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Common Error No. 2 [1]

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2. "When the state gives us rights, we have responsibilities to it in return."

The state doesn't give us any rights; we give the state some powers. The rights we enjoy are not political ones given to us by some gracious authority; they are ones we owe to each other as human beings. Each right has its corresponding duty. One person's right to life corresponds to the obligation upon others not to take that life. One's right to property translates into another's duty not to steal.

We choose governments for our convenience, although some less fortunate people have them imposed by violence. They derive from our rights rather than constituting the source of them. In a free society, for our convenience we might choose to delegate our right to justice to an impartial authority of our peers. We might choose to band together for our joint defence against hostile intrusion. This is how the powers which government wields come about.

We owe responsibilities to each other. Most importantly we owe to others the obligation to respect their rights. But we do not owe responsibilities to the state; it owes to us the responsibility to carry out fairly and properly the tasks we have assigned to it. Government is not our master, to keep us in line and occasionally give us some rights for ourselves. It is our servant, employed by us to perform as instructed.

The English common law tradition recognizes that people can do whatever the law does not specifically forbid, but in the continental Napoleonic Code tradition, people can only do what the law specifically allows. This leads people falsely to suppose that the state is giving them these rights, when it would be more accurate to say that the state is recognizing those rights. Our responsibility to behave fairly and decently is something we owe to other people, not to government.

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