

Chapter 24, Politics: Legitimacy and the State

Theories of legitimacy:

Divine Right Theory

Rulers have moral and political authority as God's representatives

Force Theory

1. **Primary aim of govt** = preservation of peace and security
2. **State of nature** where men = perpetually at war with one another
3. **Rights ≠ given by nature** – there are no rights prior to the creation of the state
4. **Government ≠ creation of reason**, consent and respect for individual rights – but because individuals = obliged by their interests – fear for their lives
5. There can be **no safeguards against the sovereign** – I have transferred my rights to the sovereign so that his acts = my acts – therefore there can be no bill of rights or separation of powers which would amount to creating a power greater than the sovereign
6. **One concentrated power** of the last resort
7. **Social contract** made by indivs in a state of war

Voluntary Acceptance Theories

1. Social Contract theory

- a) Individual accepts contract ≠ out of fear but **self-interest**
- b) Societies arise out of individuals voluntarily entering into contracts for their **mutual benefit**
- c) Presupposes **freedom to accept or reject** contract:
 - (i) but natural-born citizens have no such freedom
 - (ii) nor can it be taken away – the state cannot take away what it hasn't granted
- d) **Historical fiction** – even for those countries with a written constitution – present generation has taken no part in negotiating and signing it
- e) **A moral device** – generates moral reasons for compliance – promise keeping – a stringent moral obligation

2. The theory of consent

- a) Still involves a **promise** and nobody can strictly be said to have promised anything
- b) **Acquiescence** – does this amount to a promise, a commitment to an obligation to obey?
 - (i) gives **no reason** why we would be willing to do so
 - (ii) it may signify your **fear** about protesting or mere **apathy**
 - (iii) even '**tacit promise**' doesn't work without a reason for you agreeing to undertake the promise
- c) **Consent** = important – but it doesn't provide the grounds for political obligation unless we understand it to mean making a promise

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3. The Theory of the General Will

– but what is the ‘General Will’?

a) The will of all citizens?

- (i) can't be this because if everyone wanted the same thing **there would be no problem**
- (ii) the question is raised because the demands of the state go beyond the wishes of the individual – it's not a question of the state doing what we all want, but **what we ‘really’ want** i.e. the state sorts our conflicting wants

b) The will of the majority?

– Why should the majority lay obligations on the minority?

- (i) the majority is more likely to be right
- (ii) but not always:
 - I. a minority can be wiser, more experienced, more intelligent, etc.
 - II. the danger of ‘moral populism’

c) The common good?

- (i) The GW = the **product of moral volition**, of man as a moral agent – not of a non-moral individual out for his own interests
- (ii) **What we ‘really’ want = what we ‘ought’ to want**
 - role of the state = to enable people to develop their natural goodness
- (iii) In aiming to achieve what we ‘really’ want the state is, in effect, **getting us to do what we want to do** – Rousseau’s ‘**freedom paradox**’: ‘Man must be made to be free’
- (iv) **But what are ‘real wants’?**
 - I. what we would want with **complete wisdom**
 - II. what is **harmonious** with the rest of our wants and with the interests of all? Conflict of interests is harmful, the harmony of interests of all is the aim of each citizen. Therefore the common good = what's in the general interest of all, the ‘rational’ will, the real or General Will. The rational, enlightened individual realizes his good and the good of each individual lies in the harmony of interests of all.
- (v) If an individual doesn't understand what he ‘really’ wants and is unwilling to comply, then the **state is justified in forcing him to conform**
- (vi) **Criticisms:**
 - I. Source of the paradox = concept of GW as more than the sum of individual wills representing the ‘real’ interests of citizens.
 - therefore **legitimacy is given by the GW not by each individual**
 - II. Assumes we all have **same real interests and governments can know them** while we can be mistaken
 - III. Assumption – **what we ought to do = what we want to do** – explains our voluntary acceptance of our obligations to the state on prudential grounds – rests on unlikely assumption that we all want the same

4. Feminism and Social Contract Theory:

a) Nature of the contract:

- (i) **Original pact precedes the social contract** – progress from tyrannies to democracies = merely that more men have control over women

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(ii) **The personal and the political** – conditioning in the family perpetuates patriarchal soci

b) **Type of individual** = rational, educated, white, male and m/class:

- (i) Certain type of **modern masculinity**
- (ii) **Possesses all the moral and intellectual characteristics of his age**
 - typical figure of modern liberal philosophy = individualist, self-reliant, solitary figure
- (iii) Therefore, certain **male values and experiences at the heart of the contract**
 - doesn't represent those whose role = to care for others and not max her own self-interest – gives maleness a privileged position

c) **Relationships:**

- Contracts fail as an account of our social and moral responsibilities – merely lay down our rights and obligations – **fails as an adequate account of our moral relations** = often about dependency:
 - I. **Envisages agreement and interaction between equals** – whereas caring relationships = unequal
 - II. Provides minimum of protection consistent with maximum freedom of opportunity – therefore **fails to protect powerless**
 - III. **Regards action as free**

d) **Problems:**

- (i) **Patriarchy** – is it the result of **nature or nurture?**
- (ii) For women to achieve fulfilment does this mean to
 - I. achieve **personhood** and abolish all gender differences = radical feminism
 - or II. **accept there are crucial differences** = pro-woman position

Moral Purpose Theories

We have moral obligations to pursue certain moral ends – justice and greatest good of all

I. **The Theory of Justice:**

- a) Locke – **natural rights** – absolute – the state should protect from all infringement
 - Distinction = between moral principles and rights v. 'positive law'
- b) **Justice** = more than just defending rights – includes fairness/equal treatment = moral ends therefore our obligation to the state = moral obligation
 - But Locke = political obligation is a form of **trust** – if state fails to fulfil its obligations we have a right to rebellion
- c) **Criticisms:**
 - (i) **Are rights natural and therefore absolute?**
 - I. Substitute 'stringent moral obligations'

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- II. No need to argue for absolute rights – they can all still be forfeited
- (ii) 'Rights' = legal term therefore inappropriate to talk about 'moral rights'
- (iii) Notion of rights/justice can be subsumed under more comprehensive moral principle of promoting common good/utility

2. The Utility or General Interest Theory:

- a) Claim = the 2 elements of justice – rights and fairness – covered by utility:
 - (i) Utility demands the state protects individual rights in order to prevent harm to individuals
 - + (ii) Fairness is accounted for in redistribution of rights to promote general happiness
- b) Problem = in cases where something can promote utility and be unjust
 - needs to be combined with other principles e.g. Rawls – *A Theory of Justice*
- c) Rawls – 2 principles:
 - (i) we all have basic/equal rights
 - (ii) all social and economic inequalities should be to the advantage of everyone
- d) Justification = 'the original position'
- e) More complete account of justice:
 - (i) liberty
 - (ii) equality
 - (iii) reward for services to common good

Conclusion

- 1. Force theory = we are obliged but have no obligation
- 2. Moral Purpose theories = we have an obligation but we are not obliged
 - unless we are obliged and have moral obligations by virtue of our nature
- 3. Social Contract Theory – promise-keeping or some form of consent as basis for pol obligation – but difficulty = establishing that we do implicitly/explicitly authorize the state