

## SOCIAL CONTRACTS AND RIGHTS: LOCKE, HOBBS, AND RAWLS

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**Social contract theory** is based on the idea that moral and legal rules can be thought of as the outcome of some sort of “agreement.” So, for example, if we want to know “Why is it wrong to murder Jones, who I really dislike?” perhaps the answer is “You don’t want Jones to murder you, and society would fall apart if everyone started murdering each other. For this reason, murder is wrong for *everyone*, including you.” While social contract theory relies on the idea that moral norms are defined by what people “agree on”, it shouldn’t be confused with cultural relativism. Cultural relativists look to a culture’s current beliefs, practices, and laws to figure out what that culture’s moral norms are; by contrast, social contract theorists want to know what these laws/morals *would be* if everyone in that society were given the chance to freely and rationally negotiate about them. In this sense, social contract theory is much closer to moral objectivism (and is often identified as a “type” of objectivism).

The basic idea behind social contract theory is very old (Plato’s *Republic* describes something like it, though Socrates ends up arguing against it), but it didn’t really get started serious until the 1500s and 1600s, when people like Thomas Hobbes and John Locke started thinking about the nature of government, and what it meant to have a good/justified government. Their ideas played a major role in both the establishment of democratic governments in places like the US, France, and the UK, and in spreading the idea that people had moral and legal **rights** that their governments had to respect.

### HOBBS: FROM SELFISH HUMAN NATURE TO AUTHORITARIAN GOVERNMENT

*“To this war [in the state of nature] of every man against every man, this also in consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place. Where there is no common power, there is no law, where no law, no injustice. Force, and fraud, are in war the cardinal virtues.” (Hobbes)*

**Thomas Hobbes (1588-1679)** was an influential moral and political philosopher. While Hobbes was writing, Britain was engaged in long, violent series of civil wars. Hobbes saw the bad effects of these wars on the ordinary people, who were forced to serve as soldiers, taxed heavily, killed in raids, and were generally forced to live in a highly uncertain, unpredictable environment that made planning for the future very difficult. Hobbes’ basic idea was this: given how undesirable this sort of situation was, rational people *ought* to welcome a strong ruler, even if they didn’t like or agree with all of the rulers’ policies or actions. For Hobbes, this explains both the *origin* of morality and law, and an *explanation* of why people ought to obey moral and legal rules.

Hobbes spelled this out in more general terms:

- **The Nature of Humans: Rational and Selfish.** Hobbes is a psychological egoist, and he argued that humans are primarily motivated by *self-interest*. However, humans are also highly risk-averse. So, while humans would (in the right circumstances) enjoy stealing other people’s money, and doing various horrible things to each other, these relatively weak desires are outweighed by the *fear* of having these things done to them. This sort of risk aversion plays an important role in Hobbes’ explanation of the nature of the social contract.
- **In the beginning: “The State of Nature.”** Hobbes begins by imagining/describing how humans would have lived in the days before there were governments, police, religious, or any other sort of rule dictating how people should treat each other. He famously describes life in this situation as “nasty, brutish, and short.” Basically, people live in small family units trying to take stuff from other people and to defend their own stuff/lives from others. Since people are (roughly) the same size and strength, it’s very difficult for any single person to maintain a long-term advantage over others. Life is insecure and violent, even for those who are best off.
- **The Social Contract.** Since life in the state of nature is so bad, humans would find almost anything else to be better, so long as it gave them some security over their lives and property. Hobbes posits it is at this point humans get together, and give authority to a **monarch**, to whom they sacrifice many powers they used to have (in particular, their freedom to use violence against one another). This monarch is clearly the one who benefits the *most* from this contract, but Hobbes argues that everyone benefits from there being a clear, unified “authority” that is responsible to maintain order (and, not coincidentally, can be blamed if anything goes wrong).
- **The Leviathan and the Right to Revolution.** In his book, the *Leviathan*, Hobbes argues that the *best* government is a strong, unified, authoritarian one. This is what the social contract would agree to. Why? Because he thought any division among the government would lead to conflict among its parts (e.g., various democratic politicians and parties fighting one another, and not serving their citizens). In the event that a Hobbesian authoritarian government overstepped its bounds *too far* (by doing things like violating citizens’ lives and property rights), Hobbes thinks that rational citizens could/should revolt against it.

While Hobbes is famous for his pessimistic view of human nature (we are all selfish and afraid), and for his defense of monarchy, his view represents a major step toward modern views of government. Among other things, Hobbes emphasizes that monarchs derive their power from their citizens (and not from God!), and that citizens have the right to defend themselves if the monarch’s actions endanger them.

### LOCKE: FROM NATURAL LAW TO REPRESENTATIVE DEMOCRACY

*[Civic power] can have no right except as this is derived from the individual right of each man to protect himself and his property. The legislative and executive power used by government to protect property is nothing except the natural power of each man resigned into the hands of the community...and it is justified merely because it is a better way of protecting natural right than the self-help to which each man is naturally entitled.” (John Locke)*

Hobbes sees the origins of morality and law as springing directly from humanity’s selfish, fearful nature, and he thought the ideal society was an authoritarian one, albeit one that guaranteed its citizens some sort of minimal safety and peace of mind. By contrast, **John Locke (1632-1704)** offered a *morally-based contract theory* which purported to show how people who *already had moral obligations* could come together to form a state. (People have variously argued that Locke was a natural-law theorist, a deontologist, or a rule utilitarian; in any case, he wasn’t an egoist like Hobbes!). Locke argued that these people would come together to form sort of representative democracy. Here are Locke’s basic ideas:

- **Natural Rights:** Unlike Hobbes, Locke was NOT an egoist. Instead, he thought that humans had natural rights to things to “**life, liberty, and property**” as well as a variety of subsidiary rights (such the right to self-defense). So long as there is plenty of land and stuff, humans could live just fine (and could manage to treat each other well), even absent a government. However, these natural rights need to be supplemented/altered once humans begin to encounter large-scale social problems.
- **Debates About the “Right to Property.”** Locke’s idea that there is a natural right to property has been a contentious one, and was famously replaced in the U.S. Declaration of Independence with “happiness.” Modern **libertarians** generally look to Locke as a founding father, and think that there are certain property rights the government CANNOT violate. By contrast, **utilitarians** have disagreed with Locke’s claims that property is natural right. Instead, they tend to think it is a legal right that comes into existence only as a result of the social contract, and has a fair amount of flexibility built into it. The property laws of nations like the U.S., Canada, and the UK draw on both traditions.
  - Pure libertarians about property rights tend to think that the *only* reasons that the government can tax for are: (1) to provide for the common defense (police and army), (2) to enforce contracts, break up monopolies, and ensure people are paid **reparations** for past wrongs, and (3) to give each person a “fair chance” to acquire property in our market-driven society. This last condition (the **Lockean Proviso**) explains why libertarians are (generally) OK with spending money on children’s education or health care, but not on adults.
- **The Social Contract and “The Consent of the Governed.”** Locke thought that, at some point, even his well-meaning humans would find that there were problems they couldn’t solve, regarding things like property disputes, management of common resources, punishment of criminals. It was at this point they would agree to form a government. This government (which would be at least partially democratic) would limit some of the rights they had previously had (they have to pay taxes, and could no longer enforce their own law). However, they would recognize and consent to this, given the overall benefits. Importantly, however, this government would have much more limited power over its citizens, when compared to the Hobbesian version, since it couldn’t violate people’s “natural rights.”

Locke’s theory provides a valuable contrast with that of Hobbes. Where Hobbes sees people consenting to government only out of selfish fear, Locke sees people *wanting* to create a government, since they recognize this government will allow them to better manage their lives and stuff.

## THE INCOMPLETENESS OF RIGHTS AND CONTRACT THEORY

Thinkers like Hobbes and Locke played a major role in creating the contemporary idea that people have “rights”: to free speech, religion, assembly, private property, self-defense, and so on. They also advanced the idea that the **authority** of governments rests in some sense on the agreement/consent of the people they govern, and is not due to the “divine right of kings.” These were both major conceptual revolutions in moral/political philosophy, even if they now seem obvious to most people living in democracies. That being said, numerous critics have pointed out that “rights” and the (often imaginary) “contracts” on which they are based need to be supplemented with other moral theories (as Locke does, but Hobbes does not). Here are a few worries:

- **What about those left out of the contract?** Both Hobbes and Locke seem to see the social contract as being an agreement among “rational” adult men (white, property-owning, etc.), and left out of everyone else, *even though these other people would be affected by the contract*. While more recent contract theories have addressed this, contract theories still have a problem accounting for our moral obligations toward any being that can’t understand/abide by moral rules. This includes children, animals, many people with cognitive disabilities, etc. Most people would agree that we have moral obligations to these beings, but contract theory can’t easily explain why this is.
- **Not all moral obligations are about rights.** Some of our obligations (“don’t kill people”) are plausibly based on rights (“Respect others’ right to life”). However, many other sorts of things simply don’t seem to be this way. For example, decisions about which people we should spend time with, where to donate money, or how to distribute public funds don’t correspond directly to rights. Instead, they seem to relate to consequentialist considerations (where can I do the most good?), deontological considerations (what relationship do I bear to these various people?) or even virtue ethics/natural law considerations (what kind of person am I? what do I want to be?). A
- **The Dangers of “Standing on One’s Rights.”** Moral and legal rights are a valuable tool for explaining what’s wrong with oppressive governments or individuals, and how we can stand up to them. However, there is a danger in the idea that one should always “stand on one’s rights” whenever one is asked to do something for others, or for the community as a whole. In particular,

it seems like, if everyone did this, there's little chance that things like families, friend groups, political parties, or even nations could survive. (Short version: "It's my right to refuse to help you" doesn't mean it is *good* or *moral* to refuse to help you).

To close our discussion of contract theory, we'll consider the best-known modern version of the view. It attempts to solve some of these problems (though critics have claimed it doesn't always do so successfully).

## INTO THE MODERN ERA: RAWLS ON JUSTICE AS FAIRNESS

**John Rawls** (1921 to 2002) is widely considered one of the most important ethical theorists of the past 200 years. His 1971 book *A Theory of Justice* offered one of the first modern systematic answers to the question "What should a just society look like?" The theory he defends ("justice as fairness") is sometimes called **liberal egalitarianism**. Rawls's basic thesis is as follows: **In a just society, goods and services should be distributed to maximize the position of the people who are worst off (such as the poor or sick). However, this must be accomplished without violating anyone's basic rights to speech, assembly, religion, private property, or political participation, and without discriminating against anyone unfairly.** Where Hobbes is associated with political "realism", and Locke with libertarianism, Rawls is often associated center-left "liberalism" (roughly, the idea of a capitalist society with strong support for the poor).

Rawls' theory of "justice as fairness" is a **contract theory**, according to which the rules of a "just society" are determined by considering what the citizens would *agree* or **consent** to. Of course, contract theories cannot require **actual consent**, because (1) people do not choose where they are born, and cannot easily choose to leave their society and (2) people have reasons to be *biased* in their choices (rich people would choose a theory of justice that let them keep their wealth, while poor people would favor a theory of justice that let them take all of the wealth). To solve this problem, Rawls reasons as follows:

1. We imagine ourselves in a hypothetical situation called the **original position**. In this hypothetical situation, all of the future citizens are behind a **veil of ignorance** that prevents them from knowing their wealth, religion, health, race, sexual orientation, and so on. Each person in the original position is assumed to both **rational** and **self-interested**. That is, each person is concerned primarily with his or her achieving his or her *own* goals, and not with "making society better as a whole").
2. People's judgments in this scenario represent **hypothetical consent** (they *would* consent to these principles on the hypothesis that they were in this position).
3. Since the purely formal and abstract principle of justice means that people shouldn't be considering things like wealth, religion, race, etc., this hypothetical consent is a good guide to what people *actually* think a just society should look like.
4. We can now use the theory of justice arrived in the original position to evaluate the justice of our *own* society, and make changes as needed. Rawls emphasizes that this is a continuous process of **reflective equilibrium**—we decide on a theory of justice, see whether it conflicts with *other* beliefs we have, and then make adjustments to either the theory or our other beliefs until we have arrived at an "equilibrium" state in which our theory of justice is compatible with all of our other moral commitments. Rawls emphasizes that theories of justice cannot be "deduced" from self-evident first principles, but must instead carefully take into account *all* of the relevant evidence.

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## FUNDAMENTAL RIGHTS, FAIR OPPORTUNITY, AND THE DIFFERENCE PRINCIPLE

*The first statement of the two principles reads as follows.*

- **[Fundamental rights]** *First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others...*
- **[Difference principle]** *Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) [Fair opportunity rule] attached to offices and positions open to all under conditions of fair equality of opportunity. (Rawls)*

Rawls holds that the people in the original position would opt for a **liberal** society, in which each individual's rights to pursue his or her own conception of the "good life" were protected by fundamental rights to speech, assembly, and religion. (Libertarians *agree* with Rawls about this.) He also holds that they would aim for a relatively **egalitarian** society, in which the position of the worst off would be maximized. Finally, he holds that they adopt a **fair opportunity rule** that ensured that no individual could be discriminated against unfairly (for example, while it *might* be OK to offer an "affirmative action" program in general terms, it would *not* be OK to offer jobs to only to specific individuals, without offering others a chance to compete.) Why does he think this?

Rawls believes that the rational agents in the original position will want to ensure that they have some ability to pursue their *own* sense of the good life, *even if this ends up being a sort of life that other people don't like or approve of*. Because of this, they will avoid utilitarian principles, which can easily justify sacrificing minorities for the "greater good." He argues that they will instead choose a package of **fundamental rights** that applies to everyone, including speech, religion, assembly, bodily privacy, and so on. These rights have *priority* over everything else, including the difference principle. For the same reasons, they will adopt a fair-opportunity rule to ensure that no one can discriminate against them based on morally irrelevant characteristics.

**Primary goods** are "things that every rational man is presumed to want." They include things like rights and opportunities (mentioned above) but also things like income and health. **Social primary goods** are things that society can help distribute (like income), while **natural primary goods** (like healthy genes) are currently out of society's control. Rawls argues that these will be distributed according to the **difference principle**, which maximizes the position of the worst off.

**The Difference Principle, in a Nutshell:** While the difference principle sounds complex, the idea is intended to be an intuitive one: basically, it is perfectly OK to pay certain people more (doctors, engineers, etc.) if this is what we need to inspire the best people to do these jobs, and to do them well. After all, this helps everyone, including the worst off members of society. By contrast, it is NOT OK for people to have more money/stuff “just because,” or to deny the worst-off members of society the benefits produced by these highly paid doctors or engineers.

#### REVIEW QUESTION: FOUNDING A NEW SOCIETY

Suppose that you and your group members are in charge of starting a new society, which you will then randomly be assigned a role in. For the purposes of this exercise pretend that you do NOT know the following things: how much money you will have, what your physical or mental abilities will be, how healthy you will be, what gender or race you are, or what your religious or philosophical beliefs are. You have the following options. Why which would you choose why?

1. **Utilitarianism (J.S. Mill)**—Goods are distributed in whatever way maximizes the *net* happiness of everyone. Because of the principle of **diminishing marginal utility**, it is likely that utilitarians will split things up roughly equally. Similarly, because utilitarians value efficiency, they will likely have (relatively) free markets and give legal rights to citizens. However, none of these are absolute rules. For example, utilitarians are unlikely to spend lots of resources for low returns (e.g., a utilitarian government would be unlikely to fund expensive cancer treatment for elderly individuals). Similarly, utilitarian governments may violate rights to privacy, property, etc. in those circumstances when the greater good requires it. Utilitarians treat the principles governing the other views as “rules of thumb.”
2. **Libertarianism (Locke)**—The fundamental natural rights of citizens to life, liberty, and property will be protected. After that, goods will be *randomly* distributed to each group member (this represents inherited wealth, and other sorts of inequalities between families). The government will use taxes to provide a basic level goods corresponding to the benefits of publicly funded education of children. There is a significant chance that some people (a poor adult with a treatable disease) will die much earlier than they would have in the other views (since a purely libertarian government might not provide any health care).
3. **Liberal Egalitarianism (Rawls)**—The fundamental rights of citizens will be protected, though the right to property is somewhat more limited than on libertarianism (in particular, Rawls thinks that it is perfectly OK to tax the *estates* of the very rich to fund education and other public goods). After that, goods are distributed to *maximize* the position of the worst off. This may include things such as universal health insurance or income assistance. When compared to utilitarianism and libertarianism, there is a good chance that the *highest* incomes won’t be quite as high, but the *lowest* incomes won’t be quite as low, either.
4. **Communitarianism**—We should recognize that we simply don’t have enough information to make a choice like this in the veil of ignorance, since our conception of the good will be strongly informed by our religious beliefs, culture, and so on. With this in mind, we should set only a few prohibitions based on natural rights (for example, prohibiting slavery), and figure everything else out “on the ground.” Of course, this means that the laws governing *individuals* will be very different, depending on what sorts of values your culture happens to have adopted (Humanist, Islamic, Christian, Confucian, Hindu, Secular Liberal, or whatever). Among other things, this might impose risks on classes of people (such as women), who may find their choices limited when compared to liberal alternatives. (This view is often connected to virtue ethics, which holds that a healthy culture must inculcate its citizens with *specific virtues*, and not simply give them contentless “freedom.”)
5. **Marxist (Absolute) Egalitarianism**—Insofar as it is possible, goods will be distributed exactly equally. However, doing this may require violation of people’s basic rights. It might also involve inefficiencies (where *everyone* gets less, because there is simply less stuff produced).