

Part VII

Social Contract Theories

Chapter 18

Social Contract

18.1 Homework

Readings – EMP 10, RTD 6

- Study Questions**
1. What would be our lives in a “state of nature” according to Hobbes?
 2. What are the four basic facts about the conditions of human life which make the life in a state of nature dreadful?
 3. Why is it necessary to establish a government in order to escape the state of nature?
 4. What is morality according to the Social Contract Theories?
 5. How does a Prisoner’s Dilemma situation provide justification for social contracts?
 6. What are the four advantages of Social Contract Theories according to Rachels?
 7. Under what conditions is civil disobedience justified on a social contract theory?
 8. Among the ones discussed by Rachels, which is the most important difficulty of the Social Contract Theory according to you?

18.2 Introduction

According to Kant, morality consists in the set of rules on which reasonable, free people would agree on if they all set aside their prejudices and special interests in order to live together in an harmonious and mutually respectful way.

This leads us to the idea of a Social Contract, which is a foundation of morality and justifies the legitimacy of government: rational people agree on certain rules, and commit to respect these rules. The authority of a government is limited to what the citizens agree upon.

Historically, the social contract theories provided a modern foundation for morality and government. With modernity, the idea of a natural and divine-ordained hierarchy within the

society was not acceptable anymore. All people being free and equal, the government needed a new form of legitimacy. One can say that our modern western democracies originate in the social contract theories.

Kant's view of the social contract is probably the most tenable, especially in the contemporary version of John Rawls. That said, the idea was born well before Kant. It originates in Hobbes' philosophy. Hobbes was much less optimistic about the human nature than Kant was. Hobbes did not believe rational beings were bound to discover the moral law within themselves. Instead, Hobbes saw human beings as solely driven by their self-interest. We have already seen (See chapter on Egoism) that the idea that humans are solely driven by their self interest is doomed to failure. That said, what is interesting is that Hobbes managed to show that *we can ground morality on self-interest*. For Hobbes, *Morality can be seen as the set of rules on which rational self-interest people would agree on in order to promote their self interest*. Let's see this in more detail.

The questions you want to think about for this chapter:

1. Can we see the rules of morality as the rules on which we all implicitly agree to comply with?
2. Which conditions do you think would justify that you break the laws of your country?

18.3 From the State of Nature to the Social Contract

Hobbes begin with imagining what it would be to live in a "state of nature", that is, without rules or government.

The state of nature is a state of war :

"Hereby it is manifest, that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war, as is of every man, against every man." (RTD p.58)

→ *In a state of nature, we would be constantly on our guards, ready to fight.*

Why a state of war? – Four basic facts about humanity:

1. Equality of need – we all need the same basic things
2. Scarcity of resources – there is not enough of these basic things
3. Equality of power – whatever minor inequalities, the stronger is never strong enough to be beyond fear of others
4. Self-interest – at the end of the day, nobody is willing to sacrifice himself for nothing

Illustrations – That the state of nature is not mere fictions is shown through observation:

- civil war
- international relationships
- normal life: you lock your door, secure your goods (RTD. 59)

Why is a state of war a bad thing? – In a state of war, our life is far from pleasant:

“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, (...); no knowledge of the face of the earth, no account of time; no arts; no letter; 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.” (RTD p.58)

→ *Because were too busy protecting ourselves, we cannot start any kind of fulfilling life*

The social contract comes as a way out of the state of war:

As rational beings, we must come to the conclusion that we would be better off in a cooperative society. Here are the foundations of such a society:

No right and wrong outside the law – by themselves, human’s desires are neither right and wrong. Right and wrong make sense only within a contract.

Inalienable right of nature – the right to protect one’s own life

Consequence: man has a right on all things, when it comes to defend his life.

First law of nature – that man is forbidden to do whatever is destructive to his life
What does follow from this?

→ A general rule of reason is “that every man, ought to endeavour peace, as far as he has hope of obtaining it, and when he cannot obtain it, that he may seek, and use, all helps, and advantages of war. ”

Which are the conditions in which we can obtain peace, while still remaining consistent with our fundamental rights?

Second law of nature – “that a man be willing, when others are so too, as far-forth, as for peace, and defense 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”

→ *This is a principle of reciprocity when giving up on our liberties, with the fundamental right to protect one’s life as the absolute limit.*

Conclusion: Two essential requirements for social living :

1. People should not harm each other
2. People should keep their agreements

—→ *These are the minimal rules for social living: the first is the assurance that the right of nature will be secured – the second is the foundation of any contract of course !*

Establishment of government is necessary :

The government is an abstract, external entity which is defined as possessing the liberties that the citizen have given up. Provided with these liberties, the government is the only one entitled to implement the rules and so ensure that the citizen are secure and trustworthy.

Conclusion :

Definition 27 – Social Contract Theories

Social Contract Theories are theories of the foundation of morality and of the legitimacy of political authority:

1. *According to social contract theories, morality consists in the set of rules that rational, self-interested people will accept as necessary conditions of social living and under the condition that others accept them as well*
2. *Implementing these rules involves giving up some of one's liberties to a common power – the government. One abandon just as much power to the others as one gets from the others. One never can abandon the right to protect one's life.*

We have seen which reasoning is at the foundation of Social Contract Theories: basically, the best rational strategy to satisfy our own interests is to agree on certain rules so that we live in a secured and cooperative society.

Is it true through? Wouldn't we be better off taking advantage of the others? Considering the prisoner's dilemma is one way to see that not.

18.4 The Prisoner's dilemma

History – Merrill M. Flood and Melvin Dresner – 1950

- Game theory: modelization of rational behaviors in particular strategic situations
- Used in sociology, psychology etc.

The conditions :

- 2 prisoners : Jones and Smith
- Separate cells

- No communication possible
- the rules: the numbers are for years in prison

Change from Rachels: the option is not to confess or not, but to testify against the other or not.

	Jones testifies	Jones does not
Smith testifies	5 / 5	10 / 0
Smith does not	0 / 10	1 / 1

The dilemma stems from the fact that:

The rational answer for each is to defect –

From the self interest point of view, and without knowing what the other will do, *your best interest is to testify against the other guy.* Indeed:

1. 2 options: either Jones testifies against you, or he does not
2. If he does :
 - if you testify you get 5 years,
 - if you don't you get 10
 Hence: better to testifies against him
3. If he does not:
 - if you testify, you're set free
 - if you don't, you get 5
 Hence: here again, you're better testifying against him

→ *If you follow a rational, self-interested reasoning, you are going to testify.*

The best answer for both would be to cooperate –

- The result from above is that both testify – Jones is able to make the same reasoning as you did !
- So, you both testify against each other, and you get 5 years each
- But you would have been better off in cooperating with each other, refuse to testify against each other, and get 1 year each instead!
- For this though, you would have needed an agreement !

Conclusion : The prisoner's dilemma modelizes a social situation and the possible strategies associated. The upshot is that *while cooperation is not the first best choice to satisfy your best interest, it is the best choice in cases of inter-related interests.*

“Cooperating will not get either of you the optimum result – immediate freedom – but it will get both of you a better result than you would get without cooperating.” (Rachels, EMP p. 147)

→ *The prisoner's dilemma shows that, despite the appearances, cooperation is the best choice to serve your own interests in many social situations, and thus provides a justification for social contracts.*

18.5 Advantages of Social Contract Theories

Social Contract Theories are attractive for the following reasons:

1. Foundation of moral behavior : Social Contract Theories give us an answer as to why it is reasonable for us to follow moral rules.

1. We have agreed to follow the rules because they are in our self-interest – it is rational for us to *desire* to follow the rules.
2. Within the social contract, we are bound to actually follow the rules because we have agreed to do it (under the condition that other will follow them as well)
3. Within the social contract, we will actually follow the rules because we have given up some of our liberties to the common power, which will enforce the rules, that is, punish anyone who does not comply with them.

→ *Social Contract Theories offer a natural way to explain why we follow the rules of morality.*

2. Bounds on morality – private vs public life :

- Social contract theories tell us that morality is just the set of rules which facilitates harmonious social living.
- This implies that *anything which has no impact on social living falls outside of morality.*
- Thus, while murder or promise breaking are clearly forbidden, your private sexual life, for example, is not.

→ *Social Contract Theories offer a natural way to put bounds on morality.*

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3. Bounds on morality – when is it justified to break the rules? :

- We have seen that Social Contract Theories offer the reasons why we follow moral rules.

- Conversely, if the conditions justifying that we follow the rules are not satisfied, then there is no justification to follow the rules anymore.

- Specifically, the contract applies only in so far as the others comply with the rules as well.

→ *Social Contract Theories offer a natural way to explain why you are not bound to follow the rules anymore if the others don't honor the contract.*

4. **Bounds on morality – no moral favors required** : Social Contract Theories do not require moral heroism

Remember that one of the problems of utilitarianism is that it seemed to conflate the notions of moral favors and of moral requirement. It seems that Social Contract Theories fare better on this:

1. Our most fundamental right (the right of nature) is to protect our own lives
2. Self-sacrifice is in contradiction with the right of nature
3. No contract (and hence no morality) can require self-sacrifice from anybody.

This is what Hobbes says here:

And therefore there are some rights, which no man can be understood by any words, or other signs to have abandoned, or transferred. As first a man cannot lay down the right of resisting them, that assault him by force, to take away his life; because he cannot be understood to aim thereby, at any good to himself. (RTD p.62)

→ *Social Contract Theories offer a natural way to explain why you are never morally obligated to sacrifice yourself for the sake of the general welfare.*

→ *In sum, Social Contract Theories are attractive because they restrict the scope of morality to these rules that self-interested people could agree on. In doing so, it leaves room for personal development, privacy, and self-preservation.*

18.6 The problem of Civil Disobedience

Following the above, Social Contract Theories (SCT) seem to justify some forms of civil disobedience.

What is civil disobedience? – The classical definition of civil disobedience goes along the following lines (see for example John Rawls, *A Theory of Justice*, 1971:

Definition 28 – *Civil Disobedience*

Civil disobedience consists in a public, non-violent, and conscientious breach of the law undertaken as a last resort in order to bring about a change in the law.

Examples: Gandhi in India, Martin Luther King in the US publicly and peacefully broke the law with the avowed aim to bring about a change in the law.

So, you need to understand that one is *not* performing civil disobedience when:

- one breaks the law without being aware of it
- one breaks the law violently (terrorism)
- one breaks the law for his own personal interest (theft, murder etc.)
- one breaks the law without making it public (hide some of your revenue in order to pay less taxes)

Why is civil disobedience problematic? – the problem is simple:

1. We are morally bound to follow the laws
2. Civil disobedience consists in breaking these laws
3. So: civil disobedience seems morally wrong
→ *is breaking the laws ever legitimate?*

How can civil disobedience be justified :

Social contract theories help make sense of the legitimacy of civil disobedience:

1. We are bound to follow the laws because we have agreed on them on the basis that they are in our interest, provided that everybody involved is bound by the same laws
2. If the rights associated with the contract are denied to you, then there is no reasons to follow the law any more
3. So: If the rights associated with the contract are denied to you, then civil disobedience is legitimate

The conditions of legitimacy : in the common theory of civil disobedience, the conditions under which civil disobedience is justified are:

1. To proceed through the right mode of action:
 - CV. comes as a last resort: all legal means must have been tried
 - CV is non-violent
 - CV is public
 - The offender must be ready to accept the punishment
2. To have the right motivations
 - a well-founded cause
 - to change specific parts of the law

Some open questions : One can understand the restrictions (publicity, non-violence put on the possible legitimacy of civil disobedience. That said, these seem to be applicable only in a regime where it is conceivable to achieve anything this way.

What about tyrannies? Do you think a non-public and maybe violent civil disobedience can be legitimate? Think about the resistance during WWII in France for example.

Again, it would seem that social contract theories leaves room for such legitimacy: we are bound to obey only these rules that we agreed on and that everybody has also agreed to follow.

→ *Social Contract Theories give us a natural way to limit our moral bindings to the law and government.*

18.7 Difficulties faced by Social Contract Theories

1. Assumption that people are fundamentally egoists – we have seen that this is at best an incomplete view of human psychology in the chapter on Egoism

→ Possible refinement of the theory (Kant, Rawls): *impartial agents* instead of self-interested

2. I did not sign any contract! – Even if there was a contract agreed upon between people, their children are not bound by it

→ Not really a legitimate criticism: the idea is *not* that we have signed an actual contract, but that the society functions under *an implicit contract*. The rules of social living are these rules on which self-interested (or impartial in the case of Kant and Rawls) people would agree on. This is what constitutes the rational foundation of the rules.

3. No moral responsibilities toward non-contractors – this is *one of the most important problem*, and it applies to all social contract theories (Hobbes or Kant).

Social Contract Theories suggest that we don't have any moral responsibilities towards: animals, infants, mentally impaired etc., because:

1. Moral responsibility is restricted to contractors
2. Non-rational beings cannot be contractors
3. SO : we do not have any moral responsibilities toward non-rational beings

As Rachels puts it:

Since [non-human animals, infants and the mentally impaired] cannot participate in the agreements that, according to the theory, give rise to moral obligations, they are outside the realm of moral consideration. Yet we do have moral obligations towards them. Moreover, our obligations towards

them are often based on exactly the same reasons as our obligations toward normal humans – the primary reason we should not torture normal adults, for example, is because it causes them terrible pain; and this is exactly the same reason we should not torture babies or the mentally impaired. The Social Contract Theory can explain our duty in the one case but not the other. (EMP p. 159)

—→ *Despite all their advantages, Social Contract Theories cannot be the whole story about morality. It does not give us an acceptable foundation of morality, for it leaves out a great deal of morality.*

18.8 Conclusion

In conclusion, I would suggest that:

As theories of the foundation and content of morality , Social Contract Theories are deficient.

We have here the same fundamental problem as in Kant, that is, the idea that morality is solely an affair of rational behavior between rational agents. This seems to be at best incomplete. The ethics of care and virtue will give a complement to this narrow view.

As theories of the legitimacy of political authority , Social Contract Theories are very interesting.

- Bounds on the content of the law
- Bounds on our obligation to follow the law.

—→ *Social Contract Theories can be seen as giving some important foundation to modern democracy.*