

Phil. 2200

Notes #3: Social Contract Theory

Basic Idea of the Social Contract Theory

A response to the problem of political legitimacy

Why does the state have the right to rule?

Why must citizens obey it?

Problems with the 'state of nature'.

Solution: A 'contract' between citizens & state. Terms:

State: provides protection

Citizens: pay taxes, obey laws

Three Kinds of Social Contract Theory

1. Explicit
2. Implicit *i* (Actual consent theories)
3. Hypothetical

The Theory of the Declaration of Independence

Important principles:

"All men are created equal."

People have natural rights.

Purpose of government: to protect these rights.

Source of authority: "consent of the governed."

The right of revolution.

Further reading: Jefferson's original version:

<http://www.wsu.edu:8080/~dee/AMERICA/DECLAR.HTM>

John Locke's Theory

Biographical note: 17th-century British philosopher and physician. Famous books: *Essay Concerning Human Understanding*, *Two Treatises of Government*, *Letter Concerning Toleration*. Primary source of the ideas of the Declaration of Independence & the American Revolution.

The State of Nature

- This is where people live without government or written laws.
- The *natural law*
 - These are principles of justice that all normal people can see through reason.
 - Include individual rights to: life, liberty, and estates.
 - Most people seek to follow these principles.
- *But* problems with state of nature:
 - Lack of explicit, written laws. Leads to uncertainty, difficult to resolve disputes.
 - Lack of impartial judges to resolve disputes.
 - A few "vicious" and "degenerate" people who violate the natural law.

Solution

- The social contract.
 - Citizens agree to obey the state, let the state make and enforce laws.
 - Citizens pay the state for its services.
 - The state sets up legislators, impartial judges, and enforcers.

- The government's charge:
 - To protect everyone's rights.
 - State may not do anything else.
- Leads to: The right of revolution:
 - If government violates the social contract, citizens may overthrow it.

Problems with Social Contract Theories

A. The Explicit Contract Theory

- Locke thinks there was an explicit agreement at the start of most states.
 - Agreement is made binding on future generations through a restrictive covenant on the land.
 - Agreement becomes implicit for the later generations.
- David Hume's objection: The origins of all or most actual governments:
 - Usurpation
 - Conquest
- Lysander Spooner's objections:
 - The Constitution of the United States was only accepted by a minority of people.
 - And they're all dead now.

B. The Hypothetical Contract Theory

- This theory says that, even though you haven't actually agreed to the Social Contract, you *would* agree, in some ideal circumstances.
- Sometimes, hypothetical consent is *valid*
 - Valid: succeeds in generates rights/obligations of the kind normally taken to require consent.
 - The Accident Victim example.
- Conditions for valid hypothetical consent:
 - Actual consent/dissent is unavailable.
 - Must be based on subject's actual beliefs/values.
 - Cannot override actual dissent.
- Are these conditions satisfied for the hypothetical social contract?

C. The Implicit Social Contract Theory

- You have agreed to the social contract. Your agreement is shown through your actions, rather than by your words.
- Sometimes, implicit consent is valid.
 - Consent through silence: the Board Meeting example.
 - Consent through acceptance of benefits: the Restaurant example.
 - Consent through continued presence: the Party example. ^A Locke suggests both of these.
- How citizens implicitly consent:
 - Through residence.
 - Through acceptance of benefits.
 - Through political participation.
- Conditions for valid consent:
 - Reasonable way of opting out. Illustration: the chopping-off-your-arm example.
 - Implicit "consent" cannot override explicit dissent. The Restaurant with Explicit Dissent example.
 - Action A expresses agreement to X, only if (agent had reason to believe that) failure to do A would have resulted in *not* being held to X. The Board Meeting with Insensitive Chair example.

- Are these conditions satisfied by the Social Contract?
 - Reasonable ways of opting out?
 - Suicide?
 - Jump in the ocean?
 - Move to Antarctica?
 - Explicit dissent not respected.
 - Acceptance of benefits and political participation: Failure to take benefits or participate does not excuse citizens from the alleged contract.

A Disturbing Case

- The case of Warren vs. District of Columbia
 - Plaintiffs (four women) sued D.C. Police Department for negligent failure to protect them, resulting in severe harm to plaintiffs.
 - This is similar to other cases (Riss vs. New York, Hartzler vs. City of San Jose, DeShaney vs. Winnebago County). All have the same outcome.
- Q: Who should have won the case?
- Q: Who actually won?

It is a “fundamental principle of American law that a government and its agents are under no general duty to provide public services, such as police protection, to any individual citizen.” [*Warren v. District of Columbia Metropolitan Police Department*, 444 A.2d 1 (D.C. App. 1981). See also *Hartzler v. City of San Jose*(1975) 46 Cal.App. 3d 6.]
- Conclusion: If there was a social contract, the state has disavowed it.

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Notes #4: The Utilitarian Case for Political Legitimacy

David Hume

- Famous Scottish philosopher, 1711-1776.
- Considered by some to be the most important English-speaking philosopher. Also did work in economics.
- Important works: *Treatise of Human Nature*, *Enquiry Concerning Human Understanding* and the *Enquiry Concerning the Principles of Morals*. Also, numerous essays, including “Of the Original Contract.”
- May be the first utilitarian in history.

Utilitarianism

- This is a very well-known ethical theory. It has 3 tenets:
 - Consequentialism: the correct choice is always the choice that results in the most good. This is the only *reason for action*
 - The good = well-being. Usually interpreted as enjoyment or the satisfaction of desires.
 - Altruism: Every person ought to weigh the good of everyone (both self & others) equally.
- A “utilitarian argument” for X:
 - Is an argument that appeals to how X promotes the total wellbeing of the world.
 - Need not be advanced by an actual utilitarian.

The Argument for Political Legitimacy

- The great benefits of government:
 - Protection from criminals.
 - Dispute resolution. (Courts)
 - National defense.
 - Etc.
- States should continue their activities.
- Individuals should obey:
 - “the authority of magistrates ... must soon fall into contempt, where exact obedience is not payed to it.” (Hume, 480)
- Consequence: It doesn't matter if the present ruler is a usurper, etc. Give allegiance to whoever is keeping order.
 - Analogy: All current property has some history of injustice. But we shouldn't take it all away.
- Two ways to read this:
 1. *The act-utilitarian argument*: Your act of disobedience creates a risk of governmental collapse and is therefore bad.
 - Objection: One individual's action will not make a difference.
 2. *The rule-utilitarian argument*: Act on the rule such that, if everyone acted that way, it would have the best consequences. (Note that this argument is *not* claiming that your action will actually have bad consequences.)
 - Objection: Is this a correct principle? The professor example.
 - Reply: The rule needs to be made more complex ...
 - Counter-reply: This could also be said in defense of the law-breaker.

Hume's Appeal to Common Sense

- In moral questions, common opinion is always right.
“in all questions with regard to morals, as well as criticism, there is really no other standard by which any controversy can ever be decided. And nothing is clearer proof, that a theory of this kind is erroneous, than to find, that it leads to paradoxes, repugnant to the common sentiments of mankind, and to the practice and opinion of all nations and all ages.” (Hume, 486)
- “New discoveries are not to be expected in these matters.” (487)
- So the social contract theory is wrong. “The doctrine, which founds all lawful government on an *original contract*, or consent of the people, is plainly of this kind.” (486)
[Think about: How has common opinion changed since Hume's time?]

How Good Is Government? Some Statistics

- Murders in the 20th Century
 - People killed by their own governments, 20th century, worldwide:
169 million = 53 per 100,000 population, per year.
 - Private murders, worldwide, year 2000:
520,000 = 8.6 per 100,000 population.
- Monetary Costs
 - Total government expenditures, 2000, United States, state, local + federal: \$2.4 trillion
 - Private theft, United States, 2000: \$16 billion
 - How much is \$2.4 trillion? American government spends the entire lifetime earnings of 2,900 people every day.
- The State of Nature would have to be incredibly bad to justify this risk.

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Notes #5: The Fair Play Account of Political Obligation

John Rawls

- The most influential 20th century political philosopher. (1921-2002)
- Important work: *A Theory of Justice*

Problem

- Even in a generally just society, anyone will find many laws he considers to be wrong or unjust.
- Rawls assumes that individuals are generally obligated to obey such laws.
- Problem: to explain why this is.

Background assumptions

- Rawls assumes there is a constitutional procedure for making laws.
- And everyone agrees that the constitutional procedure is just.
- The citizen doesn't have to believe that the law is the best policy, just because it was chosen by the constitutional procedure.
- But he should believe that it should be obeyed anyway.

The Fair Play Theory

- The Principle of Fair Play:
Suppose there is a scheme of cooperation, such that:
 - It is mutually beneficial
 - It is just
 - Its advantages depend on almost everyone cooperating
 - Cooperation involves some sacrifice
 - A single person could free ridethen: you should not take the benefits and not cooperate.
- Why?
 - Because this would be unfair, you would be a "free rider", etc.
 - The benefit of the scheme doesn't belong to you.
 - This is *not* the social contract theory. There is no appeal to a "contract".
- Example: The town well.
- Maybe the government & its laws are an example of such a cooperative scheme.
 - We assume you're in a society with a just and good government.
 - Cooperation = obeying the laws, paying taxes. The sacrifice is \$ and liberty.
 - Gov't can't survive unless almost everyone obeys the law.
 - You accept the benefits of gov't.
 - Failure to obey is "free riding", is unfair, etc.
- What if *more good* would be done by disobedience?
 - Rawls: "the principles of justice are absolute with respect to the principle of utility" (13). This means two things:
 1. Injustice cannot be justified by appeal to any amount of utility.
 2. Also, the obligation to obey the law cannot be overridden by any amount of utility.
 - He doesn't know how to argue for these claims, which are "most likely false" (13), but somehow he's still defending them.

Possible Objections

A. Do we have an obligation of fair play?

- We are not required to contribute to every scheme such as Rawls describes.
 - Nozick's example: The neighborhood PA system.
- Conditions for having the obligation of fair play:
 - You agreed to the scheme, or
 - You voluntarily accepted the benefits. And
 - The providers of the benefit did not create the need they're satisfying, or prevent you from satisfying it in another way.
- Problems:
 - Benefits of gov't mostly involuntary.
 - You probably haven't agreed to it.
 - Gov't prohibits you from obtaining services from another source.

B. If we have an obligation of fair play, must we obey the law?

- When one has an obligation of "fair play" to contribute to a cooperative scheme, what does it require one to do?
 - Help to provide the benefit.
 - Help defray the costs of others' provision of the benefit.
 - Does not require: general obedience to whatever other people tell you to do, that doesn't have to do with providing the benefits of the scheme.
- Problem:
 - Obedience to wrong/unjust laws does not obviously contribute to the provision of the (just) benefits of government.

C. Why would the obligation of fair play override the obligation not to contribute to injustice?

D. Of course, the argument assumes that government is good.

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Notes #6: Philosophical Anarchism

I. Varieties of Anarchism

- Anarchism: All existing states are illegitimate.
- Legitimacy includes:
 - The right to rule.
 - Political obligation: The obligation of citizens to obey the state. The obligation to follow the law *because* it is the law.
- Common motivations of anarchists:
 - Voluntarism (human interactions should occur by consent)
 - Egalitarianism (people have equal rights, or should have equal opportunities, etc.)
 - Values of community (feelings of solidarity)
 - Failure of arguments for legitimacy
- Philosophical vs. Political:
 - Political anarchism: Holds that we should eliminate the state. (“Strong” anarchism.)
 - Philosophical anarchism: We have no “political obligations” to the state, but we need not eliminate the state either. (“Weak” anarchism.)
- A priori vs. A posteriori anarchism:
 - A priori: In principle, no state could be legitimate. (This word refers to things that can be known independent of observation.)
 - A posteriori (refers to things that can be known only on the basis of observation): No actual states are legitimate, but it is not in principle impossible for a state to be legitimate.

II. The Best Form of Anarchism

- A posteriori:
 - There could be a fully voluntary, genuinely contractual, democratic state.
- Philosophical (weak), not political (strong):
 - Even illegitimate states can provide important benefits. Illegitimacy only means that we lack political obligations.

III. Objections to Philosophical Anarchism

1. It's not real anarchism. It's not importantly different from statism.

Replies:

- It doesn't matter how the word “anarchism” is used.
 - Anarchists should not promote revolution, because there would be harmful consequences. There's no reason why anarchists should ignore this.
 - Philosophical anarchism has important implications. People may feel free to disobey laws creating distinctive political obligations:
 - “Certain taxes”
 - Military service
 - Paternalistic laws
 - Moralistic laws
2. Embracing anarchism could lead to general disobedience and the collapse of society.
Replies:
 - Philosophical anarchists do not promote mindless disobedience. Philosophical anarchists respect individuals' rights.

- Laws that philosophical anarchists would violate: Laws prohibiting harmless conduct. A state does not need to make such laws.
 - Disobedience to such laws might make governments better.
3. Anarchism is “out of keeping with our considered judgements.”

Replies:

- Belief in political obligation is a theoretical belief, based on bad arguments.
- Philosophical anarchism is not so far from ordinary beliefs. Many people violate laws they disagree with.
- Beliefs about political obligation are products of manipulation by powerful people who profit from these beliefs.

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Outline, Unit 2

By the end of unit 2, students should be able to:

Define these concepts:

Political legitimacy
Political obligation
State of Nature
Natural law/natural rights

Explain these theories:

Social Contract theory, including:
Terms of the contract
Explicit contract theory
Implicit contract theory
Hypothetical contract theory
Utilitarianism, incl.:
Act- vs. rule-
Fair play theory/principle
Philosophical anarchism
vs. political anarchism

Identify these people's views:

Locke, incl.:
Problems with state of nature
Purpose of gov't
Right of revolution
Hume
Rawls
Simmons

Explain these arguments:

Hume's objection to explicit social contract
Objection to implicit contract theory, incl.:
- Conditions on implicit contracts
Conditions on valid hypothetical consent
Utilitarian argument for political legitimacy
Objections to fair play theory, incl.:
Nozick's PA system
What must one do to discharge fair play obligations?
Philosophical anarchism leads to collapse of society
Anarchist's reply

Recognize these examples & what they illustrate/support:

Warren vs. District of Columbia
Board meeting (where chair changes time of meeting, etc.)
Restaurant (customer declines to pay)
Party (host requires help cleaning up)
Accident victim (unconscious & requires treatment)
Professor (does not want everyone to be one)
Town well (you're required to help pay for)
Nozick's PA system (expected to contribute to neighborhood entertainment)