

The Social Contract Theory in a Global Context

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JASON NEIDLEMAN, OCT 9 2012

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.

The social contract captures a consensus, sometimes built on explicit consent, sometimes on tacit consent, and sometimes it operates as a hypothetical account of what associates ought to consent to if they are reasoning well. Jean-Jacques Rousseau captured the hypothetical account of consensus with his idea of the “general will” (where associates reach consensus by privileging their collective interest over their particular interest) and the “will of all” (where the particular interests associates are aggregated without regard for the collective interest). Much more recently, John Rawls continued building on Rousseau’s argument by making an analogous argument through what he calls the “veil of ignorance” (behind which associates derive principles of justice without any knowledge the social, political, or economic status they may hold in the society they are envisioning). For both Rousseau and Rawls, these concepts are intended not as empirical accounts of how human beings reason but as normative accounts of how they ought to reason. In his adaptation of social contract theory to the international contest, Rousseau wrote, “Doubtless, this is not to say that the Sovereigns will adopt this Plan; (Who can answer for anyone else’s reason?) but only that they would adopt it if they consulted their true interests”[1] Likewise, in his account of the domestic social contract, Rousseau concedes that citizens may subvert the general will in favor of their particular will: “the general will is always right.... But it does not follow that the people’s deliberations always have the same rectitude.”[2]

I. Historical Origins of Social Contract Theory

Social contract theory follows from the principle of basic freedom and equality, but the idea’s genealogy originates as an alternative to critique the dominant theory of political legitimacy in medieval Europe. Prior to the work of Hobbes, Grotius, and Locke, the predominant view of political legitimacy drew on the patriarchal power of fathers over their children, going all the way back to the power granted by God to Adam. When Adam died, his eldest descendant inherited his authority by primogeniture. As ensuing generations were born, power continued to be passed on in this manner, from each head of household to his eldest descendant. Eventually, peoples divided and nations were formed, but all power continued to be derived from God and the principle primogeniture remained the standard by which sovereign power could be deemed legitimate. This account of sovereign power was articulated most prominently by Robert Filmer in his *Patriarcha*, published posthumously in 1680. For Filmer, the basic premise of social contract theory—that people were born free and equal, no one with authority over another—was both fiction and inconsistent with the word of God.[3]

According to Filmer, political relationships and obligations flow from historical and familial relationships and customs. Locke took on this argument directly in the first treatise of his *Two Treatises of Government*, published in 1689. In the second half of the text, Locke went on to describe an alternative to the Biblical, Filmerian account of political

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legitimacy. On Locke's model, and on the model of all social contract theorists, individuals are extracted from the socio-historical constraints that Filmer emphasized and placed in an artificial construct, usually called a "state of nature." From this starting point, social contract theory asserts the principle of consent in the place of primogeniture as the basis of political legitimacy.

II. 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 favor 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.

III. Questions Addressed by Social Contract Theory

As noted above, social contract theory has an empirical dimension and a normative dimension. The empirical dimension, which will be referred to as the question of "Origins" offers a historical account of the origins of the state. The normative dimension of social contract theory is an account of the principles of justice that make the state legitimate. Within the normative dimension of social contract theory, it is useful to distinguish between two more specific questions typically addressed in social contract theory: (1) What are the principles of justice that bind citizens in their relations with one another?; and (2) Under what conditions may the state legitimately act as the ultimate arbiter in relations among citizens? The social contract theory answers to both of these questions builds on consent, applied first to the principles of justice that govern in society and then to the establishment of a sovereign or state endowed with legitimate powers of coercion. In the rest of this article, the former will be addressed as the question of "Justice" and the latter as the question of "Legitimacy."

While social contract theory begins, most notably in the work of Hobbes and Locke, as an account of the origins and legitimacy of the state, later thinkers like Rousseau, Immanuel Kant, and John Rawls have applied social contract theory to the international arena as well (drawing in part on Grotius's outline of international justice in *On the Laws of War and Peace*). In these applications, states replace citizens as the parties to the social contract. The Justice component of social contract theory can be useful in thinking through the terms of international treaties, such as the Geneva Convention on the Treatment of Prisoners of War (in which states mutually consent to the humane treatment of prisoners) or the UN Declaration of Human Rights (in which states commit themselves to work toward the realization of a variety of human rights). The Legitimacy component of social contract theory can be used to justify the alienation of power to the International Criminal Court or even to the UN itself.

IV. Application to the International Arena: Rousseau and Kant

The social contract offers an appealing justification of political power, because it reconciles the power of the state with the freedom and equality of each associate. For this reason, some have asked whether the social contract could be generalized beyond relations between the citizens of a single state to relations among states. Rousseau argues that states, like individuals, have an incentive to enter into a contractual relationship when there is "no common and constant rule for judging" the claims made by one against another.[4] Rousseau calls this contract a confederation, in which each party relinquishes any aspiration it may have for conquest in exchange for a guarantee that they will not be attacked by any of the contracting parties: "it is good for [the Powers of Europe] to renounce what they desire in order to secure what they possess." [5]

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For Kant, states are situated toward one another as “moral persons,” who are “living with and in opposition to another state in a condition of natural freedom, which itself is a condition of continual war.”[6] This mirrors almost perfectly the seminal account of the state of nature presented by Hobbes. And, just as reason compels the individuals in Hobbes’ state of nature to form some type of union under a social contract, so too are states incentivized to leave their state of nature and enter into some kind of union of states, which he describes as “a juridical state of affairs, that is, a state of distributive legal justice.”[7] The precise nature of this union of states remained an open question for Kant. The act of contracting then occurs for Kant sequentially, on two occasions: first as a contract among associates instituting sovereign power and the principles by which it may be legitimately exercised, and second as a contract among states instituting an analogous set of principles and an analogous sovereign authority, this time in the form of a “federation of free states.”[8]

Rousseau was ultimately skeptical about the chances of an empirical realization of the confederation he imagined. Kant too acknowledged that states would be reluctant to surrender sovereign power to a world republic, but he was more optimistic that, over the course of time, the persistent application of moral reasoning would ultimately “make the concept of right effective,” as he put it in “Perpetual Peace”[9]

V. Rawls’ The Law of Peoples

In 1971, John Rawls spurred a renewed interest in social contract with the publication of *A Theory of Justice*. He later extended the model developed in *A Theory of Justice* to the international arena in *The Law of Peoples*. Rawls uses a social contract model, which he calls “justice as fairness” in the domestic context and the “law of peoples” in the international arena.[10] Rawls’ account is purely normative and does not have pretense to be an accurate descriptive account of how nations actually engage one another. He describes his argument as “ideal theory” in pursuit of a “realistic utopia.”[11]

In Rawls’ version of the social contract, associates begin from an “original position,” in which they are imagined to reason behind a “veil of ignorance,” meaning that they do not know what their relative social status will be in the society they are hypothetically constituting. The concept of the veil of ignorance gives Rawls an instrument to theorize principles of justice within a context of equality. Having arrived at principles of justice in the domestic context, Rawls goes on to imagine a second-stage original position, whose parties are “representatives of different nations who must choose together the fundamental principles to adjudicate conflicting claims among states.” They know that they represent nations “each living under the normal circumstances of human life”, but they know nothing about the particular circumstances of their own nation, its “power and strength in comparison with other nations.” In this second stage, as in the first, parties to the contract do not have knowledge of their relative status, so as to bracket what Rawls refers to as “the contingencies and biases of historical fate.”[12]

Rawls takes as a condition of the contract that states will adhere in varying degrees to basic principles of justice. “Outlaw states,” as Rawls calls them in *The Law of Peoples*, which do not adhere to the principles of justice domestically, will not be party to the law of peoples. However, Rawls does make provision for states that fall short of the liberal principles articulated in *A Theory of Justice* but that cannot be considered tyrannical or dictatorial regimes. Rawls refers to these societies as “decent” and makes space for their inclusion in the law of peoples on the grounds that an exclusionary law of peoples would not itself honor liberalism’s principle of tolerance for dissenting but reasonable perspectives.

VI. The Question of “Origins”

At the domestic level, social contract theory is perhaps most susceptible to criticism with respect to the question of Origins. Because no living person has ever experienced an initial situation like the state of nature or the original position, there is good reason to be skeptical about the state of nature as a literal account of the origin of sovereign power. This objection, most prominently associated with David Hume, holds that the initial situation of social contract theory can only be sensibly invoked as a hypothetical situation, as a thought experiment that establishes a context within which the parties to an agreement are most likely to act rationally or reasonably.[13] It was in this vein, that Hegel characterized the social contract as following from principle (pure thought), which he distinguished from the

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historical conditions under which the state and its laws developed. How a state was created Hegel maintained, has nothing to do with philosophy.[14]

One of the striking features of the relations between states, as opposed to the relations between associates within a state, is the extent to which they occur in a context that seems to more closely resemble the state of nature metaphor. While, as we will see, the problems associated with social contract theory on the questions of Justice and Legitimacy are only exacerbated by extending social contract theory to the international context, the international context actually has some advantages with respect to the question of Origins in general and to the Humean objection in particular. Prior to the establishment of international laws or treaties, states are situated toward one another in two ways that mirror the Lockean or Hobbesian state of nature. First there is no authority that stands above the parties to any putative treaty or international agreement. Second, the enactment of any such agreement is based on the explicit consent of the relevant parties, not the tacit consent that Locke was forced to have recourse to in response to the problem identified at the beginning of this section, "Every Man, that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doth thereby give his tacit Consent, and is as far forth obliged to Obedience to the Laws of that Government." [15]

VII. The Questions of "Justice" and "Legitimacy"

While the international arena is better suited to social contract theory with respect to the question of Origins, it poses particular challenges with respect to the questions of Justice and Legitimacy. In particular, the international arena violates the basic presupposition of the social contract theory that individuals be as Locke put, "promiscuously born to all the same advantages of nature, and the use of the same faculties, should be equal one amongst another." [16] The social contract's arguments for Justice and Legitimacy presuppose that the parties to the contract will be relatively equally and symmetrically situated with respect to one another. It is this constraint that ensures that the substantive principles that inform the contract will be reasonable, equitable, symmetrical, and so forth. Likewise, it is this constraint that ensures that any authority empowered by virtue of the contract will exercise its authority without favor or prejudice.

This problem is particularly acute at the international level, by consequence of the vast differences between states, especially with respect to their relative wealth and power. However many critics of social contract theory have argued that the problem occurs at the domestic level as well. Particularly noteworthy are those arguing from the feminist perspective (e.g. Carole Pateman's *The Sexual Contract*) or from the perspective of critical race theory (e.g. Charles Mills, *The Racial Contract*). These critics argue that racist or patriarchal assumptions are built into social contract theory's claims with respect to the nature of rationality or the substantive principles of justice.

Earlier critics of social contract, such as Rousseau and Karl Marx raised concerns about the assumptions of equality and reciprocity that give the social contract its appeal. Rousseau originally referred to the social contract as "the rich duping the poor" (though he later articulated his own egalitarian version). Marx describes it as part of the ideology of capitalism, used to legitimize the ongoing exploitation of the working class by the bourgeoisie. Because the assumption of equality is so problematic at the international level, the attempt to apply social contract theory to that arena serves to further illuminate critiques like Rousseau's and Marx's, which emphasize how the morality of the contract is subverted when agents are not equally and symmetrically distributed.[17]

The problem of asymmetry becomes particularly acute at the international level, where there is and, for much of recorded history, has been a tremendous discrepancy in power among parties to any putative law of peoples. Rawls avoids this problem by beginning from an assumption of rough equality between the parties to the second level original position, an assumption which is, of course, highly questionable, particularly in the current geopolitical context, in which one state exerts tremendous power over most, if not all, of the others.

Beyond the problem of inequality, there are other obstacles to using states as proxies for moral persons in the process of enacting an international social contract. Many states, for example, do not adhere to fundamental moral principles with respect to the way they treat their own people. This makes it unlikely that they would reason in accordance with the principles outlined in Section II. If tyrannical regimes treat their citizens shabbily or cannot or will

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not represent all of their citizens equally at home, it is unlikely that they will carry norms of equity and reciprocity into international relations.

Finally, there is the problem of the high degree of interdependence that characterizes, even constitutes, nations long before they enter into discussion about international laws or treaties. When Rawls, for example, imagines the initial situation of nations enter into a negotiation, he makes the assumption that the proposed society of nations will be “a closed system isolated from other societies.”[18] Historical alliances, informal relationships, along with more formal organizations such as the EU, OPEC, and ASEAN, put the lie to the assumption that the nations of the world can be regarded as autonomous agents.

VIII. An Alternative International Social Contract

Just as Rousseau dismissed traditional theories of the social contract only to later propose his own, so too have contemporary philosophers such as Martha Nussbaum, Thomas Pogge, and Charles Beitz introduced a qualitatively different version of the international social contract, one that they believe overcomes some of the problems of that contract, as articulated by Rousseau, Kant, and Rawls.[19]

The fundamental difference in this alternative approach to an international social contract lies in the nature of the parties to the contract. Whereas for Rousseau, Kant, and Rawls, the parties to the international social contract would be states or peoples, for Nussbaum, Pogge, and Beitz, social contract theory makes the most sense at the international level when the parties to the social contract are imagined to be individual human beings. Only when imagined in these terms, these writers argue, will the social contract be construed so as to meet basic liberal principles of justice. On this account, the two-stage model favored by Rawls is replaced with a single original position, in which individual human beings contract to a series of human rights that are not constrained by the contingencies of any particular conception of the state.

This approach overcomes the problem of asymmetry identified above (VI), ensuring that any forward-looking regime of international justice will not reinstitute hierarchies that exist among states in the status quo. The disadvantage of this approach is that it deviates so dramatically from contemporary practices, in which nation-states dominate international politics. Indeed, it is quite possible that this alternative international social contract will require the wholesale reconceptualization of the state and the corresponding consideration of alternative modes of social organization. In spite of these difficulties, however, the social contract persists as political theorists' most viable tool for conceptualizing principles of global justice.

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[1] Jean-Jacques Rousseau, “Perpetual Peace,” in Roger D. Masters and Christopher Kelly ed., *Collected Writings of Rousseau* (Dartmouth College Press, 2005) Vol. 11, pp. 48-9.

[2] Rousseau, *The Social Contract* in *The Collected Writings of Rousseau*, Vol. 4, p. 147.

[3] For Filmer’s argument, see Robert Filmer, *Filmer: “Patriarcha” and Other Writings* (Cambridge University Press, 1991). John Locke’s critique of Filmer’s argument can be found in the *First Treatise on Government* in Locke: *Two Treatises of Government* (Cambridge University Press, 1988).

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[4] Rousseau, "Perpetual Peace," p. 42.

[5] Rousseau, "Perpetual Peace," p. 42.

[6] Immanuel Kant, *The Metaphysics of Morals* (Hackett, 1999) p. 151.

[7] Kant, *Metaphysics of Morals*, p. 115

[8] Kant, "Perpetual Peace," p. 115.

[9] Kant, "Perpetual Peace," p. 133.

[10] John Rawls, *The Law of Peoples* (Harvard University Press, 199) p. 4.

[11] Rawls, *The Law of Peoples*, p. 5.

[12] John Rawls, *A Theory of Justice* (Harvard University Press, 1971) p. 378.

[13] For this argument, see David Hume, "Of the Original Contract," in *Essays: Moral, Political, Literary* (Liberty Fund, 1985)

[14] See especially Part I, section ii of Hegel's *Philosophy of Right*.

[15] John Locke, *The Second Treatise of Government in Two Treatises of Government* (Cambridge University Press, 1988) p. 348. *Italics in original.*

[16] Locke, *Second Treatise*, p. 269

[17] Rousseau refers to the traditional social contract as an instrument by which those with power "gave the weak new fetters and the rich new forces." Rousseau: *The Discourses and Other Early Political Writings* (Cambridge University Press, p. 173). Marx develops a critique of contractarianism across the breadth of his works, beginning in "On the Jewish Question," where he argues that it presupposes a capitalist model of social intercourse.

[18] Rawls, *The Law of Peoples*, p. 8.

[19] Charles R. Beitz, *Political Theory and International Relations* (Princeton University Press, 1979); Thomas Pogge, *Realizing Rawls* (Cornell University Press, 1989); Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press, 2007).

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