should be an ultimate resort. To make an example by necklacing is, however hard to justify. It raises concern even when directed against collaborators and appears worse in the case of bystanders, who may loathe the system even more intensely than certain activists. Coercion is in general legitimate only where it is unnecessary for most people, that is, where a widespread inclination to comply shows general support for the relevant programmes.



### Coercion and the Prisoner's Dilemma

There is a problem encountered when the prisoner's dilemma model in respect to coercion is extrapolated into the arena of resistance politics. In the prisoner's dilemma there is an explicit agreement between the prisoners regarding their ideal and the means of achieving and sustaining that mutually desired goal. They explicitly agree on the need for coercion upon themselves in the event of default. They also appoint a 'hit-man' only after mutual consultation and agreement. In other words, obligations arising from this deal are based on consent. It is true that the prisoners are partly acting under duress of their interrogators. However, when they were given the opportunity to confer with each other they realised that cooperation was essential. Insofar as they made commitments to each other, they did so voluntarily and intentionally. Both were bargaining from positions of equal strength. Their hit-man had a clear mandate and did not exercise general authority over them. His mandate was to kill the defector in the event of unilateral non-cooperation, or expose the prisoners' hitherto unknown crimes in the event of mutual non-cooperation.

It will be recalled that in the prisoner's dilemma the hit-man is an impartial observer who was appointed and mandated precisely on the basis of those credentials. Further the prisoners themselves defined and agreed on their goals. They wanted the minimal possible imprisonment term. They could withdraw from the agreement at any moment in the sense that they voluntarily agreed to the terms of the agreement. They could jointly withdraw their instructions to the hit-man. In the case of liberation movements no appointment of leadership is involved. In fact, such leadership may remain unknown for tactical security reasons. Although there are some moral restrictions on what demands the leaders may make, such limits remain fuzzy. The means of coercion must be arbitrary and *ad hoc*. Resistance organisations have neither jails nor due legal process. It is not unlikely that the disciplinary process of



liberation movements could be subject to the whims of some local bullies. In reality political coercion employed in the name of the struggle is not nearly as neat and managed as this model suggests. It is somewhat one-sided and emanates largely from people one hardly knows.

It was also demonstrated that not all the oppressed in South Africa are against the apartheid system. After all there are willing collaborators and those who at least find the system partially rewarding, however obnoxious in other respects. Unlike the prisoners, people do not seem to be agreed on the goals of liberation. Unlike the prisoner's dilemma, the struggle for liberation may be perceived to involve a degree of paternalism. In chapter nine this question is addressed further. For now, it is worth mentioning that, even if the paternalism charge were demonstrated, this in itself would not be necessarily objectionable. Still this marks another disanalogy with the prisoner's dilemma model. The prisoner's dilemma is based on rationality, deliberation, consultation, mandate, debate and choice - in short, consent. In contrast, the South African resistance situation is based on secrecy, doubt and constant vigilance.

To conclude, while the prisoner's dilemma model is useful, there are some limitations to the extent to which it can explain coercion in resistance politics. The main difference is that coercive measures adopted in the prisoner's dilemma were not only preceded by an intense process of negotiation, they were also self-imposed.

#### **Enforcement of the Obligation -** **Whose Prerogative is it?**

The argument so far is that the oppressed have an obligation not to harm one another. Their dilemma so far is how to enforce this obligation and protect its correlative right. **Ex hypothesis** the enforcing agency cannot be a government, since the state's legitimacy is precisely what is at issue. The obvious agency would

appear to be the resistance organisations. This raises two immediate questions: (a) What kind of resistance organisation must people support? (b) Where there is more than one organisation, which one should enjoy priority over others?

It is tempting, in response to (a), to outline a number of structural virtues which, once possessed by a resistance organisation, legitimise such organisation's employment of coercive measures. This approach has special appeal. It protects the bystander from random and uncontrolled coercion from any source. Further, in a situation like South Africa, the existence of the multiplicity of organisations, with differing conceptions and strategies, may add to the complication of justified coercion. The bystander might end up with an obligation to support each and every political organisation.

Still, while this approach has its merits, it should be recalled that a basic assumption of this study is that no one is to be coerced into joining an organisation, but only into supporting certain specific activities. Therefore, what is crucial is the qualities of a project rather than those of the coercing agency. In fact, the moral worthiness or otherwise of the coercer is totally irrelevant to the justification of coercion. It is tempting to believe that coercion is justified if it issues from those on a higher moral ground. Yet this is an illusion. In fact, the most effective movement in overthrowing a government might turn out to be the most undemocratic or 'immoral'. Similarly, a morally impressive group might turn out to be ineffective. All in all, it hardly makes sense to urge a bystander to be dragged into a *cul de sac* by misguided, but morally upright revolutionaries.

Who then may coerce bystanders? Essentially any person or organisation. What matters is not **who coerces** but **what one is coerced into doing**. Obligations have nothing to do with the moral character of the coercer and the coerced. In terms of the principle of fair play, it does not matter whether the bystander is a traitor, a sell-out, a priest, a tramp, an angel, a devil or a thief. However, it matters seriously whether the bystander is

coerced into murder, arson, or consumer and rent boycott. By the same token a neighbour who takes the initiative to organise a rent boycott has as much right to coerce as, for example, the ANC does. However, a neighbour or organisation which coerces people into going to church every morning to pray for liberation is acting illegitimately, however important prayer might be perceived by the coercer.

In other words, it does not matter who takes the initiative to launch a protest programme. What is essential, though, is that bystanders are not coerced into protest measures which are solely intended to promote a party or group agenda, or whose effectiveness requires boundless faith. This would be tantamount to coercing people into supporting a particular organisation. Resistance organisations **qua** organisations have no intrinsic special moral claims to coercive measures. However, empirically and contingently, it is often organisations rather than individuals who conduct resistance campaigns. This is largely because pure public goods are unlikely, in practice, to be provided by individuals. However, this is purely an empirical reality rather than a logical requirement. In short, if bystanders have any obligations at all, it is the obligation to support certain specific campaigns, and not the organisations **per se**. Those campaigns are assessed against the principle of harm and the principle of fair play.

The thrust of this principle, as it was argued is this: Even though people cannot choose to accept or reject a liberation tradition, and are for the most part born into it, that tradition may deserve their support if they are reasonable and suitably respectful of one another's interests. Specifically, this means that the liberation tradition must meet the requirements of **substantive** rather than **procedural** consent. In other words, what matters is **what** is represented (the ideal with which a reasonable person identifies) rather than **who** is represented (a person or organisation with or without a constituency).

Still, the need to subject revolutionary policies to the review of public opinion does not end as the struggle reaches its

climax. The evidence of mass support for those who are toppling a hateful regime is extremely important, and provides some (weak) insurance that the successors will not be just as bad. The fact that the Eastern European communist regimes were in effect overthrown by mass civil disobedience has given the new governments an authority both moral and political which they would not have had if it had been done by military force alone.

The belief that people may be coerced against their will and wishes need not prove as alarming as it is sometimes made out to be. The idea of substantive consent, it would appear, takes us as close as possible to freedom under involuntary institutions as we can get. It applies in those cases in which the amended principle of fair play creates obligations. It seems very important in solving the problem of coercion. For example, if established states have the right to coerce those who do not accept their policies or try to circumvent them or break the law, it must be on some such grounds as this: Whether they actually agreed to the basic rules or not, it would have been unreasonable for them to refuse agreement if they had been in a position to do so. A parallel criterion needs to be developed fully for nongovernmental organisations, particularly in situations of oppression where they are candidates for political power. This should extend to the conditions of coercion as well. In some parallel form, revolutionary organisations have demanded support on the belief that bystanders would be unreasonable not to support them. They have organised boycotts, and others may have perhaps conscripted people into their armies. Those who feel that this goes too far need to explain why, particularly if it is acceptable that governments adopt these measures.

To conclude, even if coercion is justified, it remains a measure to be approached with a great deal of caution and circumspection. This is particularly the case where paternalism is possible. The next section looks at the practical application of the principles of harm and of fair play in a revolutionary situation.

### **SECTION THREE**

#### **Application and Limitations**

**Chapter eight** examines specific cases of obligation justifiable in terms of the amended principle of fairness. The conclusion is that the principle legitimates some, and not all forms and expression of 'the struggle'. In particular, it is argued that the 'struggle' is too fuzzy a notion to serve as a proper ground for coercion. Essentially, although some coercion fails the test of the principle of fair play, it may pass a different test. The principle provides a conditional acceptance and conditional rejection of certain modes of resistance.

The conclusion is based in **chapter nine**. It is preceded by a study of paternalism in respect to the principle of fair play.



## CHAPTER EIGHT

### Participation in the Struggle

It might prove worthwhile at this stage to look back at what the line of argument has established so far. Firstly, it has been argued that the oppressed have a general obligation not to harm one another. In particular, chapters four to six examined sources of the general obligation to support, and therefore not harm a liberation struggle. Secondly, it will be recalled from the introduction that the focus of this study is not the South African situation *per se*, but any oppressive situation in which organisations have to operate covertly. Nevertheless, South Africa provides an appropriate framework within which to confront difficulties raised by the application of certain liberal principles in an undemocratic setting. It is possible on a general level to maintain that everyone has to support a liberation struggle. What that implies in practice depends on the context. The same applies to a general obligation to love our neighbours. In practice, this might require caring for the sick, helping the wounded, or donating to the poor. Similarly, since South Africa is the case study, it provides a suitable background against which to examine these questions. Thirdly, it has been established that consent is not the sole basis of obligation.

Section two of this study (chapters four to seven) examined alternative sources of non-consensual obligations. As a result, it was concluded that an Amended Principle of Fair Play provided grounds for coercive measures under certain circumstances. Obligations arising from such a principle are as enforceable as any other type. In the course of the discussion, examples of liberation measures were mentioned (rent, education and consumer boycotts).

This chapter attempts to establish whether or not these principles apply to the particular examples above. The principles are: Non-consensual obligations, principles of fair play and the

principle of harm. In particular, it will be argued that although bystanders have an obligation to participate in the liberation struggle, it does not follow that they have no choice whatsoever in which measures to support and which not. The thesis defended is briefly as follows: Significant participation in the South African liberation struggle should include selective support for or participation in some 'protest' action. The term 'protest' is used deliberately as opposed to, say, 'political' or 'anti-apartheid'. The latter terms are too general and vague. The bystander can be coerced only into actions whose goals and objectives are explicit. In other words, the principle applies only to carefully targeted programmes. In some cases, the bystander could choose which programme to support, while in other instances such an option does not exist. This chapter attempts to map out those cases.

The Amended Principle of Fair Play constitutes a criterion against which certain means of the struggle can be assessed. It is applied to three areas of the struggle: (a) The struggle in general; (b) rent and consumer boycotts; and (c) education and school boycotts. It should be emphasised at the outset that the purpose of this section is not to establish whether or not these three examples are grounds for justifiable coercion under any circumstances. The intention is simply to examine whether they pass or fail the 'legitimacy' test **in terms of the principles developed in this study**. It may be that a different approach, like a case study, would unearth other principles in terms of which different conclusions are reached. The fact that certain programmes may fail the test of the APF does not imply that they will not pass any other one. In other words, the APF provides grounds for conditional acceptance or rejection of certain strategies and programmes. It must be emphasised that the APF is preceded by yet another general principle - the principle of reasonableness. This is a logical, rather than moral principle. According to this principle, the bystander is not obligated to fulfil **contradictory, mutually exclusive or incompatible** obligations. For example, the bystander is under no obligation to

heed, simultaneously, a school boycott call from the United Democratic Front and a 'back to school' call from the Inkatha. Further, the bystander is under no obligation to participate in activities with fuzzy objectives. In the light of this, it is necessary to focus on the general obligation to take part in the struggle.

In short, for the principle of fair play to apply certain general conditions are essential:

i. The issues should be **as clear as possible**. People could hardly be expected to risk their lives for fuzzy goals.

ii. The issues should represent the **will, the aspirations and the hopes** of society. In other words the coercers should have a 'legitimate expectation that [the goal] is widely shared' (Walzer:1970:37). Such aspirations should transcend the ideological barriers.

iii. It is useful, though not essential, that the coercer has a track record of **effectiveness**. The material and human cost of liberation is heavy, and for this reason it should be worth the price.

iv. Specific programmes which people are demanded to support must be **politically possible**.

### The general call to liberation:

#### With Us or against Us?

To recapitulate, in which specific or particular acts is coercion justified? This problem has been seen to arise on different levels and formulations: (a) What constitutes liberation? (b) Are bystanders who accept the obligation to liberation free to choose in what way they will get involved politically? (c) Does this obligation require people to be political activists? (d) Do individuals retain the right to make autonomous decisions both at the level of which movement they support and at the level of which strategies are to be pursued? Or does the obligation give any and every liberation movement a right

to everyone's support? Context impacts on the preceding arguments ('the arguments') in the following manner (i - iv):

i. Do the arguments so far justify, for example, the ANC or the PAC to coerce **the same bystander**?

ii. If different movements, or elements in the same movement, are running contradictory strategies ('education for liberation' **versus** 'liberation before education'), who in terms of the amended principle of fair play is a free rider? And which party may appeal to the principle of harm?

iii. Given that (a) there is more than one movement and (b) that there are contradictory strategies, how do the arguments deal with the bystander who appeals to her obligation to be rational and therefore to make her own choice?

iv. Given the principle of harm, who harms society: The person who adopts the principle 'education for liberation', or the one who acts on 'liberation before education'?

This section addresses the first set of questions (a) - (d) raised above. As far as questions (a) - (c) are concerned, some general comments will suffice, while (d) requires extensive examination.

As far as (a) is concerned, it is evident that there is a difference between supporting 'the liberation struggle' and 'supporting particular liberation movements (ANC, PAC, UDF, Azapo, NUM)'. The struggle is more than the sum total of these organisations' activities. A person might concede to a general obligation to support the struggle without committing himself to a specific organisation, in the same way that a person may have an obligation to drive safely. In the latter case, where consumption of alcohol is concerned, he may fulfil his obligation in various ways:

- (1) He may refrain from drinking while driving.
- (2) He may drink and request a friend to drive him.
- (3) He may employ a chauffeur.

Similarly, concerning (b), there should be ways to support the struggle as such without being a party member. This is largely because political involvement in South Africa involves two related but distinct goals, **justice** and **power**. The two objectives are related because, in order to introduce justice into the South African political order, it is necessary to acquire political power. Power is a necessary, though not sufficient condition for justice.

Religious institutions like the Southern African Catholic Bishops' Conference (SACBC) and the South African Council of Churches (SACC) are concerned primarily with justice and secondarily with power, and even then, only insofar as power is necessary for the establishment of a just political order. Typically these organisations are not party-political. The same applies to certain individuals who may generally be non-political. Such people may also be 'non-sectarian', that is, politically committed to the cause of liberation though not necessarily to particular organisations. They might choose to exercise political options through other institutions - religious or economic. Alternatively, they might reserve for themselves the right to decide which activities to support in the various political organisations, without committing themselves to an organisation as such. They might feel that choosing organisations is something for the next phase of the liberation effort; that organisations are in fact divisive.

On the other hand the ANC, PAC, UDF and Azapo are political organisations and, as such, are concerned with both justice and power. Whereas religious institutions regard power as a means to justice, for political parties power is also a goal. The task of a political party is to gain political power and to retain it for as long as it can do so. This is what underlies the differences between political organisations and other anti-apartheid organisations. Formal party members are necessarily conscious political animals. When apartheid is overthrown their political struggle continues. The quest for justice may cease when justice



is achieved but political struggles continue even then. Suppose that South Africans were so morally perfectible that the demise of apartheid at once heralded a society of flawless social and political justice. In that case, it would make sense to urge religious leaders like Bishop Tutu to keep out of politics. What legitimately keeps Tutu in the political arena is the fact that South Africa is an intrinsically unjust society, and concern for justice is not the sole prerogative of politicians. It is of primary concern and interest to all layers of society. Consequently, although everyone has an obligation to bring about a just society, no one is in fact obliged to be a member or an unqualified supporter of a particular political organisation. This is not to suggest that they ought not to do so. A person may find that an organisation about which he is not particularly keen is nevertheless the most effective. The same applies to religious organisations. While retaining their independence they may also find it possible to cooperate with liberation movements in areas which pose no moral dilemmas for their members.

A more difficult question than the foregoing is whether an obligation to support the struggle necessarily involves being politically active. In the previous cases the issue was simply whether a particular political organisation has any legitimate claims upon the individual. Here the question is whether a non-activist is necessarily non-supportive of the struggle. There are two extreme perceptions of what involvement and support entail. The first requires scars of liberation such as detention, death, police brutality and some form of media-catching heroic acts. According to this view, people are politically irrelevant unless they can produce such political bruises. An alternative view reduces the struggle to a series of welfare and benevolent acts, such as feeding the hungry, educating the poor and being kind to the underprivileged. In the middle, one finds some 'moderate' position.<sup>1</sup> For example, one may argue that liberation is expedited if the oppressed gain a foothold in the economic and educational spheres, through education and leadership training. No

one should belittle any of these approaches because they have a role to play. Dramatic political symbols are required to keep faith in the struggle alive. Similarly, ameliorative gestures underline the essential good in human nature, and provide the much-needed short- and medium-term contributions to the struggle. Yet it would be wrong to reduce the political struggle to these short-term measures. There is something suspect, as it was argued earlier, about struggle that requires everyone to be injured. Similarly, there is something dubious about someone who supports the struggle solely by promoting an anti-smoking campaign designed to save more black lives!

It seems reasonable to conclude that participating in the struggle does not require one to be an activist as such. This is particularly the case if one considers that the struggle is not a momentary event, but a process. The struggle requires not only the overthrow of apartheid, but also the building and strengthening of a free and non-racial society. The latter require leadership and education, and above all, a strong economic base. Non-activists typically contribute towards the second, long term phase of the struggle. However, the second phase cannot be attained unless apartheid has been overthrown. In other words, supporting the liberation struggle is not simply reducible to doing good for blacks - whether it is praying for them, feeding them, building sports facilities and so on. Nor is it simply identical to languishing in jail. While these are not meaningless gestures, they are also not individually the tested means of overthrowing evil governments. The immediate struggle is about overthrowing apartheid in South Africa. This is a collective action which might involve national coordination at one point. Naturally, collective action is not equivalent to universal action or even majoritarian action. Nevertheless, where collective action is concerned, total commitment rather than momentary consent would be required. Therefore, one cannot simply withdraw and lend support whimsically. Naturally, as it is argued later, there may be overriding moral reasons why a person needs to withdraw. To conclude, non-activists

do contribute to aspects of the struggle, though it may be necessary for them to be activists at one or another point.

Finally, (d) raises the question: Do individuals reserve the right to make autonomous decisions both at the level of which movement they support and at the level of which strategies are to be pursued? Or does the obligation give any and every liberation movement a right to everyone's support? As far as choice regarding support is concerned, it is evident that once there are several liberation movements, then a bystander should be at liberty to choose. Otherwise a problem arises that, on different days of the week, she might be coerced into supporting conflicting political goals. However, it must be recalled that the principle authorises support for activities, and not for movements as such. As a result, the crucial question for bystanders is not whether or not to support a movement, but which activity to support, regardless of whether the demand is from an individual, one movement or several.

Question (d) is also about perceptions regarding strategies and tactics. Is an individual justified in mapping out his own strategies of liberation? This will be remembered to be a problem particularly for the nervous cooperators who are essentially morally conscious people. They are willing to cooperate through participation in the struggle, but remain doubtful that the proposed collective action will either take off or be sustained successfully. Assuming that this is not mere rationalisation, their reluctance is rooted not in ethical or prudential considerations regarding the struggle but solely on its efficacy. In fact their motives are noble. There is nothing to be gained by mindlessly exposing people to severe state reprisals without anticipation of something worthwhile. The traditional grounds of a just war include the insistence that the chance of success should not be negligible. If indeed the struggle stands no chance, then nervous cooperators are justified in refusing to take part in it. Similarly, some who are opposed to the government are nevertheless not convinced that, say, staying home on June 16 will make any

difference to the overthrow of the system. They may point to the fact that white South Africans have learned to live with no work on June 16 while business people compare it to a Jewish holiday. What then is the moral status of strategy and tactics as far as liberation and coercion are concerned?

Historically, having been launched, revolutions suffer innumerable initial setbacks. Yet the expectation is that, ultimately the oppressed will triumph. It is not clear precisely at what point the oppressed should throw in the towel. It is even more unclear who should take such decisions for them. In general, commentators of various persuasions on the South African political scene tend to reflect these assumptions and doubts. When an irate group of youths takes to the streets, or workers flex their muscles, observers conclude that blacks are about to take over political power. As soon as the police gain the upper hand, as they have done hitherto, then the conclusion is that the regime is invincible. However, whether it is in Pretoria, Vietnam, Beijing or the Kremlin, history has shown that even the most monolithic structures eventually begin to crack. It is true that this often happens only after enormous losses - human and material. Nevertheless, this illustrates that, even in what appear hopeless moments, one should hold out the possibility of victory being ultimately gained. Nervous cooperators are correct in principle. Their daunting challenge is that their claims can only be confirmed at the end of history. Yet they can be refuted during history! Their argument would carry some weight where scepticism regarding the struggle is widespread, and people remain largely unmotivated.

Still, there are two important lessons given by nervous cooperators. Firstly, it is that leaders in the struggle have an obligation to prove effectiveness, and keep faith in the struggle alive. This will require much more than rhetoric and propaganda. Lies and illusion can accumulate only to a point, after which they become transparent and collapse under their own weight. Secondly, where there are serious doubts about strategies, the nervous cooperators seem to have a point. It seems unreasonable to expect

a bystander to support a strategy about which he has serious moral concerns, or whose effectiveness he greatly doubts. This has been particularly the case with school boycotts in South Africa, about which something more detailed is said later. There is a twist of irony here. In many ways, it was school boycotts which highlighted both the educational and political plight of the oppressed in South Africa. Many gains have undoubtedly been made. Yet, there were concerns that if sacrifices were to be made, these should not be in education where the cost would in the long term be prohibitive. The educational and social costs of school boycotts are yet to be determined. However, it is an open secret that even where formal teaching still takes place in South Africa, the actual learning environment has collapsed. This raises a serious question, especially in the light of the harm principle. Who harmed society more? Was it the free rider who refused to join a school boycott, or an activist who not only supported the boycott but also coerced others into doing so?

Strategy is a particularly untidy maze. It is difficult to assess the merits of opposing sides, partly because perceptions rather than transparent facts which lie behind the conflicting judgements. Social and human costs are not easily quantifiable or comparable. While it is possible to count thousands of bodies lost in the liberation war, it is also possible to argue that numbers would have been higher had the regime not been overthrown. Besides, it is not even clear whether individuals or organisations have the right to decide on strategies. Yet, from another perspective, it seems there could be room for political paternalism here. Strategists must necessarily be experts, and fighting wars in part requires expert leadership by the few. If your strategy and tactics are known to all your citizens, they will similarly be known to your enemies.

Yet, it is also true that politicians sometimes know very little about what they should be doing. In South Africa, many disasters are caused by incompetent political strategists. The present economic ruin is a good example. Another instance is the



government's counter-revolutionary strategy. For long ordinary people knew that guns were not sufficient to subdue the oppressed. Yet this realisation only dawned upon government strategic experts later, and grudgingly too. There are two main lessons issuing from the foregoing discussion. One is that strategy is not the sole prerogative of the political leadership. Individuals have a right to question its moral basis as well as efficacy. No one is obliged blindly to follow costly but worthless tactics. The second lesson modifies the first. Although individuals reserve the right to assess a strategy, they cannot simply move from their disagreement with such a strategy to the belief that they need not participate in it at all. They may be wrong in their assessment. There is a sense in which individuals as autonomous moral agents have a right to take final decisions regarding their actions. However, as Carr (1983:473) points out:

It is only in **moral matters** that the agent can be assumed to have the insight necessary to make possible an effective and adequate review of his action.<sup>2</sup>

Further, although liberation is a moral matter it is not exclusively that. Generals in the army know better than ordinary mortals which war strategy might win, simply because they are 'experts' in the area. They are not experts on the question whether war is justifiable or not but they are experts in respect to whether an air or ground raid would be effective. Similarly, economic experts can tell better than priests whether sanctions are likely to hurt the government or not. The lesson from the foregoing should be evident: The liberation struggle is much more complicated than is appreciated by the rugged individualist or an authoritarian political general. There are important moral and social implications. What complicates the matter is that either political leaders or a concerned bystander may be wrong on the effectiveness of a strategy, and this raises questions about why individuals should defer to political leaders, and not the other

way round. All in all the problem of who has the right to decide on strategy **must** remain inconclusive.

Such questions bear the emblem of moral high ground. Nevertheless, it is an empirical fact that few if any liberation struggles can take place if the strategy is going to be debated by 25 000 000 (or even a 100) individuals. This is worse if the organisations should operate underground by force of circumstances. No army in the world has ever subjected its tactics to its individual soldiers, let alone the nation as a whole. Where there is conflict in strategies, everything should **mutatis mutandis** go the way of the political leadership. Indeed, they may be wrong but things are likely to be worse if strategies are subject to house-to-house opinion surveys. Indeed, one cannot expect the liberation movements to behave irrationally. Similarly, one cannot expect a bystander to behave irrationally and support contradictory strategies. Still, the danger that political leadership may be inept at times is one with which all individuals have to live.

Individuals have to take into account the views of other members of society. People should not simply refuse to participate in schemes of mutual importance, each time they find decisions unacceptable. Such free entry and exit must undermine the moral fibre of society, that is, the expectations people have about the durability and stability of their society. In short, people may have a moral duty to accommodate themselves to the purposes of others, even if this conflicts with their desires. The point is underscored by Kant (1965:76) in this telling passage:

...even if we imagined men to be ever so good natured and righteous before a public lawful state of society is established, individual men, nations, and states can never be certain that they are secure against violence from one another, because each will have his own right to do what seems just and good to him, entirely independently of the opinion of others. Consequently, the first decision [one] must make if he does not wish to renounce all concepts of justice, is to accept the principle that one must quit the State of Nature, in which everyone follows his own judgment, and must be united with everyone else....whom he cannot avoid, subjecting himself to a public lawful external coercion.

This leads to the third lesson. At some point a strategy needs to be coordinated. This is particularly true in the last phase of the struggle, where absolute discipline and unity may be required. At that point, bickering about tactics while the enemy is inflicting blows could be counter-productive. As a general observation, it seems likely that disagreements about strategies are prone to mount in the early days of the struggle. Alternatively, such differences are likely to be pronounced where there are numerous factions within the resistance tradition. South Africa is a case in point. Where serious strategic differences are still glaring, organisations have no moral claim to impose their views on the unwilling community. There are parallels with legal moralism. It is generally accepted that governments should not legislate on moral issues over which the community is sharply divided, provided naturally that no public harm is at stake. The onus rests on the contending parties to demonstrate that their strategy is more effective than that of its rivals. Persuasion, rather than coercion, should be the rule of the game. Differences about strategies are likely to be intense in the early phases of the struggle when there is not cumulative experience to fall back on regarding what works and what is ineffective. It is also at this time when the goals are fuzzy and people are generally inexperienced. There is no suggestion here that the need to subject revolutionary policies to the review of public opinion ends

as the struggle reaches its climax. On the contrary, evidence of mass support for those who are toppling a hateful regime is extremely important, and provides some (weak) assurance that the successors will not be just as bad.

There are other difficult areas for the concept of the struggle.

### The Struggle - Problems and Disanalogies Prisoner's Dilemma, Public Goods and Liberation

Concerted revolutionary action is a public good for the proletariat as a group. Yet each proletarian, whether he seeks to maximize his own interests or those of his class, will refrain from revolutionary action (Buchanan:1979:65-66).

The underlying assumption throughout is that liberation is a plausible moral project because autonomy matters. However, if autonomy does matter then there could be a problem about autonomous people cooperating with one another towards liberation. The problem is rooted in the fact that liberation costs may be materially and humanly prohibitive. Therefore the question arises: Why do people who will ultimately benefit from liberation have an obligation to do something about it? This study has proceeded along two major routes. Firstly, there is a belief that the mere fact of being oppressed gives one a reason to cooperate with other oppressed people to overthrow a repressive regime. This was demonstrated to be in no manner self-evident. Certainly being oppressed gives people some reason to liberate themselves if this can be done. However, as the prisoner's dilemma and public goods model illustrated, there could be countervailing reasons of a self-interested kind not to bother about liberation.

Secondly, there is a theory of a person's doing his fair share of those things which, if he does not do them, he contributes very seriously to harming other people. If that is correct, what other concerns does this theory raise? There is one residual disquiet.

Is it not paternalistic to impose this goal upon the community? The issue is addressed in the next chapter. For now, it is worth mentioning that the absence of the good in question involves harm to everyone, or most people, if not achieved. It is not a case of a paternalistic imposition of a moral goal. It is no more paternalistic than getting people to come to court to give evidence in our favour. Still, is this kind of goal best treated using orthodox notions like public goods? The principle of fair play has been stated as extensively as possible. Where feasible a strong case was made for it. The purpose of this chapter is to re-examine the principle as a whole, and to assess whether liberation is readily handled in the language of public goods. The suggestion so far has been that it is. At one level the liberation process undoubtedly fits the public goods picture. A new government is something which if supplied to anybody is supplied to everybody. So, in one sense, such a new political system is clearly a pure public good. This makes it possible to entertain the possibility of a new non-racial, anti-apartheid government in terms of pure public goods. There are other legitimate parallels too.

Common to both public goods and the liberation struggle is the demonstration of the irrationality of egoism and of the mindless pursuit of narrow self-interest to the exclusion of the interests of others. If egoism is the sole moral theory then almost everyone is likely to lose and few others to gain. In short what is required is unity of action and cooperation. The struggle does not require ideological uniformity because cooperation is possible even between sworn enemies. If no one participates in the struggle, the oppression can only increase. There is no point in pushing ahead with the struggle if no one, or only a negligible number, is willing to support it. That is courting a disaster. In addition, even though people desire liberation, they are not always keen to take the heat that goes with it. Others might be keen to support but only if the rest make their contribution.

Still, there are other elements of the prisoner's dilemma which may be overlooked by somewhat idyllic accounts of solidarity.



The government's strategies of divide and rule, of creating strongly visible economic and social stratification within the oppressed community, and of clientage and patronage have resulted also in a competitive spirit among some of the oppressed. While it is true that there is solidarity, a tendency by the oppressed to use one another as stepping stones to privilege persists. This is evident from the presence of police spies among the oppressed community, or in competition for scarce work opportunities. There are clear traits of individualism as well. The description of blacks as 'socialists by nature' hardly tallies with reality. There is competition between the employed and the unemployed, and backbiting within the employed as they struggle for favours and promotion. These features are not to be seen as natural traits on the part of blacks. These are simply empirical realities common to many societies.

At other levels too, parallels between the struggle and public goods seem contrived, and do not neatly fit into the analogy. Coercion and moral incentives raise the question of whether there is anything special about liberation struggles that makes them really impervious to analysis in orthodox liberal ways of thinking. It would seem so. In particular, liberation is characteristically open-ended, such that all talk of costs, benefits and harm easily becomes slippery.

### **The uncertainty of the Benefit**

The Olson-like (1971) universe is largely based on economic theories where the certainty of the benefit is no issue. All standard treatments of public goods consider a benefit which all those who contribute to its creation can eventually expect to enjoy. The possibility of such enjoyment should not be remote. After all it is precisely the benefit which is the basis of the obligation. The minimum people can expect is that benefit. However, future liberation is an uncertainty or even an improbability.

Of course it is possible to argue that the uncertainty feature does not weigh heavily against the theory, especially if one makes a distinction between moral and scientific certainty. For example, ordinarily weather conditions can be predicted with a reasonable degree of scientific accuracy. Moral certainty refers to those situations where a person has reasonable grounds for believing that something will happen. When people marry honestly they do so with moral certainty that the relationship will last. Similarly, joining a union does not guarantee benefits in any absolute fashion. The leadership of what looks like a worthwhile union may be discovered to be reckless and corrupt. However, here too one has moral certainty that benefits will accrue. This certainty is based on the union's track record. In the same manner if the spouses have been always faithful this provides moral certainty that they will remain so. Moral certainty involves possible subsequent refutation or disappointment (incidentally, scientific certainty is subject to similar limitations!). A union with a reputable history may subsequently deteriorate in direct contrast to its previous record. Similarly, a good marriage might collapse unexpectedly. If this is correct, it follows that similarly the struggle may be pursued on the basis of moral certainty. If a resistance organisation has a track record of effectiveness, fair play and commitment to democracy, these may be sound grounds for supporting some of its programmes. Of course there may be betrayals but this is common to so many other facets of life that it could seem strange that liberation struggles should be singled out for rejection on these grounds.

Still, while this line of argument is reasonable, it also ignores a fundamental difference between unions and marriage, on the one hand, and the liberation struggle, on the other. In the event of a pure public evil (that is, the fruits of the struggle being disastrous) the consequences are not readily reversible within a short time. In principle one can readily withdraw from a marriage or union, or dismiss such union's ineffectual leadership. If liberation ushers in another dictatorship, then the people's

options are severely narrowed. Withdrawing from a political society is not as effortless as resigning from a union.

### **Liberation: The Obscurity of the Concept**

The genuine challenge raised by the **confused cooperator** still needs to be addressed. In the prisoner's dilemma the goal is crystal clear: how to stabilise an optimal, yet elusive state of affairs. The prisoners explicitly want to reduce their jail sentences to the minimal. There is no ambiguity. As a result, they can negotiate without any misunderstanding. The costs are also explicit. In short, their debate is about coercion towards an explicit, attainable, mutually desired goal. The oppressed in South Africa have no clear and unambiguous concept of what would count as liberation. Liberation is, at the mildest, an untidy maze. It is a many-layered, multi-dimensional, and heavily ideological concept. It means different things to different bystanders. Essentially two broad conceptions of liberation are pertinent in South African debates. This became even more evident after February, 1990. When the ANC agreed to join the government in the negotiation process, it was accused by its left opposition of 'selling out' the workers to capitalists and imperialists. The resultant settlement, it was argued, would amount to no more than an unhealthy alliance between the black and white bourgeoisie. Consequently, the argument went, negotiation would not lead to 'true liberation', but only to a 'sellout settlement'. What then counts as liberation, for the purposes of coercion?

As it was pointed out in the introduction, there are two broad conceptions. One is a minimal definition, according to which liberation amounts to a situation in which everyone at least 18 years old has the vote and is entitled to form a political party. There is no reference to race in the laws. This would be a mainstream liberal position which largely underlies the Freedom Charter. An alternative maximalist view considers liberation as the establishment of a socialistic order. It may or may not include some features of the minimalist conception. Further, the

struggle involves many activities, both within one organisation and among the contending groups. For example, the ANC identified 'pillars of the struggle' which include armed struggle, mobilisation, and international isolation and economic sanctions. The Democratic Party adopted a parliamentary opposition tactic to promote the struggle. Inkatha regards as its main contribution its rejection of Bantustan independence, and its refusal to negotiate with the government until Mandela and other political prisoners had been released. On the other hand, the National Forum bases the struggle on three principles, anti-imperialism, anti-sexism and anti-racism. For Black Consciousness, psychological liberation is a **sine qua non** for the struggle. While the ANC insists on mixed membership, Black Consciousness puts emphasis on exclusivity.

In the light of this, it is evident that the struggle involves conflicting versions of liberation, goals and strategies. Consequently, to suggest that a bystander is under obligation to support the struggle appears to violate the principle of reasonableness, since no one should be under obligation to pursue obscure and conflicting aims. It is also manifestly unreasonable, to put it mildly, to expect capitalists and socialists to commit suicide by actively promoting a system inimical to their perceived interests.

For these reasons, it would appear, no obligation exists to support the struggle 'in general', and coercion towards such a cause is morally indefensible. While these are strong arguments, the problem need not be as insurmountable as it appears. One could limit the obligation to the establishment of a climate conducive to a democratic practice. This will be referred to as a procedural conception. It involves the abolishment of apartheid, the legalisation of all political organisations, and the promotion of open political canvassing and debate. In the wake of 2 February, it will become increasingly **difficult**<sup>3</sup> to justify any type of coercion, provided the state does not use underhand methods to undermine opposition organisations. From that moment, the socialists and capitalists should begin to fight it out in an open



and persuasive rather than coercive forum. The obligation is to establish the necessary conditions for democracy, not to impose a particular ideology. The political and strategic value of negotiations will remain debatable. What is indisputable is that those organisations, like the ANC and the National Party, which agreed to participate in the negotiation process gained an important moral ascendancy. Both demonstrated some form of commitment to a democratic solution, however precarious.

This procedural approach has obvious advantages. It focuses on the democratic process rather than on divisive ideologies. While there is a shared perception of apartheid as an evil, no such common perception exists regarding capitalism and socialism. An exclusively anti-apartheid struggle does not frustrate pro-socialist or pro-capitalist positions. Yet an exclusively pro-capitalist or pro-socialist struggle might frustrate the legitimate aspirations of those who do not share these ideologies. Further, it makes it unnecessary for the bystander to take sides regarding the contending ideologies. Adopting this procedural conception is perfectly compatible with the belief that socialism would be the best system for the country. Finally, this account does not require one to think that the political struggle ends with the defeat of apartheid. In many ways the demise of apartheid opens up new areas of contest. A self-critical society will continue to improve and upgrade its standards. What is maintained here is simply that an enforceable obligation is to be restricted to the creation of a democratic climate.

Nevertheless, even if the foregoing concerns were accepted, they would only address part of the problem raised by the 'struggle in general'. The arguments deal adequately with the confusion occasioned by the minimalist or maximalist conceptions of the struggle. Still they fail to address other problems, such as whether sanctions, boycotts, or sabotage advances or retards the struggle. For these reasons, 'the struggle in general' does not pass the test of reasonable coercion under the principle of fair play.



### Rationality and Liberation

Do the oppressed in a concrete situation display the kind of calculating rationality so central to the prisoner's dilemma? How accurate is this model, especially in the South African situation? Is it not perhaps more suitable to the trans-national business technocrats, politicians, prisoners and a handful of other people?

In the first place, the prisoner's dilemma is not intended to be a descriptive account of black townships, but rather a large lens through which specific political reality is examined. It puts emphasis on purposive behaviour, as opposed to treating a person simply as a product of socialisation, class, race, or ethnicity. Choice, beliefs and optimising behaviour become prominent notions. It is possible that these assumptions are gross oversimplifications. Yet, this need not be an insurmountable problem. It helps sometimes to base assumptions on extreme cases, and later refine the model in the light of concrete examples.

Of course whether the model is illuminating or not depends mainly on the use to which it is put. If it is intended to be an accurate description of the nature of a person, then obviously it runs into difficulties. Consequently, for the purposes of this argument, the model served a limited and specific role - namely, to facilitate thinking about the free rider problem in the liberation struggle. It sees a person as a creature capable of rational behaviour. 'Rational' is used in the three senses mapped out by Carlson (1973:25):

- i. Efficacious - on the basis of given information, it offers optimal prospects of achieving objectives.
- ii. Consistent - a rational decision must not involve any logical flaw in its calculation.
- iii. Reasoned or principled - it expresses an evaluative (though morally neutral) judgement of the form: 'when in situation of type C...Z, the thing to do is X'.

In some ways everyone at one stage engages in this type of deliberation. However, it is plainly untrue to elevate this feature as a central characteristic of people all over. Even in highly literate societies, intelligent people do take irrational political decisions. In fact there is no evidence whatsoever that rationality alone plays a significant role in individual political decisions such as voting or supporting a political organisation. Gender, race, religion, geography, kinship, tribalism, ethnicity and social stratification play their roles.

### **Assessment and allocation of Costs**

It is possible to argue that the share of the liberation benefits poses no problem. After all the benefit envisaged in the scheme does not extend beyond the establishment of a free political climate in which people can make more substantive political choices. This limitation is useful because it should be attractive to every oppressed person regardless of political affiliation. A difficult issue involves calculating and sharing the liberation costs. Earlier it was argued against utilitarianism that the costs of public goods are not easily quantifiable. The situation is even more hopeless in the case of liberation. Even if such costs were calculable they would not be equally and mathematically divisible for the purpose of sharing. There are various roles to play - soldiers, teachers, social workers, strategists *ad infinitum*. The risks involved vary according to the role assumed in the struggle. One could of course offset all this by insisting that highly risky roles should be left for the volunteers.

In fact this was one of the provisions made in the previous chapter. It was suggested that coercive participation is justifiable only where bystanders are required to play a common and general role, such as marching or boycotting. Here, it would appear, the costs are spread equally among the 'drafted'. Once more this is not the case. A public demonstration in Cape Town and Johannesburg, with foreign diplomats and journalists involved or

watching, is less risky than one in the Free State or Northern Transvaal where members of the **Afrikaner Weerstand Beweging** can not wait to attack and injure protesters. Similarly, while a black academic at a liberal institution can afford to miss work due to a political stayaway, this was not quite as simple for a lecturer at the University of the North in the mid-eighties. The price of bread looks the same for a domestic worker and a millionaire. However, it is only formally so. In reality, it digs deeper into the pockets of the poor. It should be emphasised once more that the point is not that people should not take risks. All that is claimed is that sharing costs equally is not how the struggle operates in practice.

### Altruism and rational self-interest

It is evident that the public goods model is a moderately plausible way of dealing with the problem of liberation. However, liberation has so many interesting and peculiar aspects that it cannot be addressed completely by appeal to public goods. For example, the language of duties to oneself or to future generations is not explicable in terms of public goods. Liberation could also be conceived as a free gift to future generations. It may be that the present adult generation has given up on liberation during its life time. These adults simply want their children to be emancipated because they regard political liberty as a gift to their offspring. This is a genuine motive for the struggle which cannot be captured adequately in public goods terminology at all.

Of course this account may raise questions about costs as well. For example, if the process of handing over is such a bloody or awfully costly affair, such that handing over is seriously distorted by that process, then liberation may be an imprudent and immoral thing to do. Yet, this presupposes no public goods framework at all - only the obligation to future generations. It is a gift to them simply because their forbears care about them.

It raises different issues altogether, such as what kind of tactics will not taint or poison what is about to be handed over. This is a different question from straight obligation questions like paying bus fares or not trampling the lawn. If liberation is a benefit, then just as it is necessary to pay bus fares, it is essential to pay for the benefit of liberation as well.

Public goods provides a useful model when setting up the problem. It gives a credible picture of people coming together to set up a liberation scheme from which they hope to benefit. The benefit would be greater than the cost they would each incur if they did not stick together. Here is a useful model of unity in action, for example, of the oppressed refusing to cooperate with the government. In many ways if the oppressed withdrew support for the government in areas such as taxes and labour, apartheid would simply collapse. If the oppressed made the desired contribution, namely non-recognition and non-cooperation, then they would almost surely get what they wanted. Such a move clearly outweighs the costs. However, the model also distorts the reality of liberation. Pure public goods says little about the down side. Armed police can still drag people to work. The struggle can simply amount to 'death now - liberation later'.

One requirement for a successful revolution is the acceptance of the fact that people are partially altruistic and partially self-interested, so that the pure Olson (1971) problem does not arise. This is also an explanation of why more public goods get produced by voluntary cooperation than one would expect on Olson's assumptions. The answer is plainly that Olson's assumptions have built into them, straight-forward self-interest. If people are not straightforwardly self-interested then they overcome a great deal of those problems by contributing anyway; they may feel like contributing a bit until the whole thing is started, or they may be full of loyal indignation at being taken for a ride so that without any need for overt coercion they actually change people's incentives.

Even in a black middle class suburb where arson and murder by

neighbours is unlikely, free riders receive an unfriendly glare from their neighbours. Free riders may feel that a glare, or even a small risk of detection, is bad enough to provide an incentive for them to support a boycott, not necessarily out of fear for their lives. They simply do not wish to be known as people who cannot be trusted.

To conclude, while it may be laudable to join the struggle, in the sense of being a known and committed activist, it is morally impermissible in terms of the APF to coerce bystanders into doing likewise. In the remaining section, focus will now move to specific forms of protest, the education, rent and consumer boycotts.

### Education Boycott

This case is somewhat problematic. An education boycott is an example of a tactic which though possibly helpful, is nevertheless not a justifiable ground for coercion. Two types of boycotts should be distinguished from each other. One is a short-term, specific issue-oriented programme, aiming at an identifiable concern over which pupils feel strongly. Students might boycott to demand the dismissal of a racist teacher, or the removal of police and army from their school premises. On this level the goals are pretty clear. There have been protests against inferior education, sexual abuse, corporal punishment and compulsory school uniforms. Positively, people wanted improved quality of education, equal and free education, and school books and texts. On other levels the aims were murky. The demand for relevant and proper education is ethically defensible. In fact such an education is a moral imperative. This demand cuts across all the political layers of the oppressed. In general one could argue that a free, healthy national education system is a **pure public good**. Its denial constitutes serious social harm. Such cases constitute, **mutatis mutandis**, possible areas of justifiable coercion.

Other versions of boycotts have been elevated from being



tactics and strategies to the level of principles. This is an area of concern, and the rest of this section deals specifically with this version of boycotts. Boycotts typically were prompted by specific issues, such as police killings, detention of fellow students, corrupt principals or poor results. However, since 1976 they have also assumed a vital political role. There have been few boycotts which were not linked to important national political questions, such as parents' representation, accountability and low standards for the oppressed. The result is that the goals of the boycotts increasingly became unclear. Boycotts in support of People's Education are typical examples. On the prophetic level such protests made sense, and raised the level of political consciousness; they questioned traditional values of education as espoused by the architects of apartheid; they addressed important questions such as democracy in education, curriculum development, relevant education and accountability. These are issues which continue to be focal in both the education and political domain.

However, what constitutes this education is not clear at all. The general principles and goals are pretty clear, but insofar as it involves a teaching package it remains a foggy and contested area. Even its demand remains strategically unwarranted until there is greater clarity about the content of People's Education. The greatest merit of the People's Education movement was more in terms of general political mobilisation than in the improvement of education as such. The movement had a propaganda value which conscientised the community and students towards a search for a new set of educational values. However, the greatest flaw in the People's Education campaign was the transformation of prolonged school boycotts from tactics to principles. In addition to this, education boycotts contained elements of **risk**, such as police detention, harassment and permanent exclusion from formal education.

Further, the achievement of these broad general educational goals was often not within immediate sight, but the issues themselves continue to be pressing. Thanks to the People's

Education movement, they remain on the agenda. Of course, if the aim was solely to raise political awareness, the approach would be perfectly legitimate. In that case, the same could have been achieved through compulsory seminars in school premises after normal school hours. Alternatively, brief one or two-day protests could be conducted every semester or term in order to highlight those issues. If, on the other hand, it was hoped that the boycotts *per se* would play a crucial role in the actual demise of apartheid, then this is a matter of debate. What opponents of boycotts feared most was that a government dedicated to poor education for blacks could hardly be threatened by the decision of those blacks to boycott schools. In other words, there were serious doubts about the **effectiveness** of such a strategy.

There were also concerns about possible **harm** such a strategy could do. First, the escalation effect of such a strategy could not be underestimated. It produced a generation of young people who, subconsciously, had come to denigrate all forms of education. Education and liberation were juxtaposed as antithetical, with preference going to the latter. Any person who pursued education was consequently 'counter-revolutionary'. The fact is that people's attitudes cannot be switched on and off randomly like electricity. In other words, the seeds of a worrying anti-intellectual tradition were inevitably sown. One of the consequences of education boycotts is a largely illiterate and unemployable generation. The effects on the black family were also sources of concern. The education strategy could never be implemented without breaking down extensively the parent-teacher authority, since very few parents would cherish the idea of children and teenagers roaming the streets with nothing constructive to keep them occupied.

The positive side to boycotts, however, should not be overlooked too quickly. It should be borne in mind that no liberation strategy is without costs. For example, with hindsight, it is possible to state categorically that sanctions played a substantial role in undermining the government, and forcing it into

a negotiation mode. This has damaged the economy, and the oppressed have no choice but to pay that price. Further, it was also the spectre of violence and the prospects of 'ungovernability' which kept foreign investment away from South Africa. This spectre was a direct result of the work of the 'comrades' who were either unemployed youth, or boycotting students. From this perspective it may be argued that, in their own cruel way, the boycotts have contributed to the liberation struggle. In addition, the boycotts politicised a substantial number of teachers, most of whom were traditionally devoted slaves of the Department of Education and Training. Indeed there is a sense in which teachers also failed in their responsibility to the community of the oppressed, by failing to exploit the classroom situation by raising the level of awareness. With corporal punishment the order of the day, teaching was also a welcome profession for those who derived sadistic pleasure from inflicting pain. Student boycotts and retaliation since the mid-eighties put an end to such abuses.

What can be concluded from all of this? Nothing in this discussion should be construed as suggesting that education boycotts were worthless. At best, they were problematic and controversial. They did not enjoy overall community support (even though there was widespread support for the issues raised by the boycott), and resistance organisations themselves were not united on the issue of boycotts. As a result, coercion was at its maximum on this level, and this alone should raise questions about the wisdom of coercion itself. The conclusion is simply this: There were benefits and costs to this strategy, the relative weight of each against the other is difficult to establish and, consequently, coercion is not justified. To emphasise, the conclusion is simply that coercion was unjustified, not that the strategy was a failure. After all, a violent strategy might be a success, but from this it does not follow that bystanders may be coerced into taking arms.

### Rent and Consumer Boycotts

These are measures in which coercion seems justifiable. Rent boycotts were designed to lower rent and service fees, or to pressurise unpopular town councillors to resign. The hopes and aspirations of society were mirrored in these measures. The issues were intelligible, and **objectives explicit**. Rent boycotts are a success story. The issues are clear, morally acceptable and of concern to people involved. They are enforced by local leaders generally known to the people. Where the government has tried to clamp down on the rent defaulters, the rest of the community rallied behind potential victims. As in the prisoner's dilemma, these protests required widespread **cooperation**. They also involved **risks** such as evictions and arrests. Still rent boycotts also included some additional 'in-process' benefits. People were gaining financially by not paying for the services they received, and also crippling the local town councils that they had come to hate. In the process rent boycotts forced the government to enter into grudging negotiations with community representatives. These goals were not only specific, but also **effective**. In a number of instances, the citizens won. The councillors resigned, and often the arrears were written off. Naturally, the strategies involved some dangers, but such perils were nevertheless not out of proportion to the benefits. There were cases where people were evicted during mid-winter nights. Still, the communities rallied behind such victims, and soon they were 're-instated' into their homes by neighbours. It would indeed be difficult to understand why any bystander would have serious problems with rent boycotts. The risks were nominal, the effects predictable and the financial savings concrete.

Consumer boycotts were in the same league. The black buying power has increasingly become a potent political weapon. Where substantially supported, boycotts crippled a number of small businesses, inducing a change of heart. While they entailed hardships, their results were visible a short time after their



launch. They provided added pressure on the government, business and local white councillors to negotiate with the oppressed. In any country, the economy is the most sensitive area. Consumer boycotts, too, were tied to specific demands such as the release of detainees. They were designed to last for specific periods. Unlike education boycotts, consumer boycotts were never indefinite. The consumer bystanders could plan their lives during such boycotts.

Consumer boycotts had added beneficial advantages over rent boycotts. In the case of the latter, the state could and did try to put counter-pressure on communities in order to break the boycott. These included midnight raids, court actions and continuous threats. In other words, communities were caught up between the resistance organisations and the state. In contrast, there was no manner in which the state could pressurise people into buying in town (or anywhere for that matter)! At best, the government could only watch in exasperation. Rent boycotts involved people in breaking the law, and therefore exposing themselves to possible arrest. Consumer boycotts were technically illegal, in the sense that it was a crime to call for such boycotts. It was never a crime to heed such boycotts as long as people did not publicise their intentions. Consequently, the motivation to participate should have been higher, and coercion here would serve as guarantee to others that 'the struggle continues'.

The consumer boycott had its negative side, namely, tremendous inconvenience. This was particularly so because most of the bystanders leave the townships very early to go to work and return quite late. Their lunch hour was used for shopping. During boycotts they had to buy in the townships where both quality and quantity were lower than in the cities. Besides, township prices are generally high, and increase even further when demand outstrips supply during boycotts. In this respect, from the bystander's perspective, rent boycotts had an edge over consumer boycotts. Rent boycotts spared the consumer the trouble of abusive petty



officials and long queues in rent offices. Consumer boycotts taxed people's resources to find alternative shopping time and shops. It brought to the bystanders added inconveniences at the mildest, or greater hardships at worst. Yet, in both cases, no lives were in danger. It was generally a matter of inconvenience. Consequently, here again coercion was justified.

### Concluding Remarks

Rent and consumer boycotts are typically local issues. Such issues are easy to identify and to rally people around. Of course local issues ultimately have national ramifications because a substantial number of local problems are initiated by the government's national policy. This explains why, despite geographical distance, many black townships have similar problems. Education boycotts belong to what may be termed 'micro issues', that is, national problems which are nevertheless not purely political in the sense of involving broader constitutional issues of the country. As a wide generalisation, it may be stated that if the principle of fair play generates obligations, it is likely to be in the area of local issues, and vaguely in micro affairs and possibly not at all in national issues (broad conceptions of liberation). Too much bickering within the resistance organisation is likely to be endemic on the national level for some time, and in the process, leave people confused. National issues are the domain of national organisation. As a result, on the national level the principle of fair play is likely to apply in the mature years of the struggle where issues have become crystallised and a track record of credibility and effectiveness has been established.

### The South African Situation - Final Questions

In the light of the foregoing discussion, it may be possible to respond to the second set of questions (i - iv), dealing with

the problems of applying the fair play principle in a specific context like South Africa.

- i. Does the amended principle of fair play justify, for example, the ANC and the PAC, coercing **the same bystander**?

Assuming that both organisations met all the structural virtues outlined above, it is possible that they may be justified in coercing the same bystander. This is possible where a specific programme is not in conflict with the conditions for justified coercion. Further, there should be consensus across the political spectrum on the merits of a proposed programme. Two vivid examples here are rent and services boycotts and the economic sanctions campaign. These tactics were generally accepted by all national resistance organisations. Coercion in regard to rents was minimal because, in general, people could identify with the demand.

However, in the case where the bystander is required to follow contradictory demands from the organisations, coercion is unjustifiable. Example one (see introduction) on education boycotts is a case in point. As was demonstrated, it fails on numerous counts as a legitimate terrain of coercion. Groups like Azapo were specifically against school boycotts. The result is that it would be irrational to coerce a bystander both to take part in and boycott the detested educational system. In short, even where there is more than one organisation, it does not follow that the principle of fair play is inoperative.

- ii. If different movements, or elements in the same movement, are running contradictory strategies ('education for liberation' **versus** 'liberation before education'), who in terms of the amended principle of fair play is a free rider? And which party may appeal to the principle of harm?

In this case, coercion is likely to be tempting for those who believe in 'liberation before education'. After all, in practical circumstances, resistance organisations were never, ever required

to coerce pupils into going to school! Now, it will be recalled that in response to (i), it was pointed out that the 'education struggle' was not one of the movements' success stories. It has certainly raised the level of political awareness and activism, but whether these were outweighed by the costs of the resultant high rate of illiteracy or not, remains a subject of intense debate. And it is precisely because of the existence of such doubts, even amongst committed activists, that one should question whether the education struggle was a genuine terrain for coercion. As was pointed out earlier, such a struggle had a murky goal, its effectiveness was in doubt at the outset, it could hardly be said to have represented the hopes and aspirations of society and its disruption of the black society will take long to undo.

At the same time, the politically destabilising effect of the youth 'in the streets' is likely to have contributed to anxiety within the government. Once the country appeared unstable to potential foreign investors, this, more than the sanctions campaign, may have undermined the national economy. Ultimately, it is impossible to quantify the implications of either strategy. In short, it is not possible to identify the free rider. The principle of fair play does not apply at all in this case, and consequently any reference to a free rider would be inappropriate.

iii. Given that (a) there is more than one movement, and (b) that there are contradictory strategies, how do the arguments deal with the bystander who appeals to her obligation to be rational and therefore to make her own choice?

Once more, it should be emphasised that the existence of more than one movement does not necessarily imply that there is no consensus on any issue. This was evident from both (i) and (ii) above. As a matter of principle, where there is conflict, then the bystander should exercise her option of choosing which strategy to support.

iv. Given the principle of harm, who harms society: the person who adopts the principle 'education for liberation', or the one who acts on 'liberation before education'?

Essentially, the issue is: Who is entitled to use the principles of harm and fair play, when the leadership disagrees on whether schools should be attended or boycotted? It is to this last question that attention should be focused. As the answer to (iii) indicates, it is either impossible or difficult to give a definite answer. This is largely due to the fact that one cannot quantify the consequences of each of these strategies. Further, even if such quantification were possible, one might still assign differing normative values to these consequences. After all, a ton of coal might still be worthless compared, say, to a pound of gold! Still, from the fact that one cannot give a decisive answer in this case, it does not follow that such an answer is impossible in all cases. For example, in the event of a march against rent hikes or police brutality, it might prove less difficult to isolate free riders.

All in all, what the above questions achieve is simply to underline that, in certain circumstances, it is impossible to apply the principle of fair play. To conclude, two issues need to be emphasised. They do not demonstrate that the principle of fair play is totally inapplicable. To illustrate that a principle runs into grey areas at times hardly marks a major theoretical advance. Finally, it is worth repeating: The foregoing discussion was not designed to juxtapose useless and useful strategies. It was solely meant to identify which measures met the requirements of the APF and which fail to do so.

**NOTES**

1. In South Africa the term "moderate" may be pejorative when understood as referring to collaborators with the government. In this context it is used technically to refer to a 'mean between two extremes'.

2. Emphasis added.

3. The emphasis is important because the principle of fair play could be employed to justify coercion even after legalisation of the parties. However, such coercion should be preceded by democratic consultation and debate.



CHAPTER NINEThe Problem of Paternalism

In the light of the prime concern of this study, it is tempting and legitimate to pose the following question: If all that matters is the type and scope of coercion, and not the organisation *per se*, why then was so much made out of the **covert**ness of organisations? It seems that the principle of fair play makes it possible for anyone, including legal political parties to adopt coercive measures. It should apply even where consent was possible, but people voted 'wrongly'. In other words, where people, unwittingly or deliberately, harm themselves, then they could be forcibly restrained from doing so in terms of the principle. This looks like the worst form of paternalism. The principle of fair play proves too much; it makes it possible for anyone, including legal political parties to adopt coercive measures.

To address the first part of the question: Why the obsession with covertness when the principle applies to cases even where consent was possible, where debate and discussion have or could have taken place? It should be recalled that the question was raised against the background of liberal theory, where consent is a cardinal feature of political and moral life. At its barest conception, such consent is understood to involve openness, debate, elections and mandates. Given these assumptions, covert organisations present moral problems. As it was pointed out earlier, such organisations are inherently undemocratic, not by desire but force of circumstances. In short, covert organisations raise problems for those who take consent seriously. The significance of covertness lies in the fact that, in this case, people can hardly debate. Discussion is made impossible for them **ab initio**. Chapter three seriously undermined the claims of consent theory. Nevertheless, it was emphasised that it was the

formulation of the theory that presented problems. The values it pursued were important, and had to be accommodated even in the alternative principle of non-consensual obligation. This was done in terms of **substantive** consent in the previous chapter. The moral importance of open discussion is that it could lead to informed consent. In other words, openness remains a central requirement of democracy.

This chapter pursues the problem of paternalism and addresses the challenge raised by the confused cooperator. Given the undemocratic nature of political resistance, who will be assigning moral importance to goals and strategies? Amongst numerous objections, is a claim that the principle of fair play could lead to political paternalism by entrusting a group of people with the right to decide the political goals and means, and to impose such schemes on the rest of society. In other words, as a partial consequence of this principle people could be 'forced to be free'. Worse still, who decides whether a given act constitutes fighting for liberation? The very presumption in favour of liberty, which is the point of departure adopted, implies that because liberation is a good thing it will be imposed upon all and sundry, regardless of their personal inclination. What happens, for example, if the oppressed prefer to live under apartheid, rather than under an alternative system? To what extent, if any, is political paternalism morally justified?

There are two possible general responses to this objection. One is a denial that any paternalism is involved. Alternatively, one can admit paternalism, but argue that in any case no account of liberty, not even Berlin's 'negative liberty' (1969), is altogether devoid of paternalism. In other words, paternalism is not always objectionable. Before these claims and counter-claims are assessed, it is necessary to spell out what paternalism means. Briefly, it will be argued that while people are free to harm themselves, if their self-inflicted harm involves harm for others as well then they could be restrained. Here there is no question of paternalism. If someone (x) wishes to commit suicide by driving

recklessly in a car in which someone else (y) is also a passenger, then (y) is perfectly justified in restraining (x).

### What is Paternalism?

Paternalism is the view that it is sometimes the business of society to compel autonomous adults to engage in activities which promote their own good. Alternatively the state or society has a right to limit individual liberty in order to protect a person from self-inflicted harm. In this context, paternalism is the belief that the oppressed may be compelled to end their oppression - in their own interest. This notion relies upon the distinction between 'self-regarding' and 'other-regarding' acts ('the distinction'). Other-regarding acts are, so to say, directed at, and have direct implications for others. To assault, steal from, or injure others, for example, is to engage in other-regarding acts. Harmful other-regarding acts are forbidden in terms of the harm principle discussed earlier. In contrast, self-regarding acts essentially 'have no effect on others against their wishes; they only affect the agents and consenting adults' (Ten:1980:10). Common examples are taken to be drug taking, the use of car seat belts, adultery and homosexuality between consenting parties, drinking heavily in private, and suicide. In this context, one would presumably include the right to be a slave. Opponents of paternalism insist that society should not intervene in self-regarding acts because, by definition, such acts do no public harm.

The distinction is queried largely on the basis that in **practice** ultimately every action has some implications for others. All of the examples cited above have an impact beyond the immediate agent. Drug addicts might impose intolerable burdens on their families; they might draw heavily on society's limited health resources. Similarly, an adulterous affair could have deleterious implications for the respective spouses of the partners and their family life. In fact there are very few significant actions which have no implications for others. The result is that any moral

doctrine, like anti-paternalism, based on such grounds is meaningless. It might not guarantee the individual's right to privacy, precisely because it fails to give a satisfactory and concrete criterion of a self-regarding act. In addition, it has been shown that even the right to remain a slave has some implications for society as a whole, including those who wish to be free. Strictly speaking, the objection based on the empirical impossibility of self-regarding acts misses the point. In fact behind such objections lies an assumption that if in fact there were 'self-regarding' actions, then paternalism would be wrong. The objection demonstrates, not that 'self-regarding' actions are logically impossible, only that in practice they are difficult to come by. It shows that although paternalism is a rare occurrence it remains necessarily wrong where it does occur.

There is another basic objection to 'the distinction'. According to Wolff (1968:25) and Ten (1980:11) it is based not on facts, but on value. What belongs to the individual's private and public sphere is not discovered, but invented by a complex network of social norms and rights. Self-regarding acts would then become those with which only an individual has a right to concern himself, while other-regarding acts imply that others have a legitimate interest in them. On this score, what makes an action 'self-regarding' is its failure to affect 'the interests of others' (Rees:1966) - that is, not merely its failure to affect others.<sup>1</sup>

Even this reformulation fails to dispose of the problem. While judgements about how people are affected are purely descriptive, those regarding how people's interests are affected are normative. The distinction is now subject to the whims, influence and reactions of others. People may be affected by a myriad of considerations - including non-rational factors. This in turn widens the concept of interests to the extent of eliminating self-regarding acts altogether, or reducing their moral significance. In short, once people's emotions play a role, they are likely to tilt the scales towards invasion of what might have

been generally accepted as private domain:

Now suppose that Joe is a devout Calvinist or a principled vegetarian. The very presence in his community of a Catholic or a meat-eater may cause him fully as much pain as a blow in the face or the theft of his purse. Indeed, to a truly devout Christian a physical blow counts for much less than the blasphemy of a heretic (Wolff:1968:24).

If the distinction is to hold at all, it has to be based upon a non-normative basis. This has been demonstrated to be impossible.

### A Case for political Paternalism

A distinction is generally made between strong and weak paternalism. Strong paternalism authorises, or indeed prescribes intervention by third parties in private individual affairs, even if the agent deliberately, voluntarily and intentionally desires otherwise. Weak paternalism appeals to a defective decision-making process on the part of the agent. If there is reason to believe that an agent's judgement might be impaired, by whatever cause, then such a person should be restrained from doing what he wants. For example, if a passenger boarded an aircraft not knowing that it contained explosives, he may be dragged out of it prior to an explosion. However, such interference is strictly temporary. If, with the full knowledge of the facts, the passenger insists on boarding, then no person should prevent him. The obvious implication is that even though apartheid is harmful to blacks, if some of the oppressed voluntarily and deliberately opt for the **status quo**, then it would be wrong to restrain them. Weak paternalism recognises the need for a temporary restraint upon individual liberty. This is particularly so when consent is not full and free. Essential to weak paternalism is the distinction between what a person wills on the one hand, and what he desires on the other (Wolff:1976:50). To will is to achieve whatever goal a



person has set out to perform. If the outcome is different from what he had set out to do, then he fails to achieve what he wants. A person might swallow cyanide under an erroneous impression that this would cure a stomach pain. He wills to swallow the poison, although he wants to get well. Preventing him from swallowing cyanide is a weak form of paternalism. Strictly speaking, you are not preventing him from getting what he wants. He does not want to die. On the contrary, he wants to cure his pain. This fact makes it possible to maintain of any person, that he may not necessarily be the best judge of his own welfare. An athlete might be more concerned about his success, but his trainer might be a better judge of what is required for that success. Naturally, there must be a close connection between a person's wants and interests. As Rescher (cited in Kleinig:1978:31) puts it, 'the determination of welfare interests is a matter of judgment and some expertise, and though a person's own feelings and interests are not to be left out of account, they are not decisive'. This point has been made already in the discussion of strategies and tactics in chapter eight.

The means-end continuum is important here. The agent wills the means but wants the end. Weak paternalism presumes a discord between means and end. Expertise and knowledge are important here. There is no debate about the goal or ends. They are pretty straightforward. The goal is not defined for the 'victim'. Indeed, the victim is being helped towards his goal, from which 'liberty' will distract him. On the basis of this analysis, it is possible to conclude that sometimes a person may not know what he really wants, and that others may know better. This means that he may be prevented from employing means at variance with his goals. This is possible only if the individual places instrumental, rather than moral value upon the means he chooses. This in turn implies that the means are acceptable to the extent that they lead to the achievement of the goal. Without this qualification, unacceptable means may be imposed upon people 'for their own good'. Freedom and choice clearly involve more than simply doing what one

wants. A host of factors impinge upon free choice, for example insufficient relevant knowledge, lack of self control and undue influence such as fear (Ten:1980:110-112).

It is not in respect of weak paternalism that ethical problems are encountered. The reason is obvious. Weak paternalism seems to be a cure to temporary blindness. It respects the goals individuals have mapped out for themselves. Intervention is designed precisely to promote those goals. Strong paternalism is a different issue altogether. Here the wisdom of the individual's goals is at issue. Alternative goals are introduced and imposed upon an unwilling person. Someone is playing God. This is precisely what the principle of fair play seems to be endorsing. As both Nozick (1971) and Dworkin (1986) have pointed out, a benefit is imposed, regardless of the attitude of the beneficiary.

### Liberty and Paternalism

Are people free to choose slavery? It will be argued that if the principle of fair play is indeed paternalistic, it is only because there is no worthwhile account of liberty which is non-paternalistic. It is interesting that even a steadfast liberal like Mill (1972:158) accepts strong paternalism in the case of liberty:

By selling himself for a slave, he abdicates his liberty; he forgoes any future use of it beyond that single act. He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself . . . The principle of freedom cannot require that he should be free not to be free. It is not freedom to be allowed to alienate his freedom.

Why does Mill object to the voluntary loss of freedom here? After all, to incur obligations is partly to sell personal liberty. Similarly, could a potential slave not sacrifice freedom for other

comforts and material benefits (Ten:1980:118)? Mill objects to voluntary slavery because in such a case freedom is given up permanently and completely and irrevocably. What Mill (1972) claims is thematic in social contract theories, particularly in respect of Rousseau (1973) and Locke (1966). The very basis of society is liberty, justice and security. Unless a political system can guarantee this minimum, it is no better than the state of nature. In fact, for some, the state of nature might even be better than an unjust, unfree and insecure civil society. At least in the state of nature, people are at liberty to resort to deviousness and discretionary use of force, something a state was designed to eliminate.

### Conceptions of Liberty

Behind the debate about paternalism lie deeper and conflicting conceptions of liberty, commonly known as positive and negative liberty. According to Berlin (1969:7), negative liberty entails 'the area within which persons should be left to do what they want without interference by others': 'I am normally said to be free to the degree to which no human being interferes with my activity. Political liberty in this sense is simply an area within which a man can do what he wants.'<sup>2</sup> In short, it is freedom **from** external obstacles. To be more specific: In the political arena, negative liberty is the doctrine that I may choose my politics. In contrast, positive liberty consists of rational self-determination. It results from the determination by a person to be in full self-control. Such a person's life must not depend on external forces, but his life and decisions must depend only on him and not on others. This view of liberty is based upon a certain conception of a person. A free person lives according to that image. Plato's tripartite division of a person in *The Republic* is designed to demonstrate that an irrational person would be unfree. He is under the influence of passions, rather than [ideally] under the guidance of his intellect. Similarly, for Rousseau (1973), those who pursue

particular individual wills, as opposed to the 'general will', are not free. There are classical objections to both versions. Against negative liberty, it is argued that it impoverishes the concept of liberty, by almost reducing it to isolation. A starving peasant can be free only in the cynical sense that nobody interferes with his destiny with certain death. In contrast, Berlin considers positive liberty paternalistic. It is allegedly based on a dubious notion of an ideal person, or ideal society to which all should conform. Non-freedom then simply becomes a matter of failing to conform to this ideal. However, for Berlin this ideal is not a metaphysical or empirical given. Rather, it is a suspiciously value-laden notion. Hitler had a notion of ideal society in which there would be no Jews. Similarly, utopias in Kampuchea turned out to be a nightmare for ordinary people who may have been previously 'forced to be free'. In the same way, the oppressed in South Africa may find themselves fighting for dubious ideals, such as the 'workers' state', which may have been presented as an ideal by a handful of people.

That this is a gross oversimplification of the differences between the two accounts has been illustrated by MacCallum (1967). He challenges the very feasibility of making the distinction, and presents instead a triadic notion of freedom. The elements of this triad are the moral **agent** (x), the intended **action** (y), and the **obstacle** (z) to that action. What separates negative from positive freedom is not that one is freedom from an obstacle, while the other is freedom to do something. The differences run much deeper and are based largely on the nature and conception of a person, as well as the obstacles to their freedom. For MacCallum, ultimately all disputes about liberty are reducible to discrepancies over the pertinent ranges of one or more of the x, y and z variables (1967:320).

MacCallum's account is not without its problems. However, it highlights the necessary conditions for any discourse about social freedom. For example, for positive liberty, education and good health are examples of liberty. To be free is (positively) to have

opportunities of education and good health. Yet this can also be expressed negatively as absence of illiteracy or massive ignorance, and poor health. Denoting one type positive and another negative is therefore not particularly illuminating. This is not to deny that there are differences. On the contrary, those differences, as it was seen, were largely based on the conception of a person. As it was noted, Berlin (1969) considers certain types of positive liberty too normative and ideological, as opposed to a more descriptive and less doctrinaire negative approach. Is this a correct assessment? It would seem not.

If, indeed, liberty simply meant the absence of external constraints in the crude Hobbesian mould, then the implications should be embarrassing even to supporters of negative liberty. For example, one would be freer or less free according to the frequency of such interference. This means that to assess freedom or its absence, one would have to undertake only a quantitative evaluation of interference - to monitor how many times interference has occurred. This means a man who had a wife chosen for him by tradition or lot would be freer than a person who was thrown out of a neighbour's house twenty times. Taylor (1979:183) develops a powerful argument to demonstrate the inadequacy of negative liberty:



Consider the following diabolical defence of Albania as a free country. We recognize that religion has been abolished in Albania, whereas it hasn't been in Britain. But on the other hand there are probably far fewer traffic lights per head in Tirana than in London. (I haven't checked for myself, but this is a very plausible assumption.) Suppose an apologist for Albanian Socialism were nevertheless to claim that this country was freer than Britain, because the number of acts restricted was far smaller. After all, only a minority of Londoners practise some religion in public places, but all have to negotiate their way through traffic. Those who do practise a religion generally do so on one day of the week, while they are held up at traffic lights every day. In sheer quantitative terms, the number of acts restricted by traffic lights must be greater than that restricted by a ban on public religious practice. So if Britain is considered a free society, why not Albania?

This is a kind of argument whose merits almost all would rightly refuse to consider. This is so because freedom of religion occupies a more fundamental place in the moral order than a prohibition imposed by traffic lights. Indeed, it is even dubious that traffic lights are an issue for freedom at all. Although both involve external constraints (to crossing a street or attending religious services), in terms of importance stopping at a street sign is seen as an inconvenience. Such an inconvenience is offset by a more fundamental gain - namely, the preservation of life and property. On the other hand, religious intolerance violates a value which carries enormous social and psychological costs.

If this is correct, then clearly there is more to freedom than merely non-interference. Freedom entails the ability to make a qualitative assessment of motives, where such assessment need not always be the sole prerogative of the agent whose freedom is in doubt. What is the basis of such a qualitative discrimination? It is ultimately based upon a certain conception of a person and society. It is not a value-free, descriptive enumeration of factual data about society and people. In this context, freedom to be a slave is ranked lower than freedom to pursue an autonomous life. It would then appear that if positive liberty leads to

paternalism, so would negative liberty.

In short, arguments against paternalism are often based on dubious grounds. Firstly, it was shown that the belief that a factual, rather than normative distinction can be made between self-regarding and other-regarding actions. Secondly, it presupposes wrongly that negative liberty is ideology-free, that is, that it objectively and simply refers to non-interference. Both contentions have been shown to be erroneous. The position defended here is not that paternalism of any sort is morally indifferent. All that is maintained is that the notion of a free society or a free person is inseparable from certain **pre-existing** shared community conceptions of a good person or a good society. This is why, for example, a distinction is made between freedom and license.

If this line of argument is accepted, then the nature of the debate changes substantially. The issue no longer is whether or not there is paternalism, but rather the type or degree of paternalism which is reasonable. This in turn involves a qualitative evaluation of the actions. This qualitative evaluation might take various forms. The most common is ranking rights and liberties in a hierarchical form. This is done sometimes by figuring which right is more fundamental than the other, that is, which right presupposes the existence of another. The right to life, for example, is a necessary condition for the right to property, to speech and so on. Similarly, one could argue, liberty is a necessary condition for exercising other social and political rights. A society indifferent to liberty is less likely to pay attention to other rights.

The immediate implications are two-fold. Firstly, it is futile to argue that an action is wrong simply because it limits somebody's freedom. Social freedom by definition involves trade-offs. Stopping at traffic lights entails a trade-off between convenience on the one hand and the protection of a higher value - physical integrity of motorists and pedestrians. No serious person would face a dilemma between the two options. Secondly, if someone

complains of external obstacles to his desire to be a slave, this should provoke little sympathy. The desire to be a slave provokes the kind of reactions produced by Albania's apologist. Finally, the foregoing debate about paternalism focused on coercing people into action beneficial to them. This is the thrust of the traditional version of the principle of fair play. It is worth reiterating that the version defended here has only one aim - to prevent harm to others. This harm is immanent, though not necessarily actual in free riding. It is true that paternalism could have been an issue, if the principle defended here were based solely on the enjoyment or acceptance of benefits, as Hart (1967) and Rawls (1971) maintain. Paternalism, as it was pointed out, is the belief that a person may be compelled to do things for his own benefit, or to prevent self-inflicted harm. It has been argued (Chapter seven) that the benefits only constitute an additional consideration, not the *raison d'être* for coercion. In other words, it is not necessary to prove that freedom is good for the individual or for society for the position to be sustained. All that needs demonstration is the fact that, in the process of refusing to participate in certain areas in the struggle, the free rider stifles the entire effort. If in the process of opting for enslavement enthusiastic slaves harm others, then they should be diverted from that path. In other words where people choose to harm themselves, but in the process also harm others, they may justifiably be restrained. Assume that a vaccine was discovered which could wipe out the threat of Aids. However, the only way this could be done was when every person has been inoculated. Suppose further that there was a group of people who did not believe in the germ-theory, or who objected to inoculation on religious or superstitious grounds. If the consequences could be confined to them only, there is a case for leaving them. However, if in the process they harm others, then they could be restrained. It is true, as I have argued earlier, that religious intolerance violates a value which carries enormous social and psychological evils. Still, there is a distinction between intolerance arising

out of general hatred for religion, and that designed to protect society from physical definite harm, when such harm can be traced directly to a religious practice. Of course parallels with revolutionary coercion are not straightforward. For one thing, the germ problem depends on empirically verifiable realities. Speculation, rather than prediction, is central to revolutionary coercion.

To conclude, the charge of gratuitous paternalism levelled at the principle of fair play does not hold. Even if it did, that in itself would not provide conclusive grounds for rejecting the principle.

### Concluding Remarks

This study began by establishing the link between obligations and rights on the one hand, and coercion on the other. It was argued that rights and obligations are **prima facie** grounds for justified coercion. Nevertheless, it was also argued that obligations as such were neither necessary nor sufficient conditions for coercion. In chapter two, it was demonstrated that although membership of the oppressed class **per se** creates no obligation within that class, the oppressed may contingently have obligations to cooperate in their liberation. The basis of such obligation would be harm. Consent fails to account for any obligation bystanders may have to liberate themselves. In a climate of secrecy and oppression, a democratic process becomes increasingly difficult to sustain. Nevertheless, an account of obligation which took consent into account was necessary. Substantive or hypothetical consent was introduced to fill this vacuum. Ultimately, obligations to support the struggle were derived from the Amended Principle of Fair Play.

The principle of fair play is not an indisputable model for obligations to support liberation efforts. Still it illuminates the dynamics of the struggle in a more useful fashion than any other liberal theory, like consent. It demonstrates that either in



principle obligations can arise, or where no such obligations exist, people can be coerced into doing things they are not obliged to do. There are bound to be problems and questions associated with this conclusion. However, there are similarly serious problems with the claim that people may take part in the liberation effort only if they feel like doing so, or only if they are convinced that they should. If consent does not legitimise even the best of governments on this planet, it is not clear why liberation movements should be expected to pass that test. Certainly, there are important values underlined by the consent theory and liberation movements should meet or at least aim at some of them.

To conclude, respect for personal liberty and autonomy should form the basis of a civilised moral system. Further, coercion should be avoided, and employed only as a last resort. Nevertheless, coercive participation in the liberation effort cannot be dismissed solely by moral and metaphysical fiat, especially where all that can be shown is that coercion violates personal liberty. More argument is required than simple appeal to hackneyed phrases like rights and liberty. Where respect for individual rights and liberty leads to greater individual and social harm, then a re-evaluation is called for. No moral or political system should be treated as though it were more important than the people it serves.



**NOTES**

1. This view is attributed by Rees to Mill. It reads like a wrong interpretation of Mill, but for the purposes of this work the debate is immaterial.
2. Berlin subsequently modifies this definition, but for the purpose of arguments here it is not necessary to delve into that debate. For a detailed analysis of, and amendments to Berlin's original formulation, see Parent (1974). He also gives useful references.

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