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# Critical Citizenship: A Theory on the Foundations of Legitimate Government

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# Critical Citizenship: A Theory on the Foundations of Legitimate Government

## **Abstract**

In this paper, it is my intention to discuss the issue of legitimacy as it relates to government. I will explore what a legitimate government necessarily consists of; that is, I will attempt to formulate a number of conditions a government must meet in order to be considered legitimate.

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### Introduction

In this paper, it is my intention to discuss the issue of legitimacy as it relates to government. I will explore what a legitimate government necessarily consists of; that is, I will attempt to formulate a number of conditions a government must meet in order to be considered legitimate.

A logical starting point in an investigation of legitimate government would seem to be an account of the original purpose of government. Problems arise, though, in discovering this original purpose; any and all attempts seem to consist of mere speculation. Government is a social convention created by man.\* It is doubtful whether or not there can ever be an empirically accurate account of the creation of government. Without this crucial information, a search for the original purpose of government appears futile. I had once thought that an account of human nature may provide insight into this enigma; I now believe that it is equally doubtful that there can be a true account of human nature. So where does this leave the political theorist?

There appear to be two options. The first of these options is to abandon all hope of ever having a foundational theory of legitimate government. It is better to throw in the towel than to give in to speculation. This suggests that the political theorist can only make use of existing governments, constitutions, decrees, actions, and the such to investigate legitimate government. To look outside of these would lead to nothing but speculation. Even this, though, seems to be an unacceptable route. The political theorist would be reduced to nothing more than a historian of governments past and present. In addition, the theorist would have to embrace the assumption that a legitimate government is not only possible, but has been actualized. That is, the theorist would have to assume in advance that there has been or currently is a legitimate government in existence. This is a huge assumption and one that I am unwilling to accept.

The second option the political theorist has is to accept that any attempt to give a foundational theory of legitimate government will depend partly upon speculation. This does not mean, of course, that this speculation has no boundaries. The theorist must tailor a speculative account as closely as possible to the reality of things. What I mean by this is that the theorist must

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\*Author's note: I make use of the word 'man' throughout this essay to refer to all of humankind. I realize that the use of 'man' is by most accounts archaic, but for the sake of simplicity and style I have used it anyway. My use of 'man' is not a deliberate attempt to be sexist.

try to mirror reality as closely as possible, only filling in those areas which need filling. In addition, the theorist has an obligation to make clear which parts are empirical and which parts are speculative.

On the speculative side, most theories of legitimacy will include both an account of human nature and the origins of government. These accounts are not to be taken as literal histories, or even historical theories. Speculative accounts should be taken at face value and appreciated for what they are: useful thought experiments. To take an account of human nature or the origins of government in any other way is foolish at best. It is my belief that there is an inherent value in these thought experiments. They are tremendous starting points for theories of legitimate government and reveal a great amount of insight into the views of the theorist. I believe that in adopting the position espoused by the second option articulated above is much more palatable than that of following the first. Thus, I will proceed in my investigation of legitimate government as has been prescribed.

### **The Nature of Man: A Thought Experiment**

To understand the nature of man is not to understand the individual but rather the community. Man, like all other animals, is driven by a desire for self-preservation. Unlike other creatures though, man is not satisfied with just mere sustainment. Once man is secure in his self-preservation, man is driven to explore his potential, to progress and find happiness. Man cannot truly recognize his potential in isolation. Man cannot progress in isolation. Man cannot find happiness in isolation. Man cannot survive in isolation. Thus to understand the nature of man is to realize that man is a social creature. Because of this, man is driven to gather together and form society. Society is a necessary component of human nature; to ignore the necessity of society for man is to ignore an essential component of man. Man cannot and will not survive without society. A true society can only exist among just individuals, for only justice promotes trust and society cannot function unless the individuals within it trust one another. A society composed of unjust individuals will fail to function properly and will eventually deteriorate into a state of anarchy. Thus because man is social by nature, man has a natural duty to himself and all others to act justly.

While man is a social creature by nature, man is at the same time selfish by nature. Man is driven to form society in order to recognize *his* potential. Man is driven to form society so that *he* may progress. Man is driven to form society in order to find *his* happiness. Man is driven to form society so that *he* can survive. Man ultimately forms society for selfish reasons. To act in a selfish manner is to act unjustly. Society, however, cannot survive when it is composed of selfish individuals; thus man is in conflict with himself. Man is

social by nature which requires man to act in a just manner. Man is also selfish by nature which creates a desire within him to act in an unjust manner. How can man resolve this conflict within himself? Man must live within society in order to secure his survival and promote his prosperity, thus man must suppress his selfish desires. Man is not perfect and because of this no individual can be confident that every individual within society, himself included, will not succumb to selfish desires. Thus a necessity arises within society to insure that individuals will be forced to keep their injustices under control. From this originates the need for an authority to enforce order within society arises. It is this authority that we have come to call government.

The basic function of government is to maintain order within society by insuring that every individual within society follows a basic code of other-regarding morality. In order to insure this, the right to use force against individuals is granted to the government. Government is given the right to make laws and punish individuals who disobey these laws. Government is given power in exchange for providing order and security within society. How does government derive this power? Do citizens have an obligation to follow the commands of a government? In other words, what are the foundations of legitimate government? The remainder of this paper will be dedicated to the exploration these questions.

### Consent Theory

Any examination of legitimate government should give proper attention to consent theory. Consent theory has dominated much of the discussion on legitimate government since the seventeenth century. Theories of consent which theorists such as Hobbes, Locke, and Rousseau have put forth differ greatly from one another but agree on one central idea—the idea that no government can have true legitimate authority over the citizens of a state without the consent of those citizens. This central idea is the focal point of every consent theory to date.

A great deal of the following analysis of consent theory is based on A. John Simmons' analysis of consent theory in *Moral Principles and Political Obligation*. According to Simmons there are four essential theses associated with consent theory (Simmons, 1979: 61-62). The first of these theses is that man is born naturally free. Consent theorists refer to this time when man is naturally free as "the state of nature." What is meant by naturally free is not that each individual has no restrictions whatsoever, but that individuals are not born with political obligations. Individuals do, however, have natural duties which they are born with and must obey. Thus, consent theorists distinguish between two types of bonds: natural and conventional. Since political obligation is a conventional obligation, i.e., an obligation which is made by individuals themselves, no individual is born with it, but rather

acquires it by some form of a voluntary action. Natural duties, on the other hand, are inherited by all of mankind and thus no individual is exempt from them, nor do they require any sort of voluntary action to make them binding.

The first thesis ignores the conflict between the social nature of man and the selfish nature of man. Man is social by nature and thus is driven to form society. Man is also driven by selfish desires which cause him to act unjustly. A society composed of unjust individuals will deteriorate into a state of anarchy, thus a need arises for some form of authority within society to insure that all individuals act in a just manner. The institution of government fulfills this need, thus government is born of necessity. Man is not born free from political bonds, man is born ignorant of his political bonds. It is only by realizing the need for political bonds that man can overcome the conflict within himself. Government allows man to be free from his selfish desires by suppressing these desires. Man is not born free; man is born ignorant. Only by realizing that government is necessary can man enter society. Only by entering society can man survive and prosper.

The second thesis put forward by consent theorists is that man can give up his natural freedom only through a voluntary act of consent. A voluntary act of consent is an act which generates an obligation between an individual and a government. The act of consent gives the government the right to act in areas where only the individual was able to act before. The act of consent is not only the granting of this right to the government, but also an agreement by the individual to not interfere with the government's use of this right. Two types of consent are offered by consent theorists, express and tacit. Express consent is given by saying something, performing some sort of a gesture, or failing to do these at an appropriate time. Thus, raising my hand, saying "I do," or failing to speak up when objections are asked for are all forms of express consent. There are two criteria that all forms of express consent must meet. First, an act of express consent must be intentional. That is, the individual must know what it means to perform such an act. Second, the act must be voluntary. An individual has not really consented to anything if he gives his consent under the threat physical violence (Simmons, 1979: 77).

Consent theorists have long recognized that express consent alone is not a suitable ground for political obligation. Rarely, if at all, are individuals given a chance to give express consent to their governments. Consent theorists, therefore, must rely on the concept of tacit consent to generate political obligation among individuals. Tacit consent is an alternative to express consent which is no less binding than express consent. Just exactly what qualifies as an act of tacit consent, though, is widely debated. Do we limit tacit consent to mere silence or inactivity, or do we make it so broad that basically anyone

who is in a state gives his consent to that government just by virtue of living there?

Consent theory's second thesis is problematic in two ways. The first problem consent encounters is a pragmatic problem. Consent theory offers two types of consent: express and tacit. Rarely, though, is there ever an occasion where an individual has the opportunity to perform an act of express consent. Express consent is in all actuality an impractical basis for political obligation and thus does not merit any further discussion. This being the case, there is only one type of consent which is a viable option for the basis of political obligation—tacit consent. What exactly counts as tacit consent though? John Locke, in his *Second Treatise of Government*, seems to believe that simply enjoying the benefits provided by the government of a state is an act of tacit consent (Locke, 1980: 63-65). If this is so, then anyone who is born into a state, lives in that state, is educated in that state, travels along the highways of that state, or anything else along these lines is obligated to the authority of the government of that state. It seems that tacit consent requires that just about everybody is obligated to the state in which they live in—regardless of their personal preference.

The purpose of consent theory is to base political obligation in personal choice. When benefits are provided by a government is there a warning which states "Recipients of this benefit will be obligated to the government of this state?" When someone purchases a house are they given a contract which states "The owner of this house understands that property ownership within the boundaries of this states obligates you to the government of this state?" Tacit consent defined as owning property or enjoying the benefits provided by the state eliminates the essential feature of consent theory—personal choice. Thus we see the second problem that consent theory possesses; tacit consent devalues the importance of a person's choice whether or not to consent to government and in doing this does not remain consistent with the central idea of all consent theory—the idea that no government can have legitimate authority over the citizens of a state without the consent of those citizens.

The third thesis forwarded by consent theory is that the act of consent protects individuals from harm by the government. All legitimate authority over an individual is derived from the consent of that individual, thus no government that the individual has not consented to can have legitimate authority over the individual. All individuals, therefore, are protected from being obligated to the laws of an unjust government simply because they are born there. This aspect of consent theory—allowing everyone to choose their own political allegiance—is very attractive. By basing political obligation in personal choice, consent theorists place political power in the hands of individuals. The act of consent protects individuals from harm by the government, because no government that an individual has not consented to

can have legitimate authority over an individual. Thus all individuals are protected from being obligated to the laws of an unjust government simply because they are born there.

This third thesis tries to correlate the protection from being forced to obey to unjust laws to the protection from being harmed by a government; this correlation, however, is unsuccessful. If I happen to be born in a tyrannical government whose authority I do not consent to, does this translate into protection from being harmed by that government? I would not say that I am protected from being harmed by this government simply because I have not consented to its authority. An unjust government does not care whether or not it has legitimate authority over an individual. Consent cannot and does not protect individuals from harm by unjust governments. The only protection from an unjust government is its elimination. The elimination of unjust governments can only be accomplished by overthrowing the government and implementing a just form of government in its place. Unjust governments cannot be reformed; almost invariably, their corruption runs deep to their core. Consent is a valuable tool for reform and thus can be used to prevent just governments from deteriorating to unjust governments. Citizens can protest unjust laws made by just governments by openly refusing to obey the unjust laws themselves and calling for their reform. Consent cannot, however, protect individuals from unjust governments; only revolution can protect individuals from unjust governments. Reform can only occur when a just foundation exists in the first place.

The fourth thesis advanced by consent theory is that the government's purpose is to serve the interests of its citizens. The people give the government the right to have authority over them, thus it is from the people that government derives its power. This being the case, a government is accountable to the people for everything it does. Not only, then, does consent theory protect individuals from being subjected to an unjust government which they did not consent to, but it also protects them from any government that they do not wish to consent to. In other words, an individual's right to choose is protected by consent theory. The individual is emphasized by consent theory and it is this fact that makes consent theory a liberal theory.

This fourth thesis argues that the government's purpose is to serve the interests of its citizens. I would argue to the contrary, the purpose of government is to maintain order within society. Government's purpose is not to serve the interests of the citizens. Because man is both selfish by nature and social by nature, man's interests are conflicting. It is the government's role in society to resolve this conflict within the individual. The purpose of government is to suppress the selfish desires of man so that man can survive and prosper. So in one sense, government's purpose to serve the interests of

the citizens--in the same way that a parent who disciplines her child in an appropriate way serves the interest of that child.

This discussion of consent theory has led to a number of conclusions. First, any theory which depends upon consent to generate political bonds will have trouble being able to generate widespread obligation among individuals. Nevertheless, man cannot survive and prosper without government, thus man is not born free from political bonds. Second, the only protection citizens have from unjust governments is their elimination through revolution. But consent cannot be used in revolution. It can only be used as a tool for reform. Finally, the purpose of government is not merely to serve the interests of its citizens but rather to insure that all citizens act in a minimally just manner. These three points underscore why consent theory fails to offer a suitable account of the foundations of legitimate government. I now turn to begin developing my own theory on the foundations of legitimate government.

### **The Nature of Political Bonds: Conventional or Natural?**

One issue that is intimately related to the topic of legitimate government is the basis of political bonds. Political bonds are the moral requirements that oblige individuals to obey governments. A theory on the foundations of legitimate government must be able to account for political bonds in order to be complete. Thus, the question of what is the basis of political bonds must be addressed. In order to address this question, a discussion on the nature of bonds in general would seem to be a logical place to start.

A bond is a moral requirement that an individual must fulfill; bonds are restrictions on an individual's freedom. There exist two types of bonds: conventional and natural. Conventional bonds are bonds created by individuals themselves, e.g., obligations and promises. Conventional bonds are acquired through some form of voluntary consent and thus individuals cannot be born with conventional bonds. Natural bonds, on the other hand, are bonds individuals are born with. Natural bonds are commonly referred to as duties. Since individuals are born with natural bonds, all individuals have them and no one individual is exempt from a natural bond.

If the above discussion is valid, then political bonds must be either conventional or natural. To argue that political bonds are conventional, though, is to argue that political bonds are acquired through some form of voluntary consent. In the discussion of consent theory, it was concluded that man is not born free from political bonds, rather man is born ignorant of his political bonds. Government is necessary for the survival of society and society is necessary for the survival and prosperity of man. Political bonds are therefore necessary for the survival and prosperity of man. Conventional bonds do not

arise from necessity but rather individual choice. Hence, political bonds cannot be conventional but instead must be natural.

Natural bonds apply to all individuals, thus all individuals have political bonds. In other words, all individuals have a duty to obey government. This duty does not apply to all governments, but only just governments. This means that man has a duty to obey all just governments wherever he may be. By this I mean an individual has a duty to obey the government of whatever state he is in as long as that government is just. Thus a theory on the foundations of legitimate government which is duty based does not run into the same problem a consent based theory does in generating political bonds among individuals.

I would like to take the time now to stop and back track for a moment in order to clarify a point. I have argued that political bonds are natural bonds yet man is born ignorant of them. By this I am arguing that there exist two types of natural bonds, or duties. The first type of natural duty is what I will call *realized*. A realized duty is a duty that an individual is conscious, or aware, of. The second type of natural duty is what I will call latent. A latent duty is a duty which an individual is not yet conscious, or aware, of. Thus man is born with latent political duty which becomes realized political duty through experience. Anyone who does not recognize that he or she has political duty is still in the latent phase of consciousness. We are now in a position to answer the question posed at the beginning of this section: what is the basis for political bonds? Political bonds are natural bonds and thus all individuals are born with them. Every individual has a duty to obey any just government that immediately applies to them (Simmons, 1979: 147-155). Although individuals are born with political bonds, these bonds remain latent until the individual is able to recognize them through experience. Even though an individual recognizes his or her duty to obey his or her government, there will arise times in which the individual's selfish nature will cause the individual to come into conflict with the state. I turn now to this conflict between the individual and the state.

### Autonomy

The conflict between the individual and the state is an issue that confronts every theory on the foundations of legitimate government. For the purpose of this paper, I will call this issue the *issue of autonomy*. Individuals form society in order to survive and prosper. Government is created to maintain order within society and thus is granted the power to make laws and punish any individual who disobeys these laws. An individual who disobeys the laws of a state acts in a selfish manner and is in conflict with the state; such an individual lives only by the laws he or she creates. Robert Paul Wolff

describes an individual who lives only by the laws which he or she creates a morally autonomous person (Wolff, 1970: 12-19).

Wolff's discussion of moral autonomy begins with the assumption that all individuals are rational beings. Because all individuals are rational beings, they are responsible for their actions. Taking responsibility for your actions means much more than just choosing whether or not to do this or that. Taking responsibility for your actions means attempting to determine what is the morally correct choice. Wolff goes on to say "Only because man has the capacity to reason about his choices can he be said to stand under a continuing obligation to take responsibility for them" (Wolff, 1970: 12). I question where this "obligation" stems from. When did man consent to take on this responsibility? It seems to me that what Wolff is actually talking about here is a duty because having the capacity to reason is something that man is born with. All individuals thus have a duty to take responsibility for their actions. Wolff later states that "The responsible man is not capricious or anarchic, for he does acknowledge himself bound by moral restraints. But he insists that he alone is the judge of those constraints" (Wolff, 1970: 13). It is because the responsible man lives by the laws he creates for himself using his rationality that Wolff calls him morally autonomous.

I would like to pose a question for consideration here. According to Wolff, the responsible man acknowledges that there exist moral restraints while at the same time insisting that he (man) alone is the judge of these restraints. I wonder how it is that these moral restraints that the responsible man acknowledges differ from his personal will? If there is no separation between the two, then a responsible man can never act immorally, unless he acts contrary to his own will. All individuals are selfish by nature, though, and selfish desires lead to unjust actions. No individual is perfect and because of this no man can suppress his selfish desires at all times. Thus all individuals act immorally at some point in their lives. No one person should be the final judge of whether or not something is morally acceptable, for when we base all morality in personal preference morality itself becomes a subjective concept.

Thus far an autonomous individual has been defined as someone that takes responsibility for his or her actions. Taking responsibility for these actions involves determining whether or not a course of action is the correct choice. I would argue that taking responsibility for one's actions goes far beyond determining whether or not something is morally correct. It also involves taking responsibility for the consequences of morally wrong decisions; it is this point that Wolff largely ignores. When someone acts immorally, it means that he or she is acting in a selfish manner. To act in a selfish manner is to act unjustly. To act unjustly is to be in conflict with society. Thus anyone who acts immorally is in conflict with the state. The

government has the power to punish anyone who disobeys the laws of the state. Therefore, to take responsibility for one's actions means to accept the punishment associated with a given immoral act, e.g., to pay the fine for a speeding ticket. (Is it necessarily immoral to speed? Yes and no. It is not immoral to drive a car fast, but it is immoral to disobey the law of a just government which happens to regulate speed limits.)

This discussion of the issue of moral autonomy has led to some very interesting conclusions. First, being morally autonomous involves taking responsibility for all your actions and their consequences. This means accepting the punishment associated with immoral acts. Second, morality cannot be ground in personal decision, for then morality becomes subjective. This being the case, a need arises for a way in which standards of morality within society can be established.

### **The Will of the Community & the Majority Principle**

The issue of autonomy called attention to the need for a way in which the standards for morality within society can be established. The standards of morality within society are the foundations of that society's laws. The standards of morality cannot be determined by personal preference for this would cause morality to become subjective, which in turn would lead to the generation of unjust laws. Thus an alternative method must be used to establish the standards of morality within society. If the will of the individual is subjective, then that which is contrary to the will of the individual could possibly be objective. The will of the individual is in constant conflict with society, thus the will of the community may provide a basis for the standards of morality within society. To act selfishly is to act in an unjust manner, while to act towards the common good is to act in a just manner. Thus the will of the individual leads to unjust behavior and the will of the community leads to just behavior. Therefore, a method is needed to discover the will of the community.

The community is composed of separate individuals who have come together to form one body and thus the will of the community must bring the various opinions of all these individuals into one voice. The will of these separate individuals may not have any sort of solidarity; there may be twenty different opinions as to what the good of the community is, or should be. How can one voice represent all the opinions among the individuals within society? One answer to this question is that the use of the majority principle will generate one definitive voice to represent the will of the community.

The majority principle assumes that all men are created equal. Because of this, no single individual's opinion is naturally superior to another individual's opinion. If the quality of opinions is more or less equal, "then the only differentiating factor left is quantity" (Barry, 1979: 193). In other

words, society is composed of individuals who are equal by nature; the only factor which can make one opinion superior to another is the number of individuals who support it. Thus an opinion which is backed by a majority of individuals carries more weight than an opinion supported by a minority. John Locke presents his argument for the majority principle in the *Second Treatise of Government* by stating:

For when any number of men have... made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority: and it being necessary the body should move that way whither the greater force carries it, which is the consent of the majority: or else it is impossible it should act or continue as one body, one community; and so everyone is bound by that consent concluded by the majority. And therefore we see, that in assemblies, impowered to act by positive laws, where no number is set by that positive law which impowers them, the act of the majority passes for the act of the whole, and of course determines, the power of the whole (Locke, 1980:52).

Thus by using the majority principle it appears that the will of the community can be discovered. If the will of the community can be revealed, then the standards of morality within society can be established as well. Once the standards of morality are established, they become the basic foundations of law and order within society. These standards of morality, however, cannot be placed upon a throne and never reviewed, for society would then become stagnant and deteriorate. To prevent society from stagnation and deterioration, the standards of morality must constantly be reviewed and revised. The only way that this can be accomplished is through open deliberation. Thus a government must not regulate the open exchange of ideas within society.

### **Conclusion: Critical Citizenship**

The discussion thus far on a theory of the foundations of legitimate government has led to a number of plausible conclusions. First, government arose out of necessity. Man is a creature born into conflict with himself. On the one hand, man is social by nature; on the other hand, man is selfish by nature. It is government's role in society to suppress the selfish side of man so that man may live in society. Man cannot and will not survive nor prosper without society, thus government is necessary for man's survival and prosperity. Second, because government is necessary for man, man has no choice whether or not to be obligated to government. If man is to survive and prosper, man must be in some sense bound to government. Man is not born free from political bonds, rather he is born ignorant of political bonds. Thus,

man's political bonds are latent duties. In other words, political bonds are natural bonds which man comes to realize through experience. The third conclusion that was arrived at in this discussion of the foundations of legitimate government is that morally autonomous individuals accept responsibility for the consequences of their actions. This means that the morally autonomous accept, within reason, whatever punishment corresponds with any immoral actions which they may perform. Morality cannot be based on individual preference which is subjective, therefore the standards of morality must be determined through an objective process. The only procedure which can produce results which resemble objectivity is the majority principle. The reasoning behind this is that the community is essentially one body. In order for a body to move in any one direction, a majority of that body must move in that direction. Since all individuals in society are essentially equal in quality, only an appeal to the majority of quantity can differentiate between the preference of the majority and the minority.

I believe that the preference of the majority is the closest man can get to an objective code of other-regarding morality, thus the majority principle should be used to determine the standards of morality the state enforces. The majority principle, however, can only function properly in an atmosphere where the free exchange of ideas occurs. Open deliberation is needed to improve and refine the preference of the majority on all issues. By doing this society will not become stagnant and deteriorate. Open deliberation is essential to the survival of society, and thus man also. Open deliberation can only occur in a society in which the government does not prohibit freedom of expression, thought, and speech. Thus my theory on the foundations of legitimate government calls for a free and open society in which citizens have a duty to obey the government and must accept responsibility for each and every immoral act they commit. The standards of morality shall be determined by the preference of the majority, but shall be revised when necessary. Every individual should have a voice, but the community should also have a voice. It is this voice of the community which the individual shall obey, but also influence. I call my theory foundations of legitimate government critical citizenship.

I am borrowing the name critical citizenship from Stephen Nathanson's *Should We Consent to be Governed?* Nathanson defines critical citizenship as "the view that whether one ought to support a government and whether one has a moral obligation to obey the law depends upon the nature of the particular government and the nature of the law in question" (Nathanson, 1992: 85). The basic idea behind Nathanson's theory is that as citizens we are obligated to obey just laws, but that we also have a right to disobey unjust laws. I believe that Nathanson's theory is a good beginning but it lacks any sort of completeness. It is my goal to lay the foundations of a complete theory of critical citizenship.

Nathanson bases his critical citizenship largely on the ideas and thoughts articulated by Dr. Martin Luther King, Jr. in his "Letter from Birmingham City Jail." King sets up four criteria for determining whether or not a law is just (Nathanson, 1992: 85-86):

- (1) "Any law which uplifts human personality is just. Any law which degrades human personality is unjust."
- (2) "An unjust law is a code that a majority inflicts on a minority that is not binding on itself."
- (3) "An unjust law is a code inflicted upon a minority which had no part in enacting or creating because they did not have the unhampered right to vote."
- (4) "There are some instances where a law is just on its face but unjust in its application."

This theory succeeds in creating a set of criteria for determining whether or not a specific law made by a just government is just. Since, however, only legitimate governments can be just, this theory deals only with legitimate governments; for this reason it is incomplete. This does not mean that Nathanson's theory on legitimate laws is not useful to my complete theory of critical citizenship.

Using King's (and Nathanson's) criteria for a just law I was able to create a set of four criteria to determine whether or not a government is just or unjust. Those government which are just are legitimate governments, those that are unjust are illegitimate. In order for a government to be considered legitimate under critical citizenship it must be able to satisfy the following set of criteria:

- (1) The laws of the state must be derived from a just ideology. [from King (1)]
- (2) A just procedure must be used for the derivation of the laws of the state. [from King (3)]
- (3) The laws of the state must be applied in a just manner. [from King (4)]
- (4) The consequences of the laws of the state must not violate seriously any group within the state. [from King (2)]

I will now briefly explain each of these criteria. First, any government which does not have a just ideology for the basis for its laws will necessarily have an unjust ideology for the basis for its laws. A legitimate government cannot be unjust, therefore any government with an unjust system of laws cannot be legitimate. What is a just ideology? This question is open for debate. Different individuals have different opinions on what is just. In the discussion of The Will of the Community & the Majority Principle, I suggested

that government must not regulate the open exchange of ideas within society. Open deliberation on what is just and what is not will broaden individuals' minds. Open deliberation allows individuals to hear different perspectives on issues and this in return does one of two things: (1) it strengthens the individual's confidence in his opinion or (2) it changes the individual's opinion. Either way, the individual will be walking away from a deliberation a better person, a person who has progressed. Second, any government which does not use just procedures for the derivation of the laws is an illegitimate government. What is a just procedure? A just procedure is any procedure which will yield a result approximate to the will of the community, e.g., a procedure which incorporates the majority principle. Third, any government which does not implement their laws in a just manner is illegitimate. If some government made a law which required a written test to be passed in order to be eligible to vote while at the same time denying a subgroup of society any education, then that government would be illegitimate. Finally, any government which makes laws whose consequences seriously violate any group within the state is illegitimate. Thus, any government which practices any form of discrimination, be it racism, sexism, etc., is an unjust government and thus illegitimate.

I have now given the foundations of a complete theory of critical citizenship—my theory on the foundations of legitimate government. critical citizenship is a duty based theory which emphasizes the importance of deliberation in society. Deliberation is the key to the continuance of legitimate governments. Without deliberation, governments become stagnate and deteriorate. Any government which restricts deliberation is unjust and cannot be reformed; an unjust government which cannot be reformed must be overthrown through revolution. When dealing with legitimate governments though, critical citizenship encourages citizens to challenge a government when it makes an unjust law. At the same time, critical citizenship reinforces the idea that individuals must take responsibility for their actions; this means accepting the punishment for breaking a law. Critical citizenship is a challenge to everyone who does not participate, yet complains about how unjust and unfair the government is. Critical citizenship encourages individuals to participate in politics. Critical citizenship is a call for individuals to make a difference.

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