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Social Contract Theory

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When you make an agreement of some significance (e.g., to rent an apartment, or join a gym, or divorce), you typically agree to certain terms: you sign a contract. This is for your benefit, and for the other party's benefit: everyone's expectations are clear, as are the consequences of failing to meet those expectations.

Contracts are common, and some influential thinkers in the "modern" period of philosophy argued that the whole of society is created and regulated by a contract.^[1] Two of the most prominent "social contract theorists" are Thomas Hobbes (1588-1679) and John Locke (1632-1704).^[2] This essay explains the origins of this tradition and why the concept of a contract is illuminating for thinking about the structure of society and government.

1. The State of Nature and the First Contract

To see why we might seek a contract, imagine if there was no contract, no agreement, on what society should be like: no rules, no laws, no authorities. This is called "the state of nature."

What would life in the state of nature be like? Most think it would be very bad: after all, there would be no officials to punish anyone who did anything bad to us, resulting in no deterrent for bad behavior: it'd be every man, woman and child for him or herself, it seems.

Hobbes has famously described life in the state of nature as "solitary, poor nasty, brutish, and short."^[3] Locke describes it as where everyone can be judge and jury in their own disputes, meaning they can personally decide when they have been wronged and how to punish the offender; clearly, this could get out of hand.^[4]

Historically, we may not have ever been in a state of nature, but contract theorists use this idea to explain why rules for society, a contract, are desirable. It allows us to peacefully live together with the assurance that no one can simply harm us or take our property without consequence. Contract theorists argue that most people would freely enter into a contract to secure these benefits.

A contract has some costs though: to receive the advantages of an ordered society, everyone agrees to give up some benefits they had in the state of nature. Hobbes says we must give up "the right of nature" or the ability to judge *for ourselves* what counts as our "preservation." This means that we could kill someone and *claim* it contributed to our "preservation,"^[5] truthfully or not. Locke argues we must give up the right to be judge and jury of our own disputes.

Suppose, for mutual benefit, people contract to form *some* society. What are the details of that contract?

2. The Agreement to Form Government

A newly-formed society needs a mechanism for making decisions: who will make and enforce the rules? This authority needs to be established if the new community is to function together peacefully.

Hobbes argues that the sole decision-making authority should be an almighty ruler, who he calls the "Leviathan," who rules *by force* so that citizens are afraid of whatever the ruler says. As Hobbes forebodingly reminds his readers: "And covenants [or contracts], *without the sword*, are but words, and of no strength to secure a man at all."^[6] The contract means that you obey the ruler and his laws or suffer severe consequences, such as imprisonment or even death.

Locke's proposal for the creation of government reflects a more democratic approach in the sense of majority rule: ". . . every man, by consenting with others to make one body politic under one government, puts himself under an obligation . . . to submit to the determination of the majority."^[7] According to Locke, the primary function of government is to pass laws through a majority vote regarding the protection of rights, especially one's right to property: "The great and chief end . . . of men putting themselves under government is the *preservation of their property*."^[8]

Government requires our submitting to someone else's authority. Submitting yourself to be ruled by someone else requires sacrifice: we give up the right to make laws, enforce those laws, and punish transgressions of them. We transfer these rights to some individual or group who does them on our behalf. These three basic activities—making, enforcing and punishing—form the basis for the three branches of government common in many countries.

3. Conclusion

Living under a contract is likely better than living in the state of nature. Questions remain, however.

First, we usually explicitly agree to contracts, but we've done no such thing for society. If it's said we *tacitly* agree, meaning that we've implicitly agreed, Locke responds: "The difficulty is what ought to be looked at as *tacit consent*, and . . . how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expression of it at all."^[9]

We haven't explicitly agreed to any social contract. Do citizens agree simply by enjoying the benefits of things only made possible by living in society? For example, being able to drive on public roads is a benefit. But this is possible only through the existence of government-funded roads. Unless someone refuses to drive on public roads, by accepting such a benefit, is one *tacitly* "consenting"?

Locke's notion of tacit consent is problematic because it *assumes* agreement based on our receiving benefits. However, *explicit* consent is important because this kind of consent is the mark of *voluntarily* entering into a contract. Explicit consent is often extremely important – consider consent in sexual relationships – but it is never obtained, or even sought, to participate in and receive benefits from being part of society.

A second, deeper problem with the notion of a social contract is who was and is left out of it. Who was not allowed to sign the contract or help create its terms? In many societies, women and non-Europeans were intentionally excluded, and certainly many individuals and groups of people would not consent to much of many governments' policies and practices, past or present.^[10]

Notes

^[1] "Modern," for the purposes of the history of philosophy, refers roughly to the time period from

the mid-17th century to the late 18th century. However, "modern" does not only designate a time period but refers to the beginning of the Enlightenment, the rise of modern scientific thinking (Galileo, Newton), and to a turning away from the established order of the Church.

^[2] Generally included with Hobbes and Locke is a third theorist, Jean-Jacques Rousseau (1712-1778). Rousseau is not discussed here because views are quite different from Hobbes' and Locke's. Rousseau is critical of both Hobbes's and Locke's views on the social contract because he is not convinced that society and government are an improvement over the state of nature. He outlines such an argument in his *Discourse on the Origin of Inequality* (1754). His own version of the social contract is found in *On the Social Contract* (1762). See Jean-Jacques Rousseau, *The Social Contract* (Penguin Books, 1968) and *Discourse on the Origin of Inequality* (Hackett, 1992)

^[3] Thomas Hobbes *Leviathan* (1651), ed. Michael Oakeshott (Simon and Schuster, 1962), 100.

^[4] Locke, *Second Treatise of Government* (1690), ed. C.B. Macpherson (Hackett, 1980), 10-11. Locke proposes that we give up the right to be judge and jury of our own disputes in order "to avoid, and remedy those inconveniences of the state of nature, which necessarily follow from every man's being judge in his own case," p. 48.

^[5] Hobbes, *Leviathan*, 104.

^[6] Hobbes, *Leviathan*, 129

^[7] Locke, *Second Treatise*, 52.

^[8] In Chapter 5 of Locke's *Second Treatise*, he famously argues we have a natural right to private property by mixing our labor with land. For example, if I pick an apple from the tree, because I own the labor I used (picking the apple), the apple becomes "mine." Government is created to protect the property I have acquired.

^[9] Locke, *Second Treatise of Government*, 64.

^[10] For an account of how race factored into the terms of the contract, see Charles W. Mills, *The Racial Contract* (Cornell University Press, 1997).

For an account of how gender factored into the contract, see Carole Pateman, *The Sexual Contract* (Stanford University Press, 1988)

References