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THE LIMITS OF CONTRACT

Michael Polanyi was deeply concerned with the moral and political disorders that have ravaged Europe in this century. In particular he sought to comprehend and to answer the revolutionary demand for a total renewal of society by means of absolute power unscrupulously employed. 1/ He criticised the 'suspended logic' of Anglo-American Liberalism, which has increasingly based itself on the same Scepticism as revolutionary totalitarianism. Although it did not logically draw the Nihilistic consequences of **that** Scepticism, it has steadily encouraged it and inhibited resistance to it and to revolutionary and terrorist movements. 2/

One significant idea in modern political thought is that of contract, the free negotiation of what the individual or the group is to do in conjunction with other individuals or groups. Many spheres of life in Europe have in fact been brought under the scope of contract. And it is widely felt either that as much as life as possible should be conducted according to freely negotiated contracts or that all of life should be so conducted. In political theory from Hobbes onwards, society and the state have themselves been interpreted as contracts, and held to be legitimate only as founded upon or approximating to a social contract. And, I suggest, it is this pre-eminence of the idea of contract which defines what is meant by 'Liberalism'.

It is easy to see why this idea has become prominent in modern Europe. For the modern age is defined by the rise of a new understanding of the world and man. The new natural science of the seventeenth century was taken to disclose the universe as a mechanical system of cause and effect, a dead world of matter in motion and operating by efficient causes alone. Such a world lacked direction and meaning, save as Deism interpreted it as the handiwork of a Creator who, having once set it in motion, left it to go on its own way. It could not present or embody any Divine or Natural Law, or Way or Tao. What, then, of man in such a world? He was taken to be the self conscious and free ego facing this 'external', alien and meaningless world. Because it presented no Law or Way to him, it left him radically free to define his own law or way, and thus to define himself. Hence the classical and mediaeval doctrine of Natural Law, a law of a human nature which is to be achieved and defines what man and society really are and should become, became the new doctrine of

1/ *'Beyond Nihilism' and 'The Message of the Hungarian Revolution' in **Being and Knowing** (London, Routledge, 1969) and **Personal Knowledge** (Routledge, 1958-hereafter 'PK'), Chap. 7.*

2/ ***The Logic of Liberty** (London, Routledge, 1951), Chap. 7; **Science, Faith and Society** (London, Oxford University Press, 1946), pp. 74-80; PK, pp. 297-8.*

Natural Right, the right simply to do one what desires because one desires at, the right to assert and define oneself without interference from others. 3/ Here are the origins and foundations of Liberalism. For without any superior Law or Way, prior to human will and binding upon it, the only legitimate way that a man can be obligated is by his own free consent. That is, only as he contracts or promises to do X, is he morally obliged to do X. Anything else would be the coercive imposition of another's private opinion and will upon the individual.

There are both individualist and collectivist versions of Liberalism. Hobbes, Locke, J.S. Mill and Nozick see society as a sphere of mutual negotiation and adjustment, with the State as the neutral umpire which prevents one individual or group interfering with the rights of others. Rousseau, Marx, Rawls and all Socialisms see that the individual is still partly defined from the outside and apart from his choice by the sheer existence of other people, who have their own aims and plans, and by institutions which he has not designed. They therefore envisage a totalitarian democracy in which all will decide everything together, so that everyone will have a say in what affects him and that the resulting arrangements will reflect everyone's will and choice. They may denounce present arrangements as a sham, but their ideal is still that of freely formed contracts or, rather, of one comprehensive contract freely drawn by all and for all.

The individualist version of Liberalism tends to be amelioristic and to take one thing at a time. It finds some present arrangement irksome because it has not been freely chosen, and seeks to make it a matter of free choice among individuals or groups. It seeks to broaden by degrees the sphere of choice and contract. The collectivist strand is inherently revolutionary for it wants a total change from a mass of unchosen and partly chosen arrangements to one comprehensive scheme of things in which all choose for all. Hence the totalitarian dialectic: to attain total freedom there must first be a total concentration of power, which will then pass over into its antithesis. Hence also the collectivist Liberals' opposition to other groups and organisations which diffuse power and influence, provide people with definitions and identities as members of them, and so stand in the way of the new order which is to be negotiated from scratch. Yet what collectivist Liberalism seeks as the ultimate goal, as in Marx's classless society without private property and the division of labour, individualist Liberalism tends to as its implicit destination when the sphere of discussion, negotiation and contract has absorbed everything else. The question is, Is that end realisable whichever route is taken to it?

1. Let us begin with what that envisaged or implied destination presupposes. Firstly, it presupposes that modern cosmology of man as a self-defining subject in a meaningless world from which it logically and historically has developed. Only if there is no Natural or Divine Law which regulates at least some matters can everything be open to decision by the

3/ See L. Strauss, **Natural Right and History** (Chicago, University of Chicago Press, 1953).

human will, and thus either for some to decide for others, or all to decide individually or collectively. As Europeans, inheriting the idea—though, alas, not always the fact-of Christian liberty, we are used to having many matters settled by human decision and choice, either our own and that of others. For Christianity, as the one and only Catholic Faith open and reaching out to all men, is not a Code wherein a particular way of life has been sacralised for all time, as in Judaism, Islam and Hinduism, and to which the convert must learn to conform. Christianity leaves the details of life for its adherents to settle as they please, by custom and convenience. In contrast, within Judaism, Islam and Hinduism there are many matters—of food, drink, dress, deportment, social relations, art or the prohibition of art, and so on—which are already settled by the sacralised way of life. They are therefore not matters about which contracts can be made, but set the terms for the making of contracts about what they leave unspecified. What fires the Liberal imagination, especially that of revolutionary and totalitarian Liberals, is the exact opposite of detailed specification by a prior Code: viz. the settlement of every issue by free decision and contract.

But as Polanyi realised, once the idea of a superior Law or Way is rejected, then *anything goes*, for nothing is ruled out as inherently wrong. This is the Nihilistic and destructive consequence that the suspended logic of Anglo-American Liberalism has failed to draw. True, it has not practised unscrupulousness but it has undermined scruples and prevented itself from properly affirming them and denouncing what breaches them. You can always find plenty of defenders for Leftist terrorists, despots and murderers among our chattering classes. And I have frequently heard it said, and seen it written, that, *because* there is nothing right or wrong in itself, we *should* allow people to make up their own minds and to act as they please. I shall merely refer you again to Polanyi himself and his analyses, in *Personal Knowledge*, of how the Objectivist ideal of impersonal knowledge has undercut explicit adherence to moral principles and has resulted in unscrupulous totalitarianism.

2. The Liberal ideal also presupposes that most things or everything can be made explicit and thus negotiable: that the world and ourselves are utterly transparent to us. This is not clear in Sartre's *Being and Nothingness*, in which man is a 'nothingness', a 'fold in being', an empty self condemned only to choose, and to choose everything, whatever it is to be and the values by which it is to choose.

But choice, as well as requiring a range of options, requires principles and preferences by *which one chooses* and which, therefore, are not themselves chosen. Hence Sartrean man cannot choose but can only take a leap into the dark. What happens in fact is that in 'bad faith' he relies acritically upon principles and preferences which he thereby takes to be true and given to him apart from his choice. They therefore constitute a Natural Law or Way at those times when he chooses with them, though he may explicitly deny this.

Neither are we wholly transparent to ourselves. We cannot tell all that we know, and what we do not and cannot explicitly know, we cannot choose. Again, I shall merely refer to Polanyi's many demonstrations of these facts, and also to the parallel arguments and

examples of Merleau-Ponty's *The Phenomenology of Perception*, the only other work which bases itself upon the tacit dimensions of human existence and both argues for them and from them.

3. What the individual cannot choose, be cannot negotiate nor make contracts about. Any limits upon choice, such as the above two and the others which are to follow, are therefore limits upon negotiation and contract, and signify things which cannot be the subject-matter of negotiation with others nor the content of contract with them.

4. If the self is wholly to choose itself, then, as we have seen, it cannot choose anything. Consequently it cannot choose with others and so it cannot make agreements and contracts with them. Sartre's logic is, in the main, inexorable: the empty and wholly self-choosing self paradoxically cannot form social relations with other empty and self-choosing selves. For they cannot have any consciousness of a 'we'. Each can only gaze at and 'objectify' the other, even when attempting to apprehend and serve the other's freedom, which then becomes a 'transcendence transcended'. Furthermore, we may add, such wholly self-choosing selves can have nothing in common by which to choose together. For negotiation and agreement require a common language and a common understanding of both the contents and the forms of discussion and contract. I may sign a contract which I don't understand, but I understand that I am signing a contract. Yet, if all is to be chosen and settled by free contract, then so must the language and forms within which and by means of which specific negotiations are conducted and contracts agreed. We see this in the attitudes of many to social roles. It is not sufficient, for example, that prospective husbands and wives freely choose each other. No: many now wish to define for themselves and with their spouses what it is to be married and the role that each is to play. They no longer take it for granted that the wife is to look after the house and the children, and the man to be the bread-winner. It is certainly possible for them, between themselves, to rearrange these roles by free debate and agreement. But that still presupposes that there are these roles and tasks to be done, by one, either, or both of the parties. They are the unchosen range of options from which they jointly choose. What some desire is the joint choice of that range of options, what 'marriage', 'wife', 'husband', and so forth are to mean. If they are to do that, they still must share an already given and unchosen language and set of more general ideas by which they will together define those terms and roles. At every point, choice, negotiation and agreement rest upon that which is not chosen, not negotiated nor explicitly agreed. If everything is to be the subject of negotiation and contract, then negotiation and the making of contracts become impossible. Neither party would be able to speak, let alone say something which the other could understand. They would have to have talks about the language and procedures in and by which to conduct their talks about having talks about the language and procedures in and by which to conduct their talks. This is parallel to, and is a symptom of the same underlying attitude as, the critical demand for evidence for the truth and relevance of evidence, for arguments for the validity of arguments, and for proof of the validity of proofs.

5. Furthermore no contract can explicitly and precisely specify what the parties have agreed to do and the conditions in which they are to do it and in which they are allowed not to do it. Again, as Polanyi has shown, nothing can be said clearly and precisely. 4/ Every utterance is defective and indeterminate to some extent, and we have to rely upon our personal judgment to be able to determine, when and as necessary, what it leaves unspecified. Therefore, whatever the qualifications and reservations are added to a contract, that contract will still require further specification at some time or other. We can never anticipate every eventuality; there are some things which are so obvious that we never think to write them down; and there are always others which we know only implicitly. Hence the possibility of the very obstructive practice of working to rule, whereby the employees precisely fulfil everything stated in the rule-book, and do nothing not so stated, and so bring things to a halt. No rule-book can contain every rule that is in fact observed and required for the co-operative enterprise which it attempts to govern. Therefore in addition to explicit rules and doing exactly what one is required to do, there is also required the co-operative attitude of give and take, and willingness to do more than is precisely allotted to oneself.

6. Hence arises the paradox of contract. Contract, in the form of specified agreement, especially in writing, manifests an attitude of distrust yet requires mutual trust both in observing it and in interpreting and applying it, or mutual trust in a third party's interpretation and application of it, as when appeal is made to a court. On the one hand, if you cannot trust someone to fulfil his side of the bargain in a proper manner, you may attempt to tie him down by specifying certain definite tasks, procedures, dates or other details. This has recently happened in Britain where the Government has been forced to specify a number of hours in the year which teachers in State schools are to work and specific duties which they are to fulfil, it being no longer possible to rely on all of them to do their work properly of their own accord. Conversely, what is specified as the minimum soon becomes the maximum: no less is taken also to mean no more. You still have to trust the other party to do what you have specified and to use his judgment rightly in deciding in further detail how, when and where it is to be done and not to make the specified minimum into a maximum. Max Scheler pointed out several times that reliance upon 'criteria', as in all forms of modern and critical philosophy, betokens an attitude of distrust—in others, life, the world, tradition, our own tacit powers. So too does the detailed specification of the content of a contract. Yet just as we all—even 'critical' philosophers—have to rely acritically on our personal powers of judgment in our knowing, so too in contracts do we have to rely on the other party's responsible exercise of his judgment in fulfilling even the most detailed contract. It is a much happier state of affairs when there is a strong tradition of responsible conduct such that many things on both sides can be confidently taken for granted and left unspecified. And the formation, strengthening and continuation of such traditions cannot itself be a matter of contract.

4/PK, Chap. 5.

7, Moreover, as Scheler argued, contract rests upon that which cannot be put into any contract. It cannot rest upon a general contract to keep contracts or promise to keep promises. Such a general promise or contract would be merely hypothetical: I *would* be ready to do A were you to do B. But a real contract is a matter of actual willing: I *am* ready to A, when you do B. The contract to contract, says Scheler, turns the willing of the partners into the *content* of the contract itself. Now that would be the same error as treating '...is true' as a statement of fact and not an accreditative utterance which makes explicit the implicit endorsement of the truth of the original statement when it is ordinarily said 5/. Just as the latter error leads to the infinite regress of "Snow is white" is true' is true" is true...', so too does the former lead to the infinite regress of promising to promise to promise... or contracting to contract to contract.... 6/

Promises and contracts are nothing without the uncontracted and unpromised obligation to keep promises and adhere to contracts. This presupposition is not itself a matter of contract.

8. What, then, is it that promising and contracting do rest upon? The answer to this question brings us to the second set of limitations upon the scope of contracted relations: the emotional ones. According to Scheler, the level of social relations established by promises and contracts, which he terms 'association', rests upon a prior level which he calls 'life-community'. Here he is refining a common *German* distinction between *Gesellschaft* and *Gemeinschaft* introduced by Tonnies. In Scheler's description of society or social relations in this specific sense, we recognise the Cartesian and Empiricist interpretation of the individual's situation in the world and among his fellows. The individual is primarily responsible for and knows himself. All responsibility for and knowledge of others is based upon analogy with himself and his experience of himself. He knows others primarily as bodies, from the movements of which he infers minds, thoughts and emotions like those he experiences behind his own bodily movements. Therefore he can be only *similar* to others and share *similar* experiences and interests. Between him and them there can exist only 'conventions' and 'contracts': *artificial* and more-or-less explicitly agreed connections. There is no experienced solidarity nor *shared* experience. This level of social connections cannot stand alone . It rests upon that of 'life-community' in which persons share the same experiences and emotions, are primarily aware of themselves as members of the community, and spontaneously feel responsible for each other and the community. Promises and contracts rest upon prior experience of the spontaneous mutual solidarity and obligation which constitutes the life community. Having had those experiences, they

5/ *Formalism in Ethics* (trans. M. Frings and R. Funk, Evanston, Northwestern University Press, 1973), pp. 531-32.

6/ PK, pp. 254-6.

7/ See *The Nature of Sympathy* (trans. P. Heath, London, Routledge, 1954), Pt. III, Chap. III, on the impossibility of knowing another primarily by means of analogy with one's

can then explicitly and voluntarily establish relations and obligations among themselves. For A to make a contract with B, it is not necessary that they belong to the same community, but it is necessary that each has belonged to a community and felt himself bound up with it, such as the family in which he was brought up.

9. In turn this means that the sphere of contractual relations among self-responsible individuals and groups rests upon traditional and customary institutions that have not been established by contract nor can be conducted by explicit instruction. One can easily establish a new *particular* institution, such as a college, when it is customary to have institutions of that type. But it is very difficult to do so when those involved have no prior experience. I once worked in a College of Education in Nigeria, for training teachers for secondary schools. Formally it was like, and modelled on, the type of college in which I had worked in England. In reality, it operated very differently, just as Nigerians have imported lots of a machinery but have no tradition of maintaining it. Now, tradition is the handing on of what is already known or practised, as *authoritative* and often in a tacit manner. Since not everything can be explicitly known and stated, there are many things that cannot be explicitly taught. They are passed on from master to apprentice by imitation. The pupil must implicitly trust and acritically rely upon his teacher in order to learn anything that either cannot be put into words at all or into a language which he has not yet learned 8/. I can contract to learn Hungarian from a teacher of that language but, insofar as I am entirely ignorant of it, I do not know what I am letting myself in for: e.g., whether what I shall be taught will be accurate or inaccurate, elementary or advanced, standard or non-standard, or conversational or literary. And I can do that only as I and the teacher already speak another and shared language. And therefore no one can contract to learn his mother tongue.

8/ PK, pp. 53-4, 101. See also my articles, in **The Journal of Philosophy of Education**, developing these and other Polanyian arguments against the Liberal theory of Rational Autonomy which dominates English-speaking philosophy of education, and which would have the child taught rationally, by formal principles, to choose everything for himself and to live without authority as an adult:

'Religion, emotion and education', Vol. 7, No.2, 1973.

'The philosophy of Michael Polanyi and its significance for education', Vol. 12, 1978.

'Rational autonomy: the destruction of freedom', Vol. 16, No. 2, 1982.

'Because I say so! Some limitations on the rationalisation of authority', Vol. 21, No. 1, 1987.

'Metaphysics in Education', Vol. 23. No.2, 1989.

9/ See PK, pp.47, 80, 94-5, 112, 187-8; J. Piaget, **The Child's Conception of the World** (trans. J. and A. Tomlinson, London, Routledge, 1929); S. Korner, **Metaphysics: Its Structure and Functions** (Cambridge, Cambridge University Press, 1984); and my 'Metaphysics in Education'.

10. In acritically learning our mother tongue, we acritically acquire the fundamental conceptions, ontology and cosmology embodied in it 9/. Our ultimate beliefs and absolute presuppositions, which govern the ways in which we think about choice, negotiation and contract, how to conduct them and what they can be about—if indeed we have any such ideas at all—are therefore not passed on nor acquired as the result of any contractual relationship between teachers and pupils. J.S. Mill chided the religious believer on his commitment to his faith, and pointed out that if the European Christian had been born and brought up in India he would have become a Hindu. What Mill forgot was the *tu quoque*: if the European Liberal and unbeliever, like Mill, had been born and brought up in India, then he also would have been a Hindu and not a Liberal unbeliever.

11. Finally, I turn to Edmund Burke's original and penetrating criticism of the theory of the Social Contract, presented in *his Reflections on the Revolution in France*. The paradigmatic contract is one explicitly made by men and terminable by them according to terms stated or implied in it. But society and the state are neither, nor can they be interpreted on such lines. For political authority rests upon historic right or what Burke called 'prescription'. The revolutionaries in France, just as much as the *ancien regime*, had to appeal to historic right to rule those territories, and the peoples living in them, brought together by the French monarchy and designated as 'France' and its possessions. They simply presumed that they had the right to govern them, and thus to crush the revolt of La Vendee. And they could do no other. The revolutionary state could not be founded on the Rights of Man, only on the rights of the government of France and the duties to it of Frenchmen. For otherwise every Jacques and Gaston could immediately refuse to obey the politicians in Paris and to contract into the new state. 'The people' in whose name they claimed to act had already been constituted by historic fact as *that* people—the French, the inhabitants of France—with specific obligations to each other. A state or body politic is not like a voluntary society within it, for it is constituted on the basis of historic or prescriptive right and obligation and not by contract. Our obligations to it and rights within it are inherited and not contracted. And voluntary societies within it themselves depend upon traditions of understanding, conduct, civility, co-operation and mutual assistance which themselves are not matters of contracts. One of the evils of revolutionary and totalitarian regimes is that they destroy such traditions and make difficult the rebirth of voluntary associations after they have fallen.

If is clear that many things in Europe, and overseas, that were once fixed by custom have become negotiable by freely contracting parties. If some can, why not all? Such has been the Liberal ideal. But it is a fallacy to think that what can be done or happen sometimes can be done or happen always: despite what many trades-unions in Britain think, not everyone can have wages at or above the average. Obviously some things, perhaps many things, can be negotiated, but never all. For some are what we negotiate *with* and never about; some we know only tacitly and therefore cannot discuss nor include in any explicit agreement; some are the presuppositions, and therefore never the contents, of any negotiation and resulting contract; and others are the emotional, religious, customary and historical preconditions of contract, and again not the contents of contract. It is not possible precisely to fix the limits of contract, but clearly there are limits. As logic and history show, push it too far and it destroys society and itself. The desire that the individual may choose entirely what he is and is to be, that his relations with others are all to be matters of negotiation and contract, whether these choices and contracts are to be made individually or collectively, springs from

a Gnostic resentment of the created order in which we have been placed. The modern Gnostic, in Heidegger's phrase, finds himself to be 'thrown' into an alien world which he has not chosen.

I, a stranger and afraid

In a world I never made

(A.E. Housman, *Last Poems* XII)

Unlike the Gnostic of old, he has no hope of escape from this world. Therefore he 'immanentises the Eschaton' and seeks to realise a new social order within this world and at the End of history: a new society remade by his own free choice, a society governed only by contract. 10/ But since that goal is logically impossible, modern Gnosticism issues only in destruction. For it resents whatever exists as an unchosen limitation on the self that would wholly choose itself and its world. It can only 'remove limits', 'liberate', 'breakdown barriers', 'reject prescribed roles', and denounce 'indoctrination'. It can never construct anything new. For everything in this world must be finite, have limits, be *this* and therefore *not that*, and be chosen and formed out of materials and upon principles which we have not chosen.

Polanyi's arguments against the revolutionary demand for a total renewal of society apply equally to the attempts which have accompanied it and have largely defined its goal, to reconstruct society throughout, gradually or instantly, on the basis of contract. Likewise he summons that we should willingly accept the limits of the *milieux* into which we are born as the conditions within which we must exercise our responsibility, 11/ apply also to the idea and practice of negotiating contracts. With him, we also need to recognise that a society that would be free and have scope for freely negotiated contracts among individuals, must also be profoundly conservative and cherish the traditions, customs, institutions and forms of upbringing and education that make freedom and contract possible while setting limits to them. 12/ Above all, with him we must recognise that man is not radically free to choose his own values, Law or Way, but has dignity and freedom only as he obeys a Law he has not made, follows a Way which he has not defined, and chooses by reference to a 'firmament of values' which he has not himself chosen. 13/

10/ *On Gnosticism in modern philosophy and politics*, see E. Voegelin, *The New Science of Politics* (Chicago, University of Chicago Press, 1952); *Science, Politics and Gnosticism* (Chicago, Henry Regnery, 1968),

11/ PK, pp. 322-4. Compare Paul Ricoeur, 'The Way of Consent', *Freedom and Nature: The Voluntary and the Involuntary* (trans. E. Kahdk, Evanston, Northwestern University Press, 1966), Pt. III, Chap. 3.

12/ PK, p. 244.

13/ PK, p. 380.