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The Traditional Social Contract Theory

2.1 The social contract orthodoxy

The social contract theory is the most prominent account of authority in the last 400 years of philosophy and has as good a claim as any to being America's theory of authority. The theory holds that, at least in some countries, there is a contractual relationship between the government and its citizens. The contract requires the government to provide certain services for the population, notably protection from private criminals and hostile foreign governments. In return, citizens agree to pay their taxes and obey the laws.¹ Some views of the social contract assign the government a larger role, perhaps including providing for the basic needs of indigent citizens, ensuring an equitable distribution of material resources, and so on.² Whatever a particular theorist takes to be the state's legitimate functions, the theorist will argue that the social contract both authorizes and obligates the state to perform those functions.

Under the terms of the traditional social contract theory, then, political obligation is a species of contractual obligation: citizens must obey the law because they have agreed to do so. The social contract would also account for political legitimacy straightforwardly. If a person agrees to be subjected to a particular form of coercion, then, as a rule, that coercion will not be wrong and will not violate his rights. For example, it is normally wrong to cut a person with a knife.

¹ Locke 1980. Hobbes, however, claims that the state owes nothing to the citizens because the state is not a party to the contract; instead, he takes the social contract as an agreement among citizens (1996, 122).

² Rawls 1999; Gauthier 1986.

But if you have hired a doctor to perform surgery on you, then it is not wrong and not a violation of your rights for him to cut you in the performance of that surgery. In the same vein, if citizens have agreed to pay the government for its services and have agreed to be subjected to coercion if they fail to pay, then it is permissible for the government to force its citizens to pay.³

2.2 The explicit social contract theory

Is there a social contract? At first glance the theory exhibits an impudent disregard for reality: no one has ever been presented with a contract describing how the government operates and asked for a signature. Few have ever been in a situation in which a verbal or a written statement of agreement to have a government would have been appropriate, let alone have actually made such a statement. When do the social contract theorists think this event happened?

John Locke believed that there was (in the case of at least some governments) an actual, explicit agreement made at the time the government was founded.⁴ Little evidence remains of these events, Locke explained, because people in those times kept few records. He cites Rome and Venice as examples of cases in which a society was founded with an explicit social contract.

But even if there was an original social contract, how could this contract bind people born much later, who never participated in the original agreement and were never asked for their consent? Locke believed that it worked through a perpetual restrictive covenant on the land: the original contractors committed all their possessions, including their land, to the jurisdiction of the government that they were creating, so that any person to ever use that land in the future would be required to submit to that government.⁵

Despite the cleverness of this last maneuver, the entire theory is sheer mythology, and its interest today is mainly as a bit of history and as a foil for more plausible theories. David Hume painted the more realistic picture of human history, when he observed that nearly all

³ An interesting question remains as to whether citizens might later withdraw their consent, as one may typically withdraw consent to other forms of coercion. This raises problems additional to those I discuss below in the text.

⁴ Locke 1980, sections 100–4.

⁵ Locke 1980, sections 116–17, 120–1.

governments are founded on usurpation or conquest.⁶ That is, at some time in the history of any presently existing nation, either the government was forcibly taken over by a person who lacked the right to do so, as in a coup d'état, or the government (or its citizens or future citizens) seized the land it presently controls from the original inhabitants by force. Either of these events would invalidate the state's authority, on a Lockean view.

In the case of the United States and its government, for instance, the history is one of conquest. The present territory of the United States was stolen from the Native Americans and then placed under the control of the U.S. government. On a Lockean view, this history renders the U.S. government's control over the land illegitimate.

As I have said, this theory is chiefly of historical interest today; no prominent contemporary theorist endorses the explicit social contract theory. The next version of social contract theory is designed to avoid these problems.

2.3 The implicit social contract theory

Explicit consent is consent that one indicates by stating, either verbally or in writing, that one consents. By contrast, *implicit* consent is consent that one indicates through one's conduct, without actually stating one's agreement. If citizens have not embraced a social contract explicitly, perhaps they have embraced it implicitly.

How can one indicate agreement without stating agreement? In some situations, one expresses agreement to a proposal simply by refraining from opposing it. I call this 'passive consent'. Suppose you are in a board meeting, where the chairman says, 'Next week's meeting will be moved to Tuesday at ten o'clock. Any objections?' He pauses, and no one says anything. 'Good, it's agreed', the chairman concludes.⁷ In this situation, it is plausible that their failure to express dissent when invited to do so indicates that the board members consent to the change.

In other cases, one commits oneself to accepting certain demands by soliciting or voluntarily accepting benefits to which those demands are known to be attached. I call this 'consent through acceptance of benefits'. For example, suppose you enter a restaurant and order a nice, tasty veggie wrap. After you eat the wrap, the waitress brings the check. 'What's this?' you say. 'I never said I was going to *pay* for any of this. If

⁶ Hume 1987, 471.

⁷ This example is from Simmons (1979, 79–80).

you wanted payment, you should have said so at the start. I'm sorry, but I don't owe you anything.' In this case, the restaurant could plausibly argue that, by ordering the food, you implicitly indicated agreement with the usual demand connected with the provision of that food: namely, payment of the price mentioned on the menu. Because it is well known in this society (and presumably known to you) that restaurants are generally only willing to provide food in order to get paid, it was *your* responsibility, if you wanted free food, to state this up front. Otherwise, the default assumption is that you agree to participate in the normal practice. For that reason, you would be obligated to pay for your meal, notwithstanding your protestations to the contrary.

A third form of implicit consent is what I call 'consent through presence', whereby one indicates agreement to a proposal merely by remaining in some location. While having a party at my house, I announce, loudly and clearly to everyone present, that anyone who wants to stay at my party must agree to help clean up afterwards. After hearing my announcement, you carry on partying. In so doing, you imply that you agree to help clean up at the end.

Finally, sometimes one implicitly consents to the rules governing a practice by voluntarily participating in the practice. I call this 'consent through participation'. Suppose that, during one of my philosophy classes, I tell the students that I am going to run a voluntary class lottery. 'Those who want to participate', I explain, 'will put their names into this hat. I will draw one name out at random. Each of the other participants will then pay \$1 to the person whose name is drawn.' Suppose that you put your name into my hat. When the winner's name is drawn, you discover, alas, that the winner was not you. I come to collect \$1 from you to give to the winning student. 'I don't owe you anything', you insist. 'I never *said* that I agreed to pay a dollar. All I did was drop my name into your hat. Maybe I was dropping it in just because I like putting my name into hats.' In this situation, it seems that you are obligated to hand over the dollar. Your voluntary participation in the process, when it was well known how the scheme was supposed to work, implied that you agreed to accept the possible financial burden associated with my lottery scheme.

Each of these four kinds of implicit consent – passive consent, consent through acceptance of benefits, consent through presence, and consent through participation – might be used as a model for citizens' implicit acceptance of the social contract. To begin with, perhaps citizens typically consent to the social contract merely by refraining from objecting to it (passive consent). Just as few if any of us have

ever explicitly stated that we accept the social contract, few have ever stated that we do *not* accept it. (The exceptions are anarchists who have explicitly stated their rejection of government.)

Consent through acceptance of benefits would also confer a nearly universal authority. Nearly everyone has accepted at least some benefits from their government. There are certain public goods – such as national security and crime prevention – that the state provides automatically to everyone within its territory. *These* goods are not relevant to consent, because these are benefits given whether citizens want them or not. Pacifists, for instance, are given the ‘good’ of military defense, against their will. However, there are other goods that citizens have a choice about accepting. For example, nearly everyone uses roads that were built by a government. The government does not force people to use these roads; thus, this is a case of voluntary acceptance of a governmental benefit. Similarly, if one calls the police to ask for assistance or protection, if one takes another person to court, if one voluntarily sends one’s children to public schools, or if one takes advantage of government social welfare programs, then one is voluntarily accepting governmental benefits. It can then be argued that one implicitly accepts the conditions known to be attached to the having of a government – that one should help pay the monetary costs of government and obey the laws of the government.

Consider next the case of consent through presence. This, in my experience, is the most popular theory of how citizens give their consent to the state, perhaps because it is the only account that can be applied to everyone within the state’s territory. The government does not require anyone (other than prisoners) to remain in the country, and it is well known that those who live within a given country are expected to obey the laws and pay taxes. Therefore, by voluntarily remaining, perhaps we implicitly accept the obligation to obey the laws and pay taxes.⁸

Lastly, some citizens might give implicit consent through participation in the political system. If one votes in elections, it might be inferred that one accepts the political system in which one is participating. This, in turn, might obligate one to abide by the outcome of the political process, including the laws made in accordance with the rules of the system, even when these are different from the laws that one desired.

If any of these four suggestions hold up, they would account for both political obligation and political legitimacy, at least with respect to some citizens.

⁸ Locke 1980, sections 120–1; Otsuka 2003, [chapter 5](#).

2.4 Conditions for valid agreements

A *valid* agreement is an agreement that is morally efficacious – that is, it succeeds in rendering permissible some action to which one consents or in generating an obligation to act in a way that one has agreed to act. All the examples in the previous section were of valid agreements. But some ‘agreements’ are invalid. For instance, suppose a criminal holds a gun to your head and demands that you sign over the movie rights to your latest book. If you sign, the contract would be invalid, because the threat of violence made it nonvoluntary. Or suppose you agree to buy a television from a salesman, but the salesman neglects to inform you that the television is broken and does not display a picture. In this case, the sale agreement is invalid because it was elicited by fraud on the part of the salesman. Televisions are normally understood to be capable of displaying a picture, and this is essential to why people buy them. Thus, if one wishes to sell a nonworking television, one must state this condition; otherwise, the default assumption is that the television works.

I shall not attempt a complete account of when a valid agreement exists. But the following are four plausible general principles governing valid agreements:

1. *Valid consent requires a reasonable way of opting out.* All parties to any agreement must have the option to reject the agreement without sacrificing anything to which they have a right.

Consider a modification of the boardroom example from Section 2.3. The chairman says, ‘Next week’s meeting will be moved to Tuesday at ten o’clock. Those who object will kindly signal this by cutting off their left arms.’⁹ The chairman pauses. No arms come off. ‘Good, it’s agreed!’ he declares. This is not a valid agreement, because the demand that board members give up their left arms as the price of dissenting from the schedule change is unreasonable. On the other hand, in the party example from Section 2.3, the demand that you leave my party if you do not agree to help clean up is reasonable, because I have the right to determine who may attend my parties.

The important difference between the modified boardroom example and the party example is not a matter of how large the costs are; that is, it is not simply that losing your left arm is much worse

⁹ The example is from Simmons (1979, 81).

than being expelled from a party.¹⁰ The chairman would not be justified even in demanding that board members pay one dollar to express their objection to the schedule change. Rather, it is a matter of who has rights over the good that dissenters are asked to give up. Those who seek your agreement to some proposal may not demand that you give up any of your rights as the cost of rejecting their proposal. I may demand that you give up the use of my property if you do not accept some proposal of mine, but I may not demand that you give up the use of *your* property.

2. *Explicit dissent trumps alleged implicit consent.* A valid implicit agreement does not exist if one explicitly states that one does not agree.

Consider a modification of the restaurant example from Section 2.3. Suppose that, after being seated, you tell the waitress, 'I will not pay for any food that you bring me. But I would like you to give me a veggie wrap anyway.' If the waitress then brings you the wrap, you are not obligated to pay for it. Given your statement, she could not plausibly claim that you agreed to pay for the meal.

What about the party example? I announce that anyone who remains at my party must agree to help clean up. Suppose that after my announcement, you reply, 'I do not agree.' I then ask you to leave, but you refuse and instead remain until the end of the party. Are you then obligated to help clean up? You did not agree to clean up, since you explicitly stated that you did not agree (how much clearer could you have been?). Nevertheless, it is plausible that you are obligated to help clean up – not because you agreed to do so, but because I have the right to set conditions on the use of my house, including the condition that those who use it help clean it. This derives not from an agreement but from my property right over the house.

3. *An action can be taken as indicating agreement to some scheme, only if one can be assumed to believe that, if one did not take that action, the scheme would not be imposed upon one.*

Suppose that in the board meeting example, the chairman announces, 'Next week's meeting will be moved to Tuesday at ten o'clock, and I don't care what any of you have to say about it – the schedule change will happen whether you object to it or not. Now, does anyone want to object?' He pauses. No one says anything. 'Good, it's agreed', he declares. In this case, there is no valid agreement. Though the board members were given a chance

¹⁰ As Otsuka (2003, 97) argues, consent may be valid even when failure to consent would have been very costly.

to object, they were also given to understand that if they objected, the schedule change would be imposed anyway. Their failure to express objections therefore cannot be taken to indicate agreement. It may simply indicate that they did not wish to waste their breath protesting something about which they had no choice.

4. *Contractual obligation is mutual and conditional.* A contract normally places both parties under an obligation to each other, and one party's rejection of his contractual obligation releases the other party from her obligation.

Suppose that you order food in a restaurant. There is an implicit agreement between you and the restaurant's owners: they provide food, and you pay them. If the waitress never brings the food, then you need not pay them; their failure to live up to their end of the deal releases you from the obligation to live up to yours. Furthermore, if one party simply communicates that they don't intend to live up to the agreement, then the other party is not obligated to live up to it either. Thus, if, after ordering food but before receiving it, you inform the waitress that you recognize no obligation to pay the restaurant, then the restaurant may conclude that you have rejected the agreement, and they need not bring you any food.

These four conditions belong to the common sense conception of consent and contracts. In the next section, I apply these principles to the putative social contract.

2.5 Is the social contract valid?

2.5.1 The difficulty of opting out

Begin with the first condition on valid agreements: all parties to a contract must have a reasonable way of opting out. What are the available means of opting out of the social contract? There is only one: one must vacate the territory controlled by the state.

Let us review some of the reasons one might have for failing to exercise this option. To leave one's country, one must generally secure the permission of some other state to enter its territory, and most states impose restrictions on immigration. In addition, some individuals lack the financial resources to move to the country of their choice. Those who can move may fail to do so due to attachments to family, friends, and home. Finally, if one moves to another country, one will merely become subject to another government. What should one do if one does not wish to consent to *any* government? Those seeking to avoid

all governmental jurisdiction have three options: they may live in the ocean, move to Antarctica, or commit suicide.

In light of this, is the option of leaving the territory controlled by the state a *reasonable* way of opting out of the social contract? Some find it unreasonable because the demand is too onerous. In the words of David Hume,

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.¹¹

However, as discussed in Section 2.4, this is not the primary issue. The primary issue is whether one is being asked to give up something to which one has a right, as the price of rejecting the social contract. This certainly seems to be the case. If a board chairman cannot demand that board members pay him a dollar to express dissent from a proposed schedule change, how can someone be required to give up home and job and leave all friends and family behind to express disagreement with a contract?

Here is one answer: perhaps the state owns all the territory over which it claims jurisdiction. Thus, just as I may expel people from my house if they do not agree to help clean up at the end of the party, the state may expel people from *its* territory if they do not agree to obey the laws and pay taxes.

Even if we granted that the state owns its territory, it is debatable whether it may expel people who reject the social contract (compare the following: if anyone who leaves my party before it is over is doomed to die, then, one might think, I lose the right to kick people out of my party). But we need not resolve that issue here; we may instead focus on whether the state in fact owns all the territory over which it claims jurisdiction. If it does not, then it lacks the right to set conditions on the use of that land, including the condition that occupants should obey the state's laws.

For illustration, consider the case of the United States. In this case, the state's control over 'its' territory derives from (1) the earlier expropriation of that land by European colonists from the people who originally occupied it and (2) the state's present coercive power over the individual landowners who received title to portions of that territory,

¹¹ Hume 1987, 475.

handed down through the generations from the original expropriators. This does not seem to give rise to a legitimate property right on the part of the U.S. government.¹² Even if we overlook source (1), source (2), which applies to all governments, is not a legitimate basis for a property claim. Might does not make right; the mere fact that the state exercises power over the people in a certain region does not give the state a property right (nor any other kind of right) in all the land within that region.

If we could establish the state's *authority*, then the state could establish ownership of all its territory simply by promulgating a law assigning that property to itself. The law of 'eminent domain' (or 'compulsory purchase', 'resumption', or 'expropriation', depending on the country one lives in) may be interpreted as just such a law. But this is of no use to the social contract theorist, for the social contract is intended as a way of *establishing* the state's authority. The social contract theorist therefore may not presuppose the state's authority in accounting for how the social contract itself is established. If we do not assume that the state already has authority, then it is very difficult to see how the state can claim title to all the land of its citizens. And if we must assume that the state already has authority, then we do not need the social contract theory.

Chapter 1 included a story in which you take to punishing vandals and extorting payment for your services from the rest of your village. Imagine that, when you show up at your neighbor's door to collect payment, your neighbor protests that he never agreed to pay for your crime-prevention services. 'Au contraire', you respond. 'You have agreed, because you are living in your house. If you do not wish to pay me, you must leave your house.' Is this a reasonable demand? Does your neighbor's failure to leave his house show that he is obligated to pay you?

Surely not. If you have a tenant occupying *your* house, then you may demand that the tenant either purchase your protection services or vacate your house (provided that this is consistent with the existing contract, if any, that you have made with the tenant). But you have no right to demand that your neighbors leave *their* houses nor to place

¹² The problem of unjust history affects all or most of the world's land. It is unclear what ought to be done about this problem, when returning the land to its last rightful holders is impossible. I propose no solution to this ethical problem here; however, I assume that the principle 'whoever holds power over the population presently occupying the land has the right to control its use' lacks ethical force. At minimum, some prior defense of a government's legitimacy would seem required to establish its right to control the land.

conditions on their continued occupation of their property. Your demand that your neighbor leave his own house if he does not agree to pay you for protection does not represent a 'reasonable way of opting out' of buying your protective services. Unless the government really owns all the land that (as we usually say) its citizens own, the government would be in the same position as you in that example: it may not demand that individuals stop using their own property, nor may it set the conditions under which individuals may continue to occupy their own land.

I conclude that the first condition on valid contracts is violated by the social contract.

2.5.2 The failure to recognize explicit dissent

Let us turn to the second condition: you have not implicitly accepted a contract if you explicitly state that you do not accept it. In the case of the social contract, a small number of people have explicitly indicated their disagreement. These are the political anarchists, people who hold that there should be no government. Yet every government continues to impose laws and taxes on anarchists. However vociferously you protest against the social contract, the government will not refund your tax money nor exempt you from the laws.

There *could* be a state that recognized explicit dissent. The social contract for such a state would be closer to being valid – it would at least not violate this second principle of valid agreements. But actual states violate this condition and thus fail to have genuine authority over at least some of those over whom they claim authority. This does not prevent these states from having authority over *other* citizens, if those other citizens have somehow voluntarily consented. But the state's well-known refusal to recognize explicit dissent calls into question the validity of any tacit consent allegedly given even by those who have not explicitly expressed dissent. Even for those who would not in fact wish to dissent, it remains true that they were not given the *option* of explicitly turning down the social contract.

2.5.3 Unconditional imposition

The third principle about valid agreements was that an action can be taken as indicating a person's agreement to some scheme only if that person can reasonably be assumed to believe that, if he did not take that action, then the scheme would not be imposed on him. This rules out nearly all of the ways in which citizens are said to implicitly accept the social contract.

Almost everyone knows that the state will still impose the same laws and the same taxes on one, regardless of whether one objects to the government, accepts government services, or participates in the political process. Therefore, one's failure to object, one's acceptance of government services, and even one's participation in the political process cannot be taken to imply agreement to the social contract.

The one form of implicit consent not ruled out by this principle is consent through presence. If you cease to reside in the territory controlled by the state, then and only then will the state cease to impose its laws on you.¹³ Unlike all the other alleged ways of implicitly consenting to be governed, remaining present in the state's territory really is a condition of having the state's laws imposed on you. Thus, only consent through presence satisfies the third principle about valid agreements. The idea of consent through presence, however, has been rejected above on other grounds.

2.5.4 The absence of mutual obligation

Finally, we come to the fourth principle concerning valid agreements: a contract imposes mutual obligations on the parties, with each party's obligation conditional on the other party's acceptance of its obligation.

In the case of the social contract, individuals are supposed to be obligated to obey the laws promulgated by the state. Sometimes citizens violate those laws, in which case the state's agents – if they are aware of the violation and can spare the resources – will punish the citizen, usually with fines or imprisonment. Given the wide and indefinite range of laws that might be created by the state and the range of punishments to which one might be subjected for violating them, an individual's concessions to the state under the social contract are quite large.

The state, in turn, is supposed to assume an obligation to the citizen, to enforce the citizen's rights, including protecting the citizen from criminals and hostile foreign governments. Does the state ever fail in this duty? What happens when it does?

In one sense, the state fails all the time. In any large society, thousands or millions of citizens are victimized each year by crimes that the state failed to prevent. But it would be unreasonable to expect the state to prevent all crimes. Perhaps the social contract only requires the state to make a *reasonable effort* to prevent crimes. But what if the state

¹³ Even to this there are some exceptions. For instance, U.S. citizens living abroad may still be required to pay U.S. taxes on some of their income.

fails to do even that? Suppose you are a victim of a serious crime that the government could easily have prevented, at little cost, had it made a reasonable effort to do so. Would the state then have failed in its obligations under the social contract?

If the social contract means anything, then the answer to that question must be yes. If there is a contract between the state and its citizens, then the state must have some obligation to do something for the citizens. Since protection from crime is the most central and widely recognized function of the state, the state must presumably have some obligation in regard to protecting one from crime. If this obligation is meaningful at all, then there must be *something* the state could do that would count as failing to meet the obligation. And if the situation described in the preceding paragraph does not count as a failure to meet the obligation of protecting a citizen from crime, then it is hard to see what would.

In the United States, that situation has occurred many times. I describe one such instance below. Though the story is disturbing to hear, there is an important point to be learned from it.

On a morning in March 1975, two men broke into a town house in Washington, DC, where three women resided.¹⁴ The two women upstairs heard the break-in and heard their roommate's screams coming from downstairs. They telephoned the police and were told that help was on the way. The two women crawled out of a window onto an adjoining roof and waited. They observed a police car drive by and then leave. Another officer had knocked on the front door but, receiving no answer and seeing no signs of forced entry, decided to leave. The police did not check the back entrance to the house, where the criminals had actually broken in. Going back inside, the women upstairs again heard their roommate screaming, and they again telephoned the police. They were assured that help was on the way, but in fact no officers were ever dispatched to respond to the second call. When their roommate's screams stopped, the two women upstairs thought the police had arrived. They called down to their roommate, which served only to alert the criminals to their presence. The two criminals then kidnapped the three women and took them back to one of the criminal's apartments, where they beat, robbed, and raped the women over the course of fourteen hours.

¹⁴ The incident is the basis for the case of *Warren v. District of Columbia* (444 A.2d. 1, D.C. Ct. of Ap., 1981), from which derives my account of the facts.

What is notable about this case is not just that the state failed tragically in its obligation to protect some of its citizens. More important for the social contract theory is what happened afterwards. The women sued the District of Columbia in federal court, for the government's negligent failure to protect them. If the government had a contractual obligation to make a reasonable effort to protect its citizens, then the women should have had a clear-cut case. In fact, the judges dismissed the case without a trial. The plaintiffs appealed, but the dismissal was upheld.

Why? No one disputed the government's negligence, and no one disputed that the women had suffered great harm as a direct result of that negligence. What the court denied was that the government had any duty to provide protection to the three women in the first place. The Appeals Court cited 'the fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen'. The government's duty, the court explained, was only a duty *to the public at large*, to provide a general deterrent to crime. The court worried that the recognition of a duty to protect *individuals* 'would effectively bring the business of government to a speedy halt' and 'dispatch a new generation of litigants to the courthouse over grievances real and imagined'.¹⁵

This was not an idiosyncratic decision. In another case, a woman telephoned the police because her estranged husband had just called her and told her that he was coming over to murder her. The police told her to call back when he arrived. When he arrived, the woman was unable to call back because her husband carried out his threat.¹⁶ In a third case, the Department of Social Services was monitoring a man for abuse of his son. On five occasions, a DSS social worker recorded evidence of abuse, but the child was left in his father's custody. Eventually, the man beat his son so severely that the child suffered permanent brain damage.¹⁷ These cases, too, resulted in lawsuits against the government, and these suits, too, were summarily dismissed. The child abuse case was appealed to the U.S. Supreme Court, which upheld the dismissal. Again, the courts held that the government owed no duty to protect the citizens in these cases.

¹⁵ *Ibid.*, from the majority opinion.

¹⁶ *Hartzler v. City of San Jose*, 46 Cal.App. 3d 6 (1975).

¹⁷ *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989).

How do these cases bear on the social contract doctrine? The courts in these cases denied that the state has any obligation to the individual. Since a contract generally requires mutual obligation of the parties to one another, this implies that there is no contract between the individual and the state.

What of the suggestion that the state's obligation is owed to the public at large rather than to any individual? One problem with this suggestion is that it is purely arbitrary. There is no actual evidence for the suggestion, and one might be forgiven for suspecting that the state simply declares that the social contract requires only whatever the state itself wants to do. The other problem is that the social contract theory is meant to explain why individuals are obligated to obey the state. If an individual is not a party to the social contract, then the individual has no duty to the state under that contract. If the contract somehow holds only between the state and the public at large, then perhaps 'the public at large' owes something to the state, but no individual does. If, on the other hand, the social contract holds between the individual and the state, then the state must have an obligation to the individual. One cannot have it both ways: one cannot maintain that the individual owes duties to the state but that the state owes nothing to the individual.¹⁸

Perhaps the court opinions in these cases were mistaken. Be that as it may, opinions that are rendered by the courts, reaffirmed, and never overturned are the official positions of the government. The government, then, has officially, explicitly adopted the position that it has no obligation to protect any particular citizen. Thus, the government has repudiated the social contract. If the state rejects the social contract, then individuals cannot be taken to be obligated under that contract either.

This last argument, the argument from mutual obligation, applies specifically to the United States, where the court cases discussed occurred. Other governments might escape this particular defect if they recognize an affirmative duty to protect their citizens.

My claim in this section has not been that most people would not agree to have a government. My claim is that there is in fact no valid

¹⁸ One might claim that the social contract holds between the individual and the state, but that the state's only promise to the individual was to protect society in general. Typically, however, when individuals make contracts to obtain goods or services, they obtain a promise to be personally given the good, not a promise that society in general will be more or less supplied with the good.

agreement. Perhaps you would have accepted the social contract if you had been given a choice. But you were not. This makes your relationship with the government a nonvoluntary, noncontractual one, regardless of whether you are actually happy with the relationship. Nor do I claim that all nonvoluntary relationships are morally illegitimate or unjust. The point is simply that the social contract theory is false, because it depicts a nonvoluntary relationship as voluntary.

2.6 Conclusion

The social contract theory cannot account for political authority. The theory of an actual social contract fails because no state has provided reasonable means of opting out – means that do not require dissenters to assume large costs that the state has no independent right to impose. All modern states, in refusing to recognize explicit dissent, render their relationships with their citizens nonvoluntary. Most accounts of implicit consent fail, because nearly all citizens know that the government's laws would be imposed upon them regardless of whether they performed the particular acts by which they allegedly communicate consent. In the case of those governments that deny any obligation to protect individual citizens, the contract theory fails for the additional reason that, if there ever was a social contract, the government has repudiated its central obligation under the contract, thereby releasing its citizens from the obligations they would have had under that contract.

The central moral premise of the traditional social contract theory is commendable: human interaction should be carried out, as far as possible, on a voluntary basis. But the central factual premise flies in the face of reality: whatever else may be said about it, subjection to government is obviously not voluntary. In modern times every human being is born under this subjection and has no practical means of escaping it.