

A CRITICAL APPRECIATION OF THE SOCIAL CONTRACT THEORY
PROPOUNDED BY GROTIUS AND HOBBS

NAME: ALEESHA DOS REIS FALCAO

CLASS: F.Y.LL.M.

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SOCIAL CONTRACT THEORY

A. INTRODUCTORY OVERVIEW

Social contract theory, nearly as old as philosophy itself, is the view that persons' moral and/or political obligations are dependent upon a contract or agreement among them to form the society in which they live. Socrates uses something quite like a social contract argument to explain to Crito why he must remain in prison and accept the death penalty. The social contract was introduced by early modern thinkers—Hugo Grotius, Thomas Hobbes, Samuel Pufendorf, and John Locke the most well-known among them—as an account of two things: the historical origins of sovereign power and the moral origins of the principles that make sovereign power just and/or legitimate. It is often associated with the liberal tradition in political theory, because it presupposes the fundamental freedom and equality of all those entering into a political arrangement and the associated rights that follow from the principles of basic freedom and equality. From that starting point, often conceptualized via the metaphor of a “state of nature”, social contract theory develops an account of political legitimacy, grounded in the idea that naturally free and equal human beings have no right to exercise power over one another, except in accordance with the principle of mutual consent.

B. BACKGROUND

Social contract theory is rightly associated with modern moral and political theory and is given its first full exposition and defence by Hugo Grotius and Thomas Hobbes. After Hobbes, John Locke and Jean-Jacques Rousseau are the best known proponents of this enormously influential theory, which has been one of the most dominant theories within moral and political theory throughout the history of the modern West. But the use of social contract as a definite concept in political and legal controversy can be traced back to the Italian Marsilius of Padua (1270-1343), who fought, like his English N of Occam, against the supremacy of the Church in other than spiritual matters. Against the claim of the Church to worldly power Marsilius stressed the autonomy and his right of jurisdiction over anything within his territory including ecclesiastical appointments; but at the same time he first developed the idea that the people are the source of all political power and government is by mandate of the people, and with their consent.

In the twentieth, moral and political theory regained philosophical momentum as a result of John Rawls' Kantian version of social contract theory, and was followed by new analyses of the subject by David Gauthier and others.

More recently, philosophers from different perspectives have offered new criticisms of social contract theory. In particular, feminists and race-conscious philosophers have argued that social contract theory century is at least an incomplete picture of our moral and political lives, and may in fact camouflage some of the ways in which the contract is itself parasitical upon the subjugations of classes of persons.

Grotius and the rationalists shared with the medieval theorists of natural law the aim of establishing an objective order. Natural law ideas were used for a very different purpose by the new rising tide of individualism which culminated, in different ways, in the English Revolution of 1688, the French Revolution of 1789 and the American Declaration of Independence. The Renaissance and Reformation paved the way for the spiritual emancipation of the individual; the expansion of commerce gave economic prosperity to the new middle class which became the moving spirit in the struggle for individual emancipation. On the other side, political absolutism, while anxious to dissociate itself from the theocratic order of the Middle Ages, looked for a justification of its claim to unlimited authority over the people. The legal construction used by both sides in that new political struggle was that of social contract.

C. PRINCIPLE OF SOCIAL CONTRACT THEORY

The principle of social contract is found in Plato's *Republic*:

Therefore when men act unjustly towards one another, and thus experience both the doing and the suffering, those amongst them who are unable to compass the one and escape the other, come to this opinion: that it is more profitable that they should mutually agree neither to inflict injustice nor to suffer it. Hence men began to establish laws and covenants with one another, and they called what the law prescribed lawful and just. The contention that legal authority comes from the people---not from the arbitrary will of a ruler---is put forward by many of the greatest medieval writers, such as John of Salisbury, John of Paris, and St. Thomas Aquinas.

The prince is therefore under an obligation to the people to observe the law and can be punished if he violates it. This truly revolutionary proposition contains the elements of the construction of a social contract which was resumed some time later, both by Catholic and Protestant writers, and gained an ever increasing importance until the end of the eighteenth century.

D. KEY FEATURES

The essential features of the doctrine of social contract are these:

- (1) From a state of nature, in which they have no law, no order, no government this state of affairs appears to some writers as a paradise, to others as chaos---men have at some time passed to a state of society, by means of a contract in which they undertake to respect each other and live in peace (*pactum unionis*).
- (2) To this contract is added simultaneously or subsequently a second pact by which the people thus united, undertake to obey a government which they themselves have chosen (*pactum subjectionis*).

E. FACTORS LEADING TO SOCIAL CONTRACT

1. Equality of need: We all have certain basic needs in common such as food, clothing, and shelter.
2. Scarcity: Factor one wouldn't really be a problem at all except for factor two which is scarcity. There is not an unlimited supply of food, clothing, and shelter just to name the essentials. Economists know this all

too well and often define economics as the study of the scarce allocation of resources which have alternative uses.

3. Equality of human power: Here is the factor that really creates a serious problem when combined with factors one and two. For a time, a few can perhaps take control and take what they want at the expense of everyone else. But, in the long run, this power cannot be sustained because one person's weakness is another person's strength. One person may have force on their side, but perhaps others have another advantage. In the end these differences tend to even out which creates a situation where everyone is, in Hobbes' phrasing, at war against everyone else for the same scarce resources.

4. Limited altruism: One solution to the problem is to rely on the kindness of strangers. But, this won't work either since we all have limits to how altruistic we are. Let's face it we are not infinitely compassionate towards our fellow human beings.

So, taken together these factors create real problems in the absence of any social order or moral rules.

The strongest incentive is to avoid the state of nature and the "war of all against all" that Hobbes warns us about. To do this we need to establish a mutual agreement that involves two factors. First, that we will not harm one another and second that we will keep our word with one another. These two factors, which Hobbes saw as the primary responsibility of government, would allow us to come together and cooperate socially as well as economically

During the first phase of the use of social contract it is treated as an historical fact, although with little actual historical research and mixed with constructions; in the second phase it is used entirely as a construction of legal reason, not as an historical fact. The transition is a gradual one. Grotius treats social contract as an historical fact; Kant treats it purely as a postulate of reason.

What links all protagonists of the social contract theory is that they find the source of political power in the people and are unanimously opposed to the deduction of political authority from above, whether from divine law or the grace of God. In that sense, the whole theory of social contract is a forerunner of democratic theory. The other common aspect of all social contract theories lies in the individualistic and indeed atomistic conception of society which it implies. The state is seen as the legal creation of individual will; contract is the suitable legal form for such a conception, although the construction of social contract has, of course, little to do with modern legal rules on private contract.

It follows that social contract theories are quite incompatible with an organic view of society and corporate personality. Apart from these common features, however, the theory of social contract like that of natural law in general has served the most divergent political purposes. In particular it has been used to justify absolutism on one hand and democracy on the other.

In one form or another many different writers have used the construction of social contract while it was fashionable. The principal aspects of the social contract theory are well represented by four eminent political and legal thinkers : Grotius, Hobbes, Locke and Rousseau. Each Philosopher has a different take on this argument, Hobbes for example gives a vivid and bleak account of what life would be like without a social contract, otherwise known as the 'state of nature', denoting that the social contract plays a big part in our moral actions. Whereas Locke is a lot more optimistic and painted a more attractive picture of the state of nature', suggesting that our moral duties would still stand even without enforced rules and regulations.

F. ELEMENTS OF THE SOCIAL CONTRACT

There are two principal elements to the social contract. The first is an initial pre-political situation called a "state of nature" by the modern philosophers and the "original position" by Rawls, the most significant contemporary exponent of social contract theory. In this initial situation, all individuals are equal, they are all situated symmetrically relative to one another, and they all have some incentive to leave the initial situation in favour of some relative advantage gained by entry into civil society. The second element is a normative characterization of the parties to the contract. The parties are described as (1) motivated by self-interest, in as much as they will only agree to the contract if they perceive that they will benefit from social interaction; (2) concerned for the welfare of others, if only because they recognize that the advantages they expect to derive from the social contract will be conditional on their willingness to guarantee the same advantages to their counterparts; and (3) rational or reasonable with respect to the way they understand their own interests, the interests of others, and the just or moral principles that ought to govern their pursuit of those interests.

HUGO GROTIUS (1583-1645)

In the early 17th century, [Grotius](#) (1583–1645) introduced the modern idea of *natural rights* of individuals. Grotius postulates that each individual has natural rights that enable self-preservation and employs this idea as a basis for moral consensus in the face of religious diversity and the rise of natural science. He seeks to find a parsimonious basis for a moral beginning for society, a kind of natural that everyone could accept. He goes so far as to say in his *On the Law of War and Peace* that even if we were to concede what we cannot concede without the utmost wickedness, namely that there is no God, these laws would still hold.

Social contract theory says that “morality consists in the set of rules, governing how people are to treat one another, that rational people will agree to accept, for their mutual benefit, on the condition that others follow those rules as well.” The idea was considered incendiary since it suggested that power can ultimately go back to the individuals if the political society that they have set up forfeits the purpose for which it was originally established which is to preserve themselves. In other words, individual persons are sovereign. Grotius says that the people are *sui juris* (under their own jurisdiction). People have rights as human beings but there is a delineation of those rights because of what is possible for everyone to accept morally; everyone has to accept that each person as an individual is entitled to try to preserve himself. Each person should, therefore, avoid doing harm to or interfering with another. Any breach of these rights should be punished.

Grotius uses the construction of social contract for a twofold purpose, internally for the justification of the absolute duty of obedience of the people to the government, internationally to create a basis for legally binding and stable relations among the states.

Grotius puts forward social contract as an actual fact in human history. The constitution of each state, he thinks, had been preceded by a social contract, by means of which each people had chosen the form of government which they considered most suitable for themselves. Whatever opinion one might hold about the excellence of the one or the other form of government, each people has the right to choose the government it prefers. But once the people have transferred their right of government to the ruler, whether in order to find a

protector against danger or because they preferred autocratic rule to liberty, or as a result of war-they forfeit the right to control or punish the ruler however bad his government be.

Grotius' other argument for slavery is based in war: he claims that because the victors in war have to right kill the vanquished, the latter can sell their liberty in exchange for their lives. Rousseau disputes Grotius' contention that the victors have a right to kill the vanquished. Wars are fought by states, not by men. After a nation has lost in battle, its soldiers cease being enemies to the opposing state, and no one has a right to their lives.

Grotius and Rousseau differ primarily in their ideas about rights. Grotius believes that a right is simply a power possessed by an agent, and does not require moral sanction. This contrasts sharply with Rousseau's conception of a right, which has a significant moral component. Just because the victors in war are capable of killing the vanquished, this does not give them the right to do so, according to Rousseau. Grotius also promotes the idea that rights can be transferred or sold like commodities. He uses this belief to support slavery and absolute monarchy. In contrast, Rousseau believes that rights (such as the right to freedom) are inalienable, and thus cannot be transferred under any circumstances.

Unlike later theorists of social contract, Grotius considered the contract as an actual fact of human history. In his view, the constitution of each state had been preceded by a social contract, by means of which each people had chosen the form of government they considered most suitable for themselves. While each people had the right to choose their own form of government, they forfeited the right to control or punish the ruler, however bad his government, once they had transferred their right of government to him. Generally, Grotius, like Hobbes, reflected not only the need of a disturbed society for strong governmental authority, but also the essentially absolutist and predemocratic character of government of that period. In his own official and diplomatic career Grotius represented autocratic governments.

DEMERITS OF GROTIUS THEORY

In order to justify this thesis Grotius goes so far as to deny that all government is for the sake of the governed. Grotius appears strangely vacillating on the question how far a ruler is bound by promises to his subjects. On the one hand, his sovereignty must not be impaired, at least in any case where authority has not been merely temporarily conferred upon him. On the other hand,

Grotius is bound to admit from his philosophical premise that the ruler is bound by natural law which is valid even without promise.

And the keeping of promises is a paramount principle of natural law. From this dilemma Grotius has not indicated any satisfactory way out. His main concern is the stability and orderliness of international society. His social contract theory served this purpose, first by stressing, against medieval conceptions, the equivalence of different forms of government established by different peoples, secondly by freeing the ruler or government which conducts foreign relations from any internal restriction or fetters, thirdly by stressing the absolute force of a promise once given. It is in regard to the last point that Grotius becomes *involved in* contradictions.

THOMAS HOBBS (1588-1679)

Thomas Hobbes, 1588-1679, lived during the most crucial period of early modern England's history: the English Civil War, waged from 1642-1648. To describe this conflict in the most general of terms, it was a clash between the King and his supporters, the Monarchists, who preferred the traditional authority of a monarch, and the Parliamentarians, most notably led by Oliver Cromwell, who demanded more power for the quasi-democratic institution of Parliament. Hobbes represents a compromise between these two factions

Living during the civil wars in England, Hobbes was convinced of the overwhelming importance of state authority, which he thought ought to be vested in an absolute ruler. In the struggle between Long Parliament and Charles I, Hobbes defended the cause of the King. In theory Hobbes, like most writers of his time, acknowledges the authority of natural law. But he understands it in a sense fundamentally different from those writers for whom natural law constitutes a definite objective order superior to positive law. Hobbes shifts the emphasis from natural law as an objective order to natural right as a subjective claim based on the nature of man and thus prepares the way for the later revolution of individualism in the name of "inalienable rights." Thus far Hobbes still acknowledges objective rules of natural law of an immutable character, but he divests them of any practical significance by depriving them of sanctions. At the same time Hobbes understands by natural law, no longer certain ethical precepts but laws of human conduct based on observation and appreciation of human nature.

The chief principle of natural law for Hobbes is the natural right of self-preservation. This is connected with his view of the state of nature in which men live without a common Power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man, against every man. In this natural state man pursues solely his own advantage without regard for anyone else and recognises no limitation of his rights. Hence a state of perpetual and devastating warfare which threatens everyone exists. But natural reason dictates to man the rule of self preservation, in pursuit of which man tries to escape from this state of permanent insecurity. He does so by transferring all his natural rights to the ruler, whom he

promises henceforth to obey unconditionally. Thomas Hobbes in many respects improved the social contract theory and made it an essential part of a system of extraordinary logical power.

Like Grotius and later Locke, Hobbes wrote his principal books, *De Cit'e* (1642) and *Leviathan* (1651), with a definite political purpose.

Hobbes does not, like Grotius, recognise an unlimited variety of social contracts by which the people may surrender a greater or smaller proportion of their rights. There is only one kind of pact, an unconditional *pactum subjectionis* by which the whole of the natural right is transferred to the ruler, who thus obtains absolute power.

Hobbes emphatically rejects any contractual or quasi-contractual right by which subjects could demand the fulfilment of certain obligations by the ruler. His "social contract" is therefore no true contract but a logical fiction. There is only one condition attached to the absolute power of the ruler: that he can govern and keep order. Hobbes naturally discourages civil disobedience. But he clearly states in *Leviathan* that where resistance is successful the sovereign ceases to govern, the subjects are thrown back upon their original position and may now transfer their obedience to a new ruler.

The Obligation of Subjects to the Sovereign is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them. Hobbes' conception of sovereignty is thus entirely rational and utilitarian. It is purely the result of rational individual self-interest which supersedes the irrational and thus self-destructive lust for power as man pursues it in the state of nature. From this fundamental thesis follow a number of rather revolutionary propositions:

(1) Natural law, though still given a place of honour-Hobbes enumerates no fewer than nineteen principles: For all law is dependent upon sanction. "Governments without the sword are but words, and of no strength to secure a man at all." All real law is thus civil law, the law commanded and enforced by the sovereign.

(2) There is no society as distinct from the state. Without the state, which is government, there is only the shapeless and anarchist multitude. Consequently there is no law between sovereign and subjects, no

autonomy of corporation. All social and legal authority is concentrated in the sovereign. In him rest all necessary powers of government.

(3) With Hobbes the Church is definitely and unconditionally subordinated to the state. It has the same legal status as any other corporation, all of which have the same head, the sovereign.

(4) Hobbes' sovereign-he prefers monarchy, but the form of government is of minor importance as long as it does its job, to govern is in no way instituted and legitimated by superior sanction whether of divine right or of natural law, or of anything else. He is purely and solely a utilitarian creation of the individuals who institute him in order to prevent them from destroying each other.

Thus Hobbes destroys all that was left of medieval conceptions of authority and law. The Church is deprived of the authority of divine law, natural law is no longer a superior law, the autonomous corporation, essential to medieval society, is eliminated, and there remains the human individual, a strange mixture of animal and rational being. For his protection alone, there is law and authority.

Hobbes is individualist, utilitarian and absolutist. Each of these different aspects of his teaching has had a powerful influence upon the legal and political thought of the next few centuries. He has shaken himself free from medieval society and medieval ideas. He completes the revolution of the Renaissance. From his political and legal theory emerges modern man, self.-centred, individualistic, materialistic, and irreligious, in pursuit of organised power. Hobbes' individualism links him with Locke, his utilitarianism with Bentham and Mill, his absolutism with all the theories which cement the growing power of the state.

The relation between individual and State is defined in three principles : (i) Through fulfilment of civic duties, the individual becomes a member of the State. The law limits and assures the rights of the individual. (iii) Outside this sphere of civic duties, the individual is free and only responsible to himself. He is a man, not a citizen. The right to punish is a part of the social contract and is based on retaliation.

In his book *Leviathan* Hobbes quotes: Whatsoever therefore is consequent to a time of Warre, where every man is Enemy to every man; the same is consequent to the time, wherein men live without other security,

than what their own strength, and their own invention shall furnish them with all. In such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no culture of the Earth, no Navigation, nor use of the commodities that may be imported by Sea ; no commodious Building ; no Instruments of moving, and removing such things as require much force ; no Knowledge of the face of the Earth ; no account of Time ; no Arts ; no Letters ; no Society; and which is worst of all, continual fear, and danger of violent death; And the life of man, solitary, poor, nasty brutish, and short, a state in which self-interest and the absence of rights and contracts prevented the 'social', or society. Life was 'anarchic' (without leadership or the concept of sovereignty). Individuals in the state of nature were apolitical and asocial. This state of nature is followed by the social contract.

Everything we do is motivated solely by the desire to better our own situations, and satisfy as many of our own, individually considered desires as possible. We are infinitely appetitive and only genuinely concerned with our own selves. According to Hobbes, even the reason that adults care for small children can be explicated in terms of the adults' own self-interest (he claims that in saving an infant by caring for it, we become the recipient of a strong sense of obligation in one who has been helped to survive rather than allowed to die). . All men pursue only what they perceive to be in their own individually considered best interests – they respond mechanistically by being drawn to that which they desire and repelled by that to which they are averse. This is a universal claim: it is meant to cover all human actions under all circumstances – in society or out of it, with regard to strangers and friends alike, with regard to small ends and the most generalized of human desires, such as the desire for power and status. From these premises of human nature, Hobbes goes on to construct a provocative and compelling argument for why we ought to be willing to submit ourselves to political authority.

And because the condition of Man, is a condition of Warre of every one against every one; in which case everyone is governed by his own Reason; and there is nothing he can make use of, that may not be a help unto him, in preserving *his* life against his enemies; It followeth, that in such a condition, every man has a right to everything; even to one anothers body. And therefore, as long as this natural Right of every man to every thing endureth, there can be no security to any man, (how strong or wise soever he be) of living out the time, which Nature ordinarily alloweth men to live. And consequently it is a precept, or general rule of

reason, that every man, ought to endeavour Peace, as far as he has hope of obtaining it and when he cannot obtain it, that may seek, and use, all helps, and advantages of Warre. The first branch of which Rule, contains the first, and Fundamental Law of Nature; which is, to seek peace and follow it. The Second, the sum of the Right of Nature; which is by all means we can, to defend ourselves. From this Fundamental Law of Nature, by which men are commanded to endeavour Peace, is derived this second Law; that he be willing, when others are so too, as farre-forth, as for Peace, and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himself or as long as every man holdeth this Right, of doing any thing he liketh ; so long are all men in the condition of Warre. But if other men will not lay down their right, as well as he; then there is no reason for any one, to detest himself of his: For that were to expose himself to Prey, (which no man is bound to) rather than to dispose himself to Peace. This is that Law of the Gospel; whatsoever you require that others should do to you, that do ye to them.

Lastly, the agreement of these creatures is natural; that of men is by Covenant only, which is Artificial: and therefore it is no wonder if there be somewhat else required (besides Covenant) to make their agreement constant and lasting; which is a Common Power, to keep them in awe, and to direct their actions to the Common Benefit by contracting to have one ruler to defend them from problems.

The only way to erect such a Common Power, as may be able to defend them from the invasion of Foreigners and the injuries of one another, and thereby to secure them in such sort, as that by their own industries, and the fruits of the Earth, they may nourish themselves and live contentedly; is, to confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their Wills, by plurality of voices, unto one will: which is as much as to say, to appoint one man, or assembly of men, to bear their Person; and every one to own and acknowledge himself to be author of whatsoever he that so beareth their person, shall Act, or cause to be Acted, in those things which concern the common peace and safety; and therein to submit their wills, every one to his will, and their judgements, to his judgement. This is more than consent, or concord; it is real Unity of them all, in one and the same person, made by Covenant of every man with every man, in such manner, as if every man should say to every man, *I authorise and give up my right of governing my life, to this Man, or to this assembly of men, on this condition, that thou give up thy*

right to hunt, and authorise all his actions in like manner. This one person, is called a COMMON WEALTH.

This shows the influence of the Social Contract Theory even on one who believed in absolutism.

Some writers, especially those, *e.g.*, Althusius, who favoured popular sovereignty, argued for two contracts, a *pactum unionis*, between individuals to create a unity in which sovereignty was vested, and a *pactum subjectionis*, between the unit and ruler. The latter contract could then contain restrictions on the ruler's powers and even a right of withdrawal. Hobbes would have none of this. A single contract both created the absolute sovereign and divested the individual of all vestige of pre-existing natural right.

DEMERITS OF HOBBS THEORY

One problem with the social contract theorists, and especially with Hobbes, is that the whole notion of the theory is that moral obligations and duties are reciprocated. For example the reason why you don't scratch other people's cars is in the hope that nobody scratches your car. However, one flaw with this argument is that we might exclude certain groups who would not be expected to return the favour, which we need not be exclude. These groups could include people with learning difficulties or young children as they cannot be held responsible for their own actions.

Hobbes theory was challenged by John Locke who felt that our morality is not based on law and government, or the social contract.

David Hume heavily criticised Hobbes and Locke's versions of the social contract. Firstly he points out that there had never been a situation called the state of nature' and that nobody had consented to a social contract, mainly because the social contract was purely hypothetical.

A lot of his views are backed up with religion making them less believable to some readers.

CONCLUSION

Only after these contracts are established, however, society becomes possible, and people can be expected to keep their promises, cooperate with one another, and so on. The Social Contract is the most fundamental source of all that is good and that which we depend upon to live well. Our choice is either to abide by the terms of the contract, or return to the State of Nature, which Hobbes argues no reasonable person could possibly prefer.

The social contract was an 'occurrence' during which individuals came together and ceded some of their individual rights so that others would cede theirs (e.g. person A gives up his/her right to kill person B if person B does the same). This resulted in the establishment of the state, a sovereign entity like the individuals now under its rule used to be, which would create laws to regulate social interactions. Human life was thus no longer "a war of all against all".

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