

Defining social contrary theory and its application

Law



**ASSIGN
BUSTER**

The primary aim of this study is to explore the meaning of the term 'social contract theory', while the secondary aim is to discuss the different approaches to the relationship between 'rights' and 'duties'.

In order to understand what social contract theory means, first the term 'state of nature' needs to be examined, and then the idea of 'social contract'. The origins of the state was a basic question of the problem of social contract theorists such as Hobbes, Rousseau, and Locke. Social contract theories presuppose an anarchic origin of the state. According to them, once upon a time man lived without authority, in a natural state. In this state, man was, supposedly, self-sufficient and thus autonomous. For Hobbes and to a lesser extent Rousseau the absence of State relations reduced people to the law of the jungle. Indeed, the rule of law could not exist in a state of nature. (Friend n. d.)

According to Friend, the idea of the social contract goes back to early Greek philosophers including Socrates and it was developed in different ways by Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and Immanuel Kant. It means that we have obligations as members of a society, and that by accepting these obligations we receive certain rights in return. Social contract theory postulates, basically, that everyone in the state of nature is the absolute ruler of his own person and whatever he can secure. However, in order to avoid insecurity and protect each other, people chose to abandon their natural right to war in order together to form a society based on a contract - either a mutual contract or with a ruler, depending on the theory. (Friend n. d.) The force of attraction of the theory of the social contract is its affirmation of a principle of government by consent. Another strength of <https://assignbuster.com/defining-social-contrary-theory-and-its-application/>

social contract theory is the idea of the right to resistance, derived from the principle of consent, which is found briefly and implicitly in Hobbes but openly in Locke. The social contract is thus based on the idea that individuals have fundamental rights and that these rights are fungible. The body politic is formed, according to this theory, by alienation of freedoms in an absolute state of nature. Thus, the theory of the social contract is a logical consequence of the idea of natural rights. The government is formed from the consent of the governed - and so the people should have the right to dissolve the government they formed. (Rachels 2011)

As previously mentioned above the social contract prescribes the legal rights of individuals and the powers of government, and the social contract also includes certain duties. It is important to note that although individuals have a right of self-defence in the state of nature, when they enter into society under the social contract, the pooling of that right transforms it into a duty to defend the community, and therefore to risk or sacrifice one's life, liberty, or property if such defence should require it. The right of self-defence is no longer supreme, although it survives the transition to society as a duty to defend oneself as part of the community. (Hampton 1986)

The intent of the following section is to discuss the different theorists' approaches to the relationship between 'rights' and 'duties'.

Social contract theory is rightly associated with modern moral and political theory and is given its first full exposition and defence by Thomas Hobbes. After Hobbes, John Locke and Jean-Jacques Rousseau are the best known proponents of this theory, which has been one of the most dominant theories

within moral and political theory throughout the history. As a result of the political changes during the eighteenth century, there were major social changes as well. The Enlightenment changed the way people lived as political and social scholars began to question the workings of society and government, while rejecting traditional ideas. (Rachels 2011) The Enlightenment attempted to explain the purpose of government, and describe the best form of it. Thomas Hobbes, lived during the most crucial period of modern England's history, caused great controversy with the release of his provocative treatise *Leviathan* (1651). Hobbes' work originates the modern social contract theory, which incorporates Enlightenment conceptions of the relation of the individual to the state. Taking a sociological perspective, Hobbes felt that by nature, people were self-serving and preoccupied with the gathering of a limited number of resources. To keep balance, Hobbes continued, it was essential to have a single intimidating ruler. (Hampton 1986)

He stated that life would be a state of constant warfare without a strong government to control man's natural impulses. He believed people would enter into a social contract to escape from this. In the social contract, people would exchange most of their freedoms for the safety of organised society. Once people entered into this contract, there was no release. Hobbes did not believe in revolutions, and supported the idea of absolute monarchs. (Kavka 1986) Hobbes promoted that monarchy is the best form of government and the only one that can guarantee peace. In some of his early works, he only says that there must be a supreme sovereign power of some kind in society, without stating definitively which sort of sovereign power is best. In

Leviathan, however, Hobbes unequivocally argues that absolutist monarchy is the only right form of government. In general, Hobbes seeks to define the rational bases upon which a civil society could be constructed that would not be subject to destruction from within. Accordingly, he delineates how best to minimise discord, disagreement, and factionalism within society—whether between state and church, between rival governments, or between different contending philosophies. Hobbes believes that any such conflict leads to civil war. He holds that any form of ordered government is preferable to civil war. Thus he advocates that all members of society submit to one absolute, central authority for the sake of maintaining the common peace. In Hobbes's system, obedience to the sovereign is directly tied to peace in all realms. The sovereign is empowered to run the government, to determine all laws, to be in charge of the church, to determine first principles, and to adjudicate in philosophical disputes. (Hampton 1986)

Hobbes believed that in a natural state, moral ideas do not exist. He defines good simply as that which people desire and evil as that which they avoid, at least in the state of nature. Hobbes uses these definitions as bases for explaining a variety of emotions and behaviours. For example, hope is the prospect of attaining some apparent good, whereas fear is the recognition that some apparent good may not be attainable. (Friend n. d.) Hobbes admits, however, that this definition is only tenable as long as we consider men outside of the constraints of law and society. In the state of nature, when the only sense of good and evil derives from individuals' appetites and desires, general rules about whether actions are good or evil do not exist. Hobbes believes that moral judgments about good and evil cannot exist until

they are decreed by a society's central authority. This position leads directly to Hobbes's belief in an autocratic and absolutist form of government.

(Rogers and Ryan eds. 1991)

The idea of a social contract had existed since at the least the Renaissance, but previous versions claimed that there was a binding contract between rulers and the ruled. Other versions of the social contract viewed the contract as being between the people, but still asserted that they were obligated to obey their government. This theory provided the foundation of enlightened despotism, in which the king was sovereign and ruled in the best interests of the people. (Friend n. d.)

A half century later, John Locke came into the picture, promoting the opposite type of government—a representative government—in his *Two Treatises of Government* (1690). His conception of the social contract differed from Hobbes' in several fundamental way.

According to him, man lived in the State of Nature. However, 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. 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 pre-moral. (Friend n. d) 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 statue 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. However, man in the State of Nature felt the need to protect their property and for the purpose of protection of their property, men entered into the " Social Contract". 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. 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. (Rachels 2011)

Jean-Jacques Rousseau's political theory, as presented in his *On the Social Contract* (1762), presents a contrast to the Lockean liberal model. Rousseau argues that direct democracy is the only form of government in which human freedom can be realised. Human freedom, according to Rousseau's

interpretation, is possible only through governance according to what he calls “ the general will,” which is formed through the original contract, concretely determined in an assembly in which all citizens participate. (Wraight 2008) The contract consists in the self-alienation by each associate of all rights and possessions to the body politic. Because each alienates all, each is an equal member of the body politic, and the terms and conditions are the same for all. The emergence of factions is avoided insofar as the good of each citizen is, and is understood to be, equally (because wholly) dependent on the general will. (Friend n. d) Legislation supports this identification with the general will by preserving the original equality established in the contract, prominently through maintaining a measure of economic equality. The (ideal) relation of the individual citizen to the state is quite different on Rousseau’s account than on Locke’s; in Rousseau’s account, the individual must be actively engaged in political life in order to maintain the identification of his supremely authoritative will with the general will, whereas in Locke the emphasis is on the limits of governmental authority with respect to the expressions of the individual will. Though Locke’s liberal model is more representative of the Enlightenment in general, Rousseau’s political theory, which in some respects presents a revived classical model modified within the context of Enlightenment values, in effect poses many of the enduring questions regarding the meaning and interpretation of political freedom and equality within the modern state. (The Social Contract 2008)

To conclude, Rachels suggests that one strength of the social contract theory is that it gives us a plausible answer to the question “ Why should we obey

moral rules?": we should obey them because doing so is beneficial to us, since they facilitate harmonious social living. He also suggests that the theory provides a plausible answer to the question " Which moral rules should we accept?" The answer is that we should accept those rules which facilitate harmonious social living. Rules prohibiting murder, assault, rape, and theft, for example, clearly do so (on the other hand, Rachels believes that rules prohibiting prostitution and sexual promiscuity are not supported by the social contract theory). Social contract theory is the only theory of the origin of the state which identifies states as originating not in families. the social contract is an expression of the idea of government by consent consequent to the recognition of individual rights and the rule of law. The social contract recognises and affirms the value of the individual. (Rachels 2011)