



What is Social Contract Theory?

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The concept of social contract theory is that in the beginning man lived in the state of nature. They had no government and there was no law to regulate them. There were hardships and oppression on the sections of the society. To overcome from these hardships they entered into two agreements which are:

- “*Pactum Unionis*”; and
- “*Pactum Subjectionis*”.

By the first pact of unionis, people sought protection of their lives and property. As, a result of it a society was formed where people *undertook to respect each other and live in peace and harmony*. By the second pact of subjectionis, people united together and pledged to *obey an authority and surrendered the whole or part of their freedom and rights to an authority*. The authority guaranteed everyone protection of life, property and to a certain extent liberty. Thus, they must agree to establish society by collectively and reciprocally renouncing the rights they had against one another in the State of Nature and they must imbue some one person or assembly of persons with the authority and power to enforce the initial contract. In other words, to ensure their escape from the State of Nature, they must both agree to live together under common laws, and create an *enforcement mechanism* for the social contract and the laws that constitute it. Thus, *the authority or the government or the sovereign or the state came into being because of the two agreements*.

Analysis of the theory of Social Contract by Thomas Hobbes

1. Thomas Hobbes theory of Social Contract appeared for the first time in Leviathan published in the year 1651 during the Civil War in Britain. Thomas Hobbes’ legal theory is based on ***Social contract***. According to him, prior to Social Contract, man lived in the ***State of Nature***. Man’s life in the State of NATURE was one of *fear and selfishness*. Man lived in chaotic condition of constant fear. Life in the State of Nature was ‘solitary’, ‘poor’, ‘nasty’, ‘brutish’, and ‘short’.
2. Man has a natural desire for *security and order*. In order to *secure self-protection and self-preservation, and to avoid misery and pain*, man entered into a contract. This idea of self-preservation and self-protection are inherent in man’s nature and in order to achieve this, they ***voluntarily surrendered all their rights and freedoms*** to some authority by this contract who must command obedience. As a result of this contract, ***the mightiest authority is to protect and preserve their lives and property***. This led to the emergence of the institution of the ‘ruler’ or ‘monarch’, who shall be the absolute

- head. Subjects had no rights against the absolute authority or the sovereign and he is to be obeyed in all situations however bad or unworthy he might be. However, Hobbes placed moral obligations on the sovereign who shall be bound by natural law.
3. Hence, it can be deduced that, Hobbes was the supporter of *absolutism*. In the opinion of Hobbes, “*law is dependent upon the sanction of the sovereign and the Government without sword are but words and of no strength to secure a man at all*”. He therefore, reiterated that civil law is the real law because it is commanded and enforced by the sovereign. Thus, he upheld the principle of “*Might is always Right*”.
 4. Hobbes thus infers from his mechanistic theory of human nature that humans are necessarily and exclusively self-interested. 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. In addition to being exclusively self-interested, Hobbes also argues that human beings are reasonable. They have in them the rational capacity to pursue their desires as efficiently and maximally as possible. From these premises of human nature, Hobbes goes on to construct a provocative and compelling argument for which they ought to be willing to submit themselves to political authority. He did this by imagining persons in a situation prior to the establishment of society, the State of Nature.
 5. Hobbes impels subjects to surrender all their rights and vest all liberties in the sovereign for preservation of peace, life and prosperity of the subjects. It is in this way the natural law became a moral guide or directive to the sovereign for preservation of the natural rights of the subjects. For Hobbes all law is dependent upon the sanction of the sovereign. All real law is civil law, the law commanded and enforced by the sovereign and are brought into the world for nothing else but to limit the natural liberty of particular men, in such a manner, as they might not hurt but to assist one another and join together against a common enemy. He advocated for an established order. Hence, *Individualism*, *materialism*, *utilitarianism* and *absolutions* are inter-woven in the theory of Hobbes.

Analysis of the theory of Social Contract by John Locke

1. John Locke theory of Social Contract is different than that of Hobbes. According to him, man lived in the State of Nature, but his concept of the State of Nature is different as contemplated by Hobbesian theory. Locke’s view about the state of nature is not as miserable as that of Hobbes. It was *reasonably good and enjoyable*, but the property was not secure. He considered State of Nature as a “Golden Age”. It was a state of “peace, goodwill, mutual assistance, and preservation”. In that state of nature, men had all the rights which nature could give them. Locke justifies this by saying that in the State of Nature, the natural condition of mankind was a state of perfect and complete liberty to conduct one’s life as one best sees fit. It was free from the interference of others. In that state of nature, all were equal and independent. This does not mean, however, that it was a state of license. It was one not free to do anything at all one pleases, or even anything that one judges to be in one’s interest. The State of Nature, although a state wherein there was no civil authority or government to punish people for transgressions against laws, was not a state without morality. The State of Nature

was pre-political, but it was not premoral. Persons are assumed to be equal to one another in such a state, and therefore equally capable of discovering and being bound by the Law of Nature. So, the State of Nature was a '*state of liberty*', where persons are free to pursue their own interests and plans, free from interference and, because of the Law of Nature and the restrictions that it imposes upon persons, it is relatively peaceful.

2. **Property** plays an essential role in Locke's argument for civil government and the contract that establishes it. According to Locke, private property is created when a person mixes his labour with the raw materials of nature. Given the implications of the Law of Nature, there are limits as to how much property one can own: one is not allowed to take so more from nature than oneself can use, thereby leaving others without enough for themselves, because nature is given to all of mankind for its common subsistence. One cannot take more than his own fair share. Property is the linchpin of Locke's argument for the social contract and civil government because it is the protection of their property, including their property in their own bodies, that men seek when they decide to abandon the State of Nature.
3. John Locke considered property in the State of Nature as insecure because of three conditions; they are:
 - Absence of established law;
 - Absence of impartial Judge; and
 - Absence of natural power to execute natural laws.
4. Thus, man in the State of Nature felt need to protect their property and for the purpose of protection of their property, men entered into the "Social Contract". Under the contract, **man did not surrender all their rights to one single individual, but they surrendered only the right to preserve / maintain order and enforce the law of nature**. The individual retained with them the other rights, i.e., right to life, liberty and estate because these rights were considered natural and inalienable rights of men.
5. Having created a political society and government through their consent, men then gained three things which they lacked in the State of Nature: laws, judges to adjudicate laws, and the executive power necessary to enforce these laws. Each man therefore gives over the power to protect himself and punish transgressors of the Law of Nature to the government that he has created through the compact.
6. According to Locke, **the purpose of the Government and law is to uphold and protect the natural rights of men. So long as the Government fulfils this purpose, the laws given by it are valid and binding but, when it ceases to fulfil it, then the laws would have no validity and the Government can be thrown out of power**. In Locke's view, unlimited sovereignty is **contrary to natural law**.
7. Hence, John Locke advocated the principle of "*a state of liberty; not of license*". Locke advocated a state for the general good of people. He pleaded for a constitutionally limited government.
8. Locke, in fact made **life, liberty and property**, his three cardinal rights, which greatly dominated and influenced the Declaration of American Independence, 1776.

Analysis of the theory of Social Contract by Jean Jacques Rousseau

1. Jean Jacques Rousseau was a French philosopher who gave a new interpretation to the theory of Social Contract in his work "*The Social Contract*" and "*Emile*". According to him, social contract is not a historical fact but a hypothetical construction of reason. Prior to the Social Contract, ***the life in the State of Nature was happy and there was equality among men.*** As time passed, however, humanity faced certain changes. As the overall population increased, the means by which people could satisfy their needs had to change. People slowly began to live together in small families, and then in small communities. Divisions of labour were introduced, both within and between families, and discoveries and inventions made life easier, giving rise to leisure time. Such leisure time inevitably led people to make comparisons between themselves and others, resulting in public values, leading to shame and envy, pride and contempt. Most importantly however, according to Rousseau, was the invention of private property, which constituted the pivotal moment in humanity's evolution out of a simple, pure state into one, characterized by greed, competition, vanity, inequality, and vice. ***For Rousseau the invention of property*** constitutes humanity's "fall from grace" out of the State *of Nature*. For this purpose, they surrendered their rights not to a single individual but to the community as a whole which Rousseau termed as "general will"
2. According to Rousseau, the original "freedom, happiness, equality and liberty" which existed in primitive societies prior to the social contract was lost in the modern civilisation. ***Through Social Contract, a new form of social organisation, the state, was formed to assure and guarantee rights, liberties freedom and equality.*** The essence of the Rousseau's theory of General Will is that State and Law were the product of General Will of the people. State and the Laws are made by it and if the government and laws do not conform to "general will", they would be discarded. While the individual parts with his natural rights, in return he gets civil liberties such as freedom of speech, equality, assembly, etc.
3. The "**General Will**", therefore, for all purposes, was the will of majority citizens to which blind obedience was to be given. The majority was accepted on the belief that majority view is right than minority view. Each individual is not subject to any other individual but to the "general will" and to obey this is to obey himself. His sovereignty is infallible, indivisible, unrepresentable and illimitable.
4. Thus, Rousseau favoured people's sovereignty. His natural law theory is confined to the freedom and liberty of the individual. For him, State, law, sovereignty, general will, etc. are interchangeable terms. Rousseau's theory inspired French and American revolutions and given impetus to nationalism. He based his theory of social contract on the principle of "***Man is born free, but everywhere he is in chains***".

Comparison of the Theory Of Social Contract of Thomas Hobbes, John Locke and Jean Jacques Rousseau

1. Hobbes asserts that without subjection to a common power of their rights and freedoms, men are necessarily at war. Locke and Rousseau, on the contrary, set forth the view that the state exists to preserve and protect the natural rights of its citizens.

When governments fail in that task, citizens have the right and sometimes the duty to withdraw their support and even to rebel.

2. Hobbes' view was that whatever the state does is just. All of society is a direct creation of the state, and a reflection of the will of the ruler. According to Locke, the only important role of the state is to ensure that justice is seen to be done. While Rousseau's view is that the State must in all circumstance ensure freedom and liberty of individuals.
3. Hobbes' theory of Social Contract supports absolute sovereign without giving any value to individuals, while Locke and Rousseau support individuals more than the state or the government.
4. To Hobbes, the sovereign and the government are identical but Rousseau makes a distinction between the two. He rules out a representative form of government. But, Locke does not make any such distinction.
5. Rousseau's view of sovereignty was a compromise between the constitutionalism of Locke and absolutism of Hobbes.

Critical Apprehension

1. Rousseau propounded that state, law and the government are interchangeable, but this in present scenario is different. Even though government can be overthrown but not the state. A state exists even there is no government.
2. Hobbes concept of absolutism is totally a vague concept in present scenario. Democracy is the need and examples may be taken from Burma and other nations.
3. According to Hobbes, the sovereign should have absolute authority. This is against the rule of law because absolute power in one authority brings arbitrariness.
4. Locke concept of State of nature is vague as any conflict with regard to property always leads to havoc in any society. Hence, there cannot be a society in peace if they have been conflict with regard to property.
5. Locke concept of laissez-faire is not of welfare oriented. Now in present scenario, every state undertake steps to form a welfare state.

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