

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness—That to secure these rights, Governments are instituted among Men, **deriving their just powers from the consent of the governed.**

- Thomas Jefferson, *Declaration of Independence* (1776)

Social Contract Theory

1. The Social Contract: Here is something that would legitimize a ruler's authority: CONSENT. For instance, if we AGREED to obey a ruler's laws, and pay taxes to them (e.g., by freely entering into some CONTRACT with them), then it would be just for them to enforce those laws and taxes. This is just to say that when people make agreements with or promises to one another, obligations arise. However, IS there such a contract?

An agreement or contract can be made in 1 of 2 ways: Explicitly or implicitly.

Explicit agreement: This occurs when you explicitly communicate that you agree to something. For instance, if you say, "I will give you \$5 for a hamburger", and they bring you one, you have explicitly agreed to pay that amount for it.

Implicit agreement: This occurs when your actions or inaction implies that you agree to something. For instance, if you ask a server at a restaurant to bring you a hamburger, it says "\$5" on the menu, and they bring you one, you have implicitly agreed to pay that amount for it.

Have we either explicitly or implicitly agreed to be ruled by our government?

2. Objections: 18th c. philosopher David Hume argued that no such agreement exists.

1. Explicit consent: Many rulers, he pointed out, rule by force, or by succession, not by contract. Furthermore, the citizens born under government simply accept their fate of being ruled. They are unaware of having made any agreement with the ruler, so their consent is not explicit. Put simply, there is NO government that is founded upon any contract or agreement which all those who are ruled by it have explicitly agreed to. While it is true that, perhaps, long ago some people explicitly agreed to let one person (or a few) rule them, such contracts are long forgotten, and none exist today.

Have YOU explicitly consented to be governed? Probably not.

(Though, if you've recited this in school, perhaps you have?)

I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

Surely, though, there is not explicit consent of ALL the governed. But, perhaps there is IMPLICIT consent?

2. Implicit consent via residence: Perhaps we have agreed to our government's rule by our actions? One proposal is that, just by continuing to live here, we implicitly consent to being governed by the local rulers.¹ In other words, if you don't consent to local government, why don't you just go somewhere else?

Consider three cases:

- (1) Your friend asks "Would you like a ride to campus?" You reply, "Yes", and intentionally get into her car. You are EXPLICITLY consenting to riding in the car.
- (2) You are sitting in your friend's car. She says, "I'm going to drive to campus now." You say nothing, do not exit the car, but simply buckle your seatbelt. You are IMPLICITLY consenting to riding in the car.
- (3) You wake up in your friend's car, which is moving down the interstate at 80 miles per hour. Your friend says, "Feel free to get out, but I'm not slowing down." If you jump out of the car, however, you will die.

Is there implicit consent in scenario (3)? It doesn't seem so. This is because **consent requires a reasonable way of opting out.** (*This is why contracts signed at gunpoint are invalid.*) But this is the state of most of the governed. It is nearly impossible for most people to immigrate to another country without significant sacrifice to themselves. And ALL places have governments. There is no way to escape being governed, unless you move to Antarctica or a raft in the middle of the ocean (which is implausible). How can consent to governance exist when there is no feasible way of leaving the country, or no existing government that you want to be governed by? As David Hume put it,

"Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives, from day to day, by the small wages which he acquires? We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean and perish, the moment he leaves her."

3. Implicit consent via acceptance of services: Perhaps we implicitly consent to being governed because we accept the services provided by the government. For instance, here are just a few of the services that the government provides:

¹ Philosopher John Locke seems to have thought that residence binds you to a government PARTIALLY, but not wholly. For instance, if I travel to China, I must pay its sales taxes if I buy something; and I cannot just start stabbing people and expect not to be punished by their authorities. However, he indicates that only EXPLICIT consent makes one a true member of a commonwealth, with full obligations to it.

Government Goods & Services

- military protection
- police protection
- public schools
- judicial system
- road systems
- post offices
- national currency
- drinking water
- trash disposal
- recreation (parks, etc.)
- libraries
- health inspections/safety regulations

Can you think of others? How many of these services have you benefitted from or used? Does your use of these services imply consent to be governed? ^{2, 3}

Excludable vs. non-excludable goods: We should make a distinction here. Some goods are excludable (i.e., can be offered to some, but not others). Other goods are not. Military and police protection are examples of NON-excludable goods—the military cannot reasonably protect ONLY the taxpayers from foreign invasion, for instance.

Other goods ARE excludable (e.g., school systems, health care, subsidies, etc.), because they can be provided to some but not others.

Does accepting either of these sorts of goods give rise to a valid contract?

Objection: Huemer ultimately says that valid consent requires ALL of the following:

- (1) **There is a reasonable way to opt out.**
(e.g., in this case, there are reasonable alternatives to the services provided)
- (2) **If one explicitly dissents, then they do not enter into the contract.**
- (3) **The contract is conditional and mutual; i.e., if one party does not hold up their end of the bargain, then the other party is not obligated. E.g.,**
 - (a) If you do not use the services, then you do not have to pay for them.
 - (b) If you do not pay, then the state will not provide the services to you.

Clearly, **there is no reasonable way to opt out of receiving the non-excludable goods**, simply because there is no way to opt out AT ALL. So, acceptance of non-excludable goods does not seem to create a valid contract.

² John Locke said that we ARE obligated to a government if we accept services from that government, or use its land, etc. BUT, at any time, we may give up those services and no longer be a subject of that government (unless we have explicitly consented to becoming a member of that commonwealth).

³ In addition to acceptance of services obligating us to pay into a system because it implies that we have AGREED to do so (contract theory), it may also generate an obligation to pay for another reason: Namely, it is only FAIR that we pay for services rendered (fair play theory). Otherwise, we are free-riders.

But, what about acceptance of EXCLUDABLE goods? None of these conditions are met for excludable goods either!

- (1) Avoiding the use of roads, currency, public water, etc., is not a reasonable option.
- (2) Explicit dissenters (e.g., anarchists) are not released from the contract. They are still required to pay taxes and obey laws under the threat of violence if they do not.
- (3a) We must still pay taxes and be subject to the legal system, etc., even if we have never used any of the government's services (you do not get a tax break if you avoid public parks, or send your kids to private schools, for instance).
- (3b) Tax evaders and criminals still use many of the services (e.g., the government does not pull your children out of public school if they find out you evaded taxes).

So, Huemer says, given that there are not adequate alternatives to many of the government's services, and the fact that the government does not seem to link our political obligations to our use of them, there is no valid implicit contract between the state and its citizens (unless we have explicitly made one). [*Do you agree?*]

3. Hypothetical Consent?: Perhaps our consent is neither explicit nor implicit, but merely *hypothetical*. That is, IF asked whether or not we want to be ruled by our government, we WOULD consent to this. (This is, for instance, why it is supposedly permissible for paramedics to resuscitate a flat-lined patient—for, if they COULD be asked, they WOULD consent to being resuscitated.)

DO we hypothetically consent to the government's authority? And if we do, does this make the government's authority over us LEGITIMATE?

Objections: Yet, some people clearly do NOT hypothetically consent—namely because they have explicitly DISSENTED (i.e., stated explicitly that they do NOT consent to the government's rule over them).

A valid contract must provide a viable way to opt out. (For instance, in the paramedic example, patients can obtain a "do not resuscitate" (DNR) order, expressing explicit dissent to being resuscitated.) Is this available to us? It doesn't seem so. If someone in the U.S. says, "I am opting out of my contract with the U.S. government," they will still be obligated to pay taxes, be subject to legal jurisdiction, etc.

Second, hypothetical consent is only appealed to in cases where the person is incapable of consenting in the usual way; for instance, because they are unconscious, incoherent, or too young to understand. (Parents are granted authority to make decisions on behalf of their children based on their determination of what their child hypothetically WOULD want if they could fully understand.) But, now consider: Are WE the American people unconscious, or incapable of being asked whether we consent to our government's rule?