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## THE SOCIAL CONTRACT THEORY OF THE STATE: A CRITIQUE

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### **Abstract**

*The origin and development of the State have attracted a great deal of attention of practically all the important political thinkers. Like the other concepts in political theory, important changes are reflected in the understandings of the nature of the state with the changes in political order and the advancement in the other areas of human knowledge. The social contract theory in the seventeenth and eighteenth centuries introduced a radical departure in analyzing the relationship between the ruler and the ruled, challenging the traditional divine right theory by arguing that the ruler and the ruled are two parties of the agreement and as such essentially equal. However, twentieth century political thinkers have rejected and criticized the claims of the social contract doctrine for its historical ambiguity, unfeasibility and defective logic.*

### **Introduction**

No theory of the state is ever intelligible except in the context of its time. What men think about the state is always the outcome of the experience in which they are immersed. According to Laski (2004), the massacre of Saint Bartholemew produced Whiggism, the Puritan Rebellion set Hobbes searching for the formula of social peace, the "Glorious Revolution of 1688 enabled Locke to affirm that the power of the Crown is built upon the consent of its subjects. According to Laski (2004:1), Rousseau, Hegel and Green sought to give the mental climate of their time the rank of universal validity. The more critical the epoch in which we live, the more profound is the emphasis upon universality.

The current age, in this regard, is not different from its predecessors. It is an age of critical transition in which as at the end of the fifteenth and the eighteenth centuries, a new social order is struggling grimly to be born. Our scheme of values is in the melting pot, and the principles of its refashioning have not yet been determined. Consequently, men have gone back to the foundations of politics, and they seek anew to explain the nature of the state. However, there is confusion in the atmosphere of discussion which betokens the advent of a revolutionary age in which there is a war, and a peace that is not easy to distinguish from war and economic crisis of unparalleled intensity. This revolutionary fervent manifested in the emergence of a socialist society in Russia and the birth of a new and aggressive imperialism in the Far East. These events have compelled the search for new approaches for solving problems which hardly a generation ago, seemed to men, settled beyond dispute. The bone of contention now is not the



minor matter of the state's form; but the nature of the state itself (Laski, 2004:11, Schwarzmantel, 1994).

### **The Origin and Concept of the State**

The origin of the state has attracted a great deal of attention of practically all the important political thinkers. Like the other concepts in political theory, important changes are reflected in the understanding of the nature of the state with the changes in political order and the advancement in other areas of human knowledge (Ramaswamy, 2006: 132). Political science has always been viewed as the study of life in an organized community, that is, as the study of the state. Thus, the study of politics according to Laski (2004:25), "concerns itself with the life of men in relation to organized states." It is therefore strongly implied that to study politics is to study the state. Since the term "the state" is commonly used in everyday political discourse, its nature must be clearly understood if one is to understand the subject matter of political science.

Among the first questions which political theory raises is: What is the origin of the state? Have men always lived under some form of political organizations? If they have not, what are the factors that brought about the original establishment of government? According to Pickles (1972) and Appadorai (1982), political thinkers have not agreed on the answer to this fundamental question, with the result that there are various theories concerning the beginnings of the state namely, the social contract theory which is the focus of this paper, the divine right theory, the force theory, the patriarchal theory, the matriarchal theory and the evolutionary theory. We will examine the social contract theory in detail, but first, a brief outline of the other theories of the state will suffice.

### **The Devine Theory**

The theory of divine origin of the state outlines three simple propositions: the State has been established by an ordinance of God; its rulers are divinely ordained; they are accountable to no authority but God. Thus we are told in the Bible (Romans, xiii:1-2):

*'Let every soul be subject unto the higher powers. For there is no Power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation.'*

This notion strongly prevailed in the oriental empires where the rulers regarded themselves as the descendants of God. The early Hebrew, for example, believed that their government was created by the Lord. The theory was also strongly adhered to by rulers throughout the Middle Ages. The theory was used to support the absolutism of James I of England. He, like others of his era, governed absolutely without any accountability to his people.



### **The Force Theory**

The force theory holds that the state originated in conquest and coercion. According to Anifowose and Enemuoh (1999:96), it is the result of the subjugation of the weaker by the stronger. In the later part of the 19<sup>th</sup> century, some German philosophers argued that force was the most characteristic attribute of the state, that "might made right" and that power has its own justification. The force theory, accordingly, has no respect for the natural rights of the citizens and does not approve of any resistance to the acts of political authority.

### **The Patriarchal Theory**

According to this theory, the unit of primitive society was the family. In the family, descent was traced through males in which the eldest male parent was absolutely supreme. His power extended to life and death, and was as unqualified over his children and their houses as over his slaves. The single family breaks up into more families, which, all held together under the head of the first family (the chief or patriarch), become the tribe. Thus, an aggregation of tribes makes the state (Appadorai, 1982:34).

### **The Matriarchal Theory**

As distinguished from the patriarchal theory, the maternal theory holds that the primitive group had no common male head, and that kinship among them could be traced only through the woman. Under such a system, it is obvious that as far as there is any recognition of blood relationship at all, it is through women, and through men. As Laski (2004:29-30) asserts, 'maternity is a fact, paternity an opinion.' It is believed that society organized on such a basis gradually evolved into the family marked by paternal descent. In this family, men began to take to pastoral occupations; they domesticated animals; they recognized the value of women's labour in tending sheep and cattle, and so gradually realized the value of permanently retaining women at home for the purpose; and so arose the institution of permanent marriage.

### **The Evolutionary Theory**

The evolutionary theory contends that the state is a product of historical growth and gradual evolution and that a variety of factors have contributed to its emergence. According to Appadorai (1982:36-37), Anifowose and Enemuoh (1999:97), Laski (2004:31-33) and Ramaswamy (2006:146-147), these factors include kinship, religion, force and political consciousness. According to these scholars, the state has evolved out of a complex set of human needs. On the basis of existing knowledge, the family is the basic social unit from which large, more complex units have developed. The next step was the formation of a public authority within them and more regular relations with one another. With the rise of an agricultural economy, there was a gradual growth of these communities. Eventually, some merged with others after much interactive process. At some point in this process, one community after another found it desirable to adopt a formal method of



controlling the conduct of its members. Thus, a formal public authority was established and the community assumed the form of what is now generally known as the state.

We shall examine the Social Contract Theory of the State in detail, but first, what is the state? There is no clear all-inclusive definition of the state. According to Anifowose and Enemuo (1999), some writers define the state as essentially a class structure, an organization of one class dominating over the other classes, that is, a machine used by the capitalists to keep the working class and the poor in perpetual subjection. Others scholars regard it as the one organization that transcends class and stands for the whole community. In addition, there are scholars that conceive the state as a power-system, others see it as a welfare-system, while there are those who view the state as a legal construction; that is, a community organized for action under legal rules.

Following Anifowose and Enemuo (1999: 89) and Heater (1964), there is no definition of the state which is acceptable for all men and all purposes. Adopted for the purpose of this paper is the definition which sees the state as the most inclusive organization which has formal institutions for regulating the most significant external relationships of the men within its scope. It is the basic political unit, a grouping of individuals who are organized in a defined territory for the pursuit of secular common welfare, the maintenance of law and order, and the carrying out of external relations with other groups similarly organized.

According to MacIver (1966), the state is a form of human association which acts through law as promulgated by a government endowed with coercive power, to maintain the universal external conditions of social order within a community territorially demarcated.

From the opinions of renowned scholars, one gets a picture which depicts the state as an all-embracing and an all-encompassing organization that possesses the supreme authority to give orders to all and receive orders from none. In fact, the state is the supreme coercive power in any given political society whose powers and resources are expected to be used for the promotion, protection and preservation of the interests of the citizenry in all ramifications. However, the facts on grounds have shown that instead of promoting the well-being and 'the greatest happiness of the greatest number', the coercive power of the State is used and still being used to exploit and oppress the masses while protecting and promoting the interest of the ruling class.

### **The Social Contract Theory of the State**

The social contract theory in the seventeenth and eighteenth centuries introduced a radical departure in analyzing the relationship between the ruler and the ruled, challenging the traditional divine right theory by arguing that the ruler and the ruled are two parties of the agreement and as such essentially equal.

Ramaswamy (2006:135) observed that Grotius, Hobbes, Pufendorf, Locke, Rousseau and Kant had in their various works, used the idea of the social contract to explain the origins and nature of the state and search for philosophical basis to moral and political obligation. Some, like Kant (in Williams, 1994:132-146) and Forsyth (1994) used the idea of contract to characterize a form of political association and regard it as a rational criterion of the just polity. The crux of the



social contract theory is the idea that legitimate government is artificially and voluntarily agreed upon by free moral agents and it rejects the argument that there is something like natural political authority. While Wayper (1977) calls it the "Will and the Artifice Tradition, Hobbes, Locke and Rousseau, who were the classical exponents of the doctrine produced political prescriptions that are profoundly at variance with one another.

### **Hobbes**

Hobbes (1588-1679) places premium on order and through the contract, justifies an all-powerful absolute state. He lived in the days of the civil war (1642-51), hence, his inclination towards absolutism was natural and understandable because the most important need of his country then was a strong government to maintain law and order (Appadorai, 1982:22).

Hobbes considers self-preservation as a basic right. Through the state of nature, he portrays the dismal human existence since it prohibits the possibilities of commodious living that makes life meaningful and worthwhile. In the absence of a common power to keep individuals in awe, there are no legal or moral rules, no notions of right and wrong, justice and injustice. This state of nature is a state of war, a war of every man against every man. Natural freedom and natural equality of individuals in the state of nature are the reasons for this intolerable and insecure life.

As he puts it:

*In such a condition, there is no place for industry,.....no culture of the Earth; no Navigation, nor use of the common duties that may be imported by sea; no commodious building, no knowledge of the face of the earth, no account of Time, no Arts; no Letters, no society, and which is worst of all, continuous fear, and danger of violent death; And in such a condition, the life of man is solitary, poor, nasty, brutish and short (see Hobbes, 1991)*

Hobbes recognizes that even in the primitive natural state, there are in some sense; laws of nature essentially meant for self-preservation. In detail, these laws are: to seek peace and follow it, to relinquish the right to all things which if retained, hinders the peace of mankind, and that individuals must honour their contracts. The only way to peace is for men to give up so much of their natural rights as are inconsistent with living in peace. Hence, a supreme coercive power is then instituted. According to Hobbes (1991:84), the contracting parties are not the community and the Government, but subject and subject. As he recalled, he says; every man says to every other:

*I authorise and give up my right of governing myself to this man or this assembly of men (Government) on the condition that thou give up your right to him and authorise all his actions in like manner.*



A state is thus created. Hobbes therefore justifies an absolute state on the basis of 'free' contract and consent. However, it is instructive to note that the psychological basis of his theory is fear.

### **Locke**

The purpose of Locke(1632-1704) in his *Two Treatises of Government* (1690) was to justify the English Revolution of 1688. James II had been deposed from the throne and William of Orange invited to occupy it. Locke sought as he said, to 'establish the throne of our great Restorer, our present King William, and make good his title in the consent of the people.

Locke developed Pufendorf's arguments convincingly. He restored the traditional role of the contract theory as justification of resistance to government. However, he did not follow Pufendorf's multiple contracts and his tasks were twofold. First, to refute Filmer's criticisms of contractualism and second, to explain the origins of legitimate political authority. The *First Treatise* rejected the central arguments of Filmer, which were reiterated in the *Second Treatise*. As Locke (1690) posited:

*God does not give the relevant power to Adam and assuming Adam had been granted this power, it does not mean that his heirs would also have a right to it. Even if Adam's heirs do have such a right, there are no clear rules of succession according to which the rightful heirs could be named and even if there were such rules, it would be impossible to identify Adams actual heirs considering the time span since God's original grant of power to him.*

Through the technique of the social contract, Locke explains that consent is the basis of a legitimate political authority. Like Hobbes, he too begins with the idea of the state of nature. He rejects Filmer's (1691) biblical account of the origins of political power, without abandoning its religious foundations and acknowledges an explicit moral relationship between an individual and God. To preserve oneself and the well-being of others is a duty that an individual owed to God as part of God's creation as the basic moral law of nature that existed in the pre-political state of nature.

Like Grotius and Pufendorf, Locke viewed the state of nature as a social condition regulated by God's moral claims for Locke was ultimately based on religious obligations, the source of all morality. He used the contract as a means to create a body politic but concurrently as a device to subordinate the body politic to the kingdom of God. This is in sharp contrast to the rigid secularism of Hobbes, who refused to begin from an absolute moral presumptions, seeing the social contract as creating a temporal political power for fulfilling external peace, security and earthly felicity (Forsyth, 1994; Tuck, 1979).



The State is created by Lock through the medium of a contract in which each individual agrees with every other to give up to the community the natural right of enforcing the law of reason, in order that life, liberty and property may be preserved. Locke, unlike Hobbes, gives the power the community and not to a Government. The contract it may be stressed, is also not general, but limited and specific, because it is the natural right of enforcing the law of reason alone that was given up, but the natural right to life, liberty and property reserved for the individual limit the just power of the community.

As perceived by Appadorai(1982:25), the state or political society in Locke's theory is instituted by way of remedy for the inconvenience of the state of nature -to avert, not escape from a state of war. According to him, these inconveniences are threefold. First, the want of an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies. Secondly, the want of a known and disinterested judge with authority to determine all differences according to the established laws. Thirdly, the want of power to back and support the sentence when it is right and to give it due execution.

### **Rousseau**

The social contract theory of Rousseau (1712-1778) is important in two respects. It inspired the French Revolution of 1789 which was a revolt against the despotic French Monarch. It also supplied the basis of the theory of popular sovereignty.

Rousseau's conceptions of the state of nature and the social contract differ from those of Hobbes and Locke. The life of man in his state of nature is not as glooming as that of Hobbes, nor as optimistic as that of Locke. Man, according to Rousseau, is essentially good and sympathetic; the state of nature is a period of idyllic happiness, men being free and equal. Soon however, with the introduction of private property and the growth of numbers, quarrels arise and man is compelled to give up his natural freedom. His problem is 'to find a form of association which protects with the whole common force the person and property of each associate, and in virtue of which every one, while uniting himself to all,.....remains as free as between'. The problem is solved through a contract and the creation of civil society (Ebenstein, 1974).

For Rousseau just like Hobbes, the contract was constitutive of the society itself, with a difference in the ends that they envisage. For Hobbes, the ends were civil peace and commodious living, while for Rousseau, it was to ensure that individuals unite without renouncing their liberty and the moral advancement of the components of civil society. Through the social contract, the individual lost his natural liberty and absolute right to anything that tempts him. However, what he gains through the social contract is civil liberty and the legal right of property (Rousseau, 1958: 42).

Rousseau's social contract, according to Pateman (1985), replaces arbitrary relation that exists between persons with obedience of the citizen to the law and for this purpose; atomistic individuals with diverse interests transform themselves into a community with a common will or interest. For Rousseau, consent is the basis of society but emphasizes the importance of the



community along with the need to protect individual freedom. He attempts to reconcile the claims of the individual with that of the community through the notion of the 'general will' that emerges in an assembly of equal lawmakers. He categorically asserts that each person is free only if he obeys his own will that finds expression in the laws of the state of which he is the lawmaker. He visualizes a free state as a consensual and also the existence of participatory democracy (Pateman, 1985).

It is instructive to point out that Rousseau was an outspoken critic of 'the fraudulent liberal social contract' that sought to justify social relationships and political institutions that are already in existence. Consequently, Rousseau's contract doctrine provides an actual foundation for a participatory political order for the future.

### **A Critique of the Social Contract Theory of the State**

The use of the contract along with its attendant idea of consent has its criticisms and limits. Critics, such as Filmer (1991:11-12) and Appadorai (1982:27), found its language inappropriate because it suggests that the obligation to obey authority, and even its very legitimacy, depends on an original agreement by which succeeding generations are bound or a continuously renewed agreement that can be revoked if its conditions are not met. The contract doctrine has been criticized for its historical ambiguity, unfeasibility and defective logic.

Filmer (1991:11), criticises contractualism, contending that if contractual arguments are true, then it results into two unacceptable consequences, which its advocates find hard to explain. First, it is not possible to provide for a continuing valid political authority. If all authority is vested on consent, then an individual who has not consented is not bound by the laws, implying that minorities, dissenters and non-voters need not obey the law and the new ruler, since one has not consented to them. If the original contractors, who establish society are free, then each generation, unless it consents, is not bound to obey the laws. This, according to Filmer, makes a society unstable. If on the contrary, one contends that succeeding generations have to obey because their fathers and forefathers have expressed their consent, then such argument is not different from the one championed by the patriarchists, that men are not born free but into families, and hence, subject to the authority of their fathers.

Filmer argued further that there is nothing like natural liberty and equality. According to him, natural rights exist but they are not universal because there is, and always shall be continued to the end of the world, natural right of a supreme father over every multitude. From the historical point of view therefore, the contract theory of the origin of political authority is untenable, not only because historical records are wanting as to those early times when, if at all, such compacts must have been made, but also because what historical evidence there is, from which by inference primitive conditions may be imagined, is such as to show its impossibility. The theory presupposes individuals as contracting; when the research findings show that the progress of societies has been from status to contract. Contract, according to Appadorai (1982: 27), is not the beginning but the end of society.



The second argument relates to property rights. Filmer thinks that those who explain the origin of government with reference to consent of free individuals find it difficult to establish either feasible or morally acceptable political authority or rightful private possession of goods. Filmer, like many of his contemporaries, adheres to the view that each individual is God's property and does not have a right to take his own life. It is therefore absurd to harbour the idea that consenting individuals confer a power that they do not themselves have, namely, that of life and death, upon a sovereign. Only God has this power and it is He who confers it upon kings (Filmer, 1991:12).

Maistre (cited in Ramaswamy, 2006:112) provides a more extreme defence for natural authority by rejecting the contractarian conception of the individual as a free and equal subject. He directs his arguments against European Enlightenment and French Revolutionaries in general, and against Rousseau's conception of natural equality and popular sovereignty in particular. Like Filmer, he regards human beings' natural condition as social. Unlike the former's subtle charges against the contract doctrine, Maistre's arguments are more virulent attack on the presumption of human beings to challenge a Divine injunction and God's authoritative will. He sees the contract theory's attempt to justify political authority and political obligation as examples of human beings' sinful pride. According to Maistre, 'it is precisely because of this that there is a need for unquestionable political authority in the person of the monarch'. He warned that any attempts to establish equal civil or political authority only results in barbarism and chaos.

Reacting to the excesses of the French Revolution and fearing its adverse effects on England, Edmond Burke (cited in Curtis 1961:59) protested saying, the theory is dangerous in practice, for it is favourable to anarchy. He noted that the overall structure of society cannot be reduced to a mere contract between two or more parties similar to a trade agreement, that is more transient and which can be dissolved by the parties involved. In his remarks, Burke asserts that:

*Society is a partnership in all science, a partnership in every virtue and in all perfection. As the ends of a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but also between those who are dead and those who are to be born. Each contract of a particular state is but a clause in the great primeval contract of eternal natures, connecting the visible and, invisible world, according to a fixed compact sanctioned by the inviolable oath which holds all physical and all moral natures, each in their appointed place. (Burke, 1969 : 27).*

The most virulent critic of contractualism was David Hume. Without propping the theories of Divine Right and Patriarchy, Hume (1971) submitted that societies are prior to governments. According to the scholar, the most likely reason why governments come into existence is not because of disagreement between members of the same society but because of



external threats and conflicts. In a *Treatise of Human Nature* (1739-40), he declared that the sudden dangers to which societies are vulnerable necessitates retaliatory and immediate authoritative responses and for this reason, a single individual takes charge to provide the necessary leadership. He argues further that the natural origin of monarchy is perhaps more convincing than the argument that it is derived from the natural right of patriarch. According to him, most of the present governments, except for some stray cases, are not established through consent or contract, so there is no universal acceptance of the social contract theory. And even if it is assumed that some kind of contract has taken place at an earlier time, the old contract cannot bind future generations. Authority in the long run is based on necessities of circumstances and not on consent. As Hume posited:

*Not only in Persia and China but even in Holland and England, where consent was proclaimed as the basis of authority most people did not remember when they gave their consent. Nor was there any record of their ancestors giving their consent. Regarding tacit consent, even if this is a criterion of consent, it is one that can never be applied. Most places fell under some jurisdiction and those that did not were without the necessary conveniences and comforts of the existing system, whatever the basis of its legitimacy. Hence, the social contract doctrine is superfluous and unnecessary (Hume, 1971).*

Bentham (1977) was greatly influenced by Hume's opinion on the social contract theory of the state. As Bentham declared, "I am bound to obey not because my great grandfather may be regarded as having made a bargain which he did not really make with the great grandfather of George III, but simply because rebellion does more harm than good". According to him, the theory is dangerous in practice, for it is favourable to anarchy. The state of its institutions is regarded as the result of the individual will, and therefore, it may be argued that they can have no sufficient authority when they contradict individual will. Bentham therefore rejects social contract theory as pure fiction and points out that the binding force of a contract comes from a government and from the habit of enforcement and not vice-versa. He concluded that this habit of obedience will continue as long as the ruler acts in the interest of the ruled, or more precisely if it is possible to maximize the greatest happiness of the greatest number.

On his part, Hegel (1969) rejects the contract doctrine because according to him, it assumes separateness and autonomy of individuals rather than their unity. He points out that in modern times, claims are made for private judgment, private will and private conscience whereas in pre-modern times, individual wills coincided with the will of the State. The contract doctrine, according to Hegel, conceives the State as a voluntary association with obligations freely chosen



and accords priority to private over public rights, ignoring the fact that the former is dependent on the latter and not the other way round as the contract theory claims. As Hegel argued:

*The state is not a contractual institution for the protection of property rights of the individuals nor is it a private property of the monarch. The state is an ethical arrangement in which the individuals realize their capacities. They are born into it with the capacity to acquire rights and duties that have originated as a result of human practices and which the state can sustain and do not choose it with natural rights (Hegel, 1969).*

Hegelians and post Hegelian German Philosophers stressed the organic unity, individuality and moral autonomy of the state and reject the contractarian arguments for its legitimacy.

## **Conclusions**

The social contract theory of the origin of the state has attracted more critics than its exponents could bargain for. The doctrine has been found to be historically and logically absurd for not considering the will of the person of the state as *composed* of the wills of each individual. From the historical point of view, the contract theory of the origin of political authority is untenable, not only because historical records are found wanting as to those early times when, if at all, such compacts must have been made, but also because what historical evidence there is, from which by inference primitive conditions may be imagined, is such as to show its impossibility.

The theory presupposes individuals as contracting when the researches of Maine (cited in Appadorai, 1982:29) show that the progress of societies has been from status to contract. Contract, according to Maine, is not the beginning but the end of society. The idea of contract postulates that individuals who enter into the contract are free to do things in their own way; but, according to Maine, the evidence of early law and custom shows that primitive men had no such freedom. Primitive society rested not on contract but on status. In that society, men were born into the station and the part they were to play throughout their life was not a matter of choice or of voluntary arrangement in what relations men were to stand towards one another as individuals. In line with Appadorai's view, Maine observed that:

*He who is born a slave, let him remain a slave; the artisan, an artisan, the priest, a priest --is the command of the law of status. Merit, aptitude, and individual freedom were allowed to operate only within the sphere of each man's birthright. Under such condition, the very idea of individuals contracting themselves into civil society seems impossible (Appadorai, 1982:29).*



The social contract theory of the state is illogical. It presupposes such political consciousness in a people who are merely living in a State of nature as could only be possible in individuals who are already with a State. As Leacock (1975:95) argued, they must have known what a Government was before they could make one.

With all its defects however, social contract has some merits. It reminds the Government of those human purposes which the state can serve and which alone can justify its existence. As Kant, the German philosopher, argued: "The legislator is under the obligation to order his laws as if they were the outcome of a social contract" (Kant, in Williams 1994:132). In the form given to it by Locke and Rousseau, the theory brought out the idea that civil society rests not on the consent of the ruler but of the ruled and thus became an important factor in the development of modern democracy.

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