Summary of this lecture

• What was David Hume actually objecting to in his attacks on Classical Social Contract Theory, and why do his objections work best against the social contract theory of John Locke?

• Why are there (at least) three ways in which we might understand the notion of consent, and whether any of these help to solve the problems facing Social Contract Theory?

• How John Rawls revolutionized Social Contract Theory (and political philosophy) by moving from the ‘state of nature’ to the ‘initial position’

• Why, just about, everyone no longer grounds political obligation in Social Contract Theory
Hume’s objections to Classical SCT

• Last week’s bombshells from Hume:

1. Classical Social Contract Theory doesn’t seem to describe the laws that people are supposedly obliged to obey. They should be universal, non voluntary and coercive, so isn’t suggesting that they are ‘founded altogether on voluntary consent’ sedition, if not insanity? (OOC 475)

2. Classical Social Contract Theory implies that we have consented to be governed by laws but nobody has ever asked us for this consent, nor can we be said to have a free choice to leave our country given how cost this would be. We are like a mariner ‘carried aboard asleep’ and yet subject to the dominion of the ships master. (OOC 119)

• These are great objections. However, in order to see exactly how they work we need to understand their real target – the theory of John Locke
David Hume and John Locke

- Hume’s ‘On the original contract’ is a skeptical and highly satirical attack on the two main political positions in the UK in the 18th century
  1. Tories – disliked the Glorious Revolution of 1688, argued for constitutional stability and believed that kings ruled via divine right (but, says Hume, what about the divine right of robbers and pirates?)
  2. Whigs – supported the glorious revolution, believed that the people ruled via the social contract and argued for gradual constitutional reform towards some utopian future (the Whig view of history)

- Thomas Hobbes was somewhere in between (Social Contract conservative), Jean-Jaques Rousseau was a radical (believed in constitutional revolution), Edmund Burke was only 16 years old.

- The Whig philosopher in Hume’s sights was John Locke
John Locke

- Lived 1632-1704. Believed that human beings were born ‘blank slates’ who learned via empirical experience. Held conservative political views for much of his youth (helped to write the Fundamental Constitutions of Carolina) before coming under the influence of more radical associates of his employer, the Whig politician Anthony Ashley (Earl Shaftsbury).

- There is some debate about whether Locke and Hobbes agreed about what life would be like in a State of Nature, however the differences are definitely much less than those between Hobbes and Rousseau.

- Both Hobbes and Locke saw individuals in the state of nature as struggling to reconcile their natural desire to act morally and the present and immediate threats that people pose to one another in the state of nature.
John Locke

- First major difference between Hobbes and Locke: Locke did not believe that morality would remain unrealised in the state of nature, despite it being in conflict with self-preservation. Hence, we should not confuse the ‘state of nature’ with a ‘state of war’.

- This may well have reflected the fact that Hobbes was (probably) an Atheist whilst Locke, who was not, believed that God would not create something (the natural law) unless it served a purpose.

- In particular, Locke argues, that natural law gives everyone a reason to punish wrongdoing wherever they perceived it (whether perpetrated against themselves or others) and to accept the authority of others to punish wrongdoing in this way (even against themselves). This effectively allowed for Hobbes’ collective action problem to be resolved within the state of nature.
John Locke

- Locke therefore sees the social contract as emerging via a two stage process:

1. In the first stage, people in the state of nature avoid falling into a ‘state of war’ by freely agreeing to form political societies. Individuals respect each others authority to uphold the natural law, and in doing so preserve their natural rights (to life, liberty and property)

2. In the second stage, political societies become too large and complex for individual actions to continue being a sufficient deterrent to violations of natural right. Therefore, political societies must select a government in order to avoid collapsing into a ‘state of war’.

- Hence, people are obliged to obey the government, but only because it protects their natural rights and freedoms not because it pacifies them.
Second major difference between Hobbes and Locke: for Hobbes individuals consent to be ruled, for Locke they consent to be part of a political society.

For Hobbes, it is enough that people subject themselves to be ruled for them to be seen as having consented to a ruler. For instance, simply to cease fighting an invader implies consenting to their rule.

For Locke Consent is far more complicated

1. People remain in the state of nature until they have ”by their own consent … [made themselves] members of some politick society” (ToG 278)

2. Rulers do not only protect our natural rights, they also violate them
What does Locke mean by consent?

1. Not ‘actual consent’ – it does not seem to be the case that people affirm direct consent to be part of a political society or to be ruled by its government, although Locke does seem to believe that actual consent was necessary for people to originally agree to form political societies.

2. ‘Tacit consent’ – we consent to be part of a political society and to be ruled by its governments because our actions imply such consent. “Every Man that hath any Possession, or Enjoyment, of any part of the Dominions of any Government, doth thereby give his tacit Consent, and is as far forth obliged to obedience to the laws of that Government, during such Enjoyment as any one under it” (ToG 348)
Locke’s argument

P1 – People are obliged to obey the laws of any government that upholds the natural rights of the members of a political society to which they consent to be a part.

P2 – People give their tacit consent to be part of a political society so long as they hold any possessions or enjoy any part of that society “whether it be barely travelling freely on the Highway’ (ToG 348)

C – We are therefore obliged to obey the laws of our governments, although we may seek to replace those governments if they no longer uphold and protect our natural rights.
• Now Recall Hume’s objections to Locke

1. Social Contract Theory doesn’t describe the laws that people are supposedly obliged to obey – in Hume’s day, no government saw their authority as resting on citizens’ consent to be governed, nor did they hold themselves as governing in order to protect individual’s natural rights. This undermines Locke’s P1

2. Social Contract Theory implies that we, tacitly, consent to be governed but this is unreasonable as we have no choice but to possess and enjoy part of our political societies. This undermines Locke’s P2

• What about Hobbes and Rousseau?
Thomas Hobbes

• Hobbes’ argument (reconstructed)

• P1 – People are obliged to obey the laws of any ruler who they consent to be ruled by as a means of limiting the natural desires of the people and thus avoiding a state of war

• P2 – People consent to be ruled just in so far as they submit to being thus ruled and subject themselves to the authority of the ruler

• C – We are therefore obliged to obey the laws of anyone who can rule over us.
• Hume’s second objection may not work against Hobbes. Anyone who finds themselves on board a ship is likely to submit to the commands of a captain, even if they never chose to be on the ship in the first place – unless they are sure that they could do a better job as captain. The risk in defying the captain is that the entire ship will be lost, and this would be even worse for the mariner than merely accepting their dominion.

• Yet Hume’s first objection seems, if anything, even stronger in this case. Such a rule cannot be justified on the grounds of my voluntary consent to it. Merely to refuse to be subjected to such a law implies revoking its justification. However, laws are meant to apply to us whether we like it or not!

• Hume has a convincing response to Hobbes, but it is different to, and more limited than, his response to Locke…
Jean-Jaques Rousseau

• Rousseau’s argument (reconstructed)

• P1 – People are obliged to obey the laws of any government that is expedient to facilitating cooperation and enterprise within their community (and is thus supported by the ‘general will’ of the people)

• P2 – People give their consent to uphold the general will of their community so long as they remain within its domains (...unless “family, goods, lack of asylum, necessity or violence may keep the inhabitant in the country in spite of himself” (SC 124n) – but who cares about that?)

• C – (At least) some of us are therefore obliged to obey the laws of our governments, although they remove our freedom and we should all work towards establishing a utopian constitution wherein the ‘general will’ will also be the ‘will of all’
Here it is Hume’s first objection that seems to work less well. Rousseau is quite sanguine about the imperfection of our laws and was indeed hounded by political authorities for his views (this may well have been exactly what Hume was referring to as the two of them were friends). His view is that the only laws we are really obliged to follow are the ones that we ourselves have placed upon us.

However, Hume’s second objection, about consent, still seems relevant. Despite Rousseau’s list of caveats he clearly saw consent as primarily resting on residency, and believed that people actually did tacitly consent to being part of a state by simply remaining within its boarders. However, as Hume suggests, the barriers of encumbrance that Rousseau describes are in fact very great, so how could any of us been taken to consent to a government on this basis?
Hume’s objections hold up well against a range of Classical Social Contract Theories. However, you must still be careful in applying them.

In fact, they pretty much killed off all discussion of the social contract in English Language Philosophy for the next 200 years.

However discussion of social contract theory did re-emerge in the second half of the 20th century via John Rawls and the idea of the ‘hypothetical social contract’.

The hypothetical social contract attempts to ground morality (or at least that part of morality known as justice) in hypothetical ideas about what people would accept and reject under ideal conditions - not in what they have actually consented to, either actually or tacitly.
John Rawls

- Rawls particular concern was to identify “the principles of justice that would regulate a well ordered society”? (ToJ 7)

- Rawls is very ‘analytical’, we can learn a lot about his theory just by looking at how he defined his terms. For instance, a society is "a more or less self sufficient association of persons who, in their relations to one another, recognize certain rules of conduct as binding and who, for the most part, act in accordance with them” (ToJ 4)

- Societies are “typically marked by a conflict as well as by an identity of interests” (sound familiar?)
  1. Identity of interests because “social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts”
  2. but conflict of interests because “persons are not indifferent as to how the greater benefits produced by their collaboration are distributed” (ToJ 4)
All societies therefore require “a set of principles … for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice” (ToJ 4)

In a ‘well ordered society’ “(1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles” (ToJ 5)

”the principles of justice for the basic structure of society are ... the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association.” (ToJ 10)
These principles form the basis of an ‘original agreement’ for Rawls. However, this is nothing to do with an agreement made with others in the, real or hypothetical, ‘state of nature’. Instead it is an agreement that we would make if we were to design the ideal society for ourselves, knowing only that we would have to live in that society and be bound to uphold its principles, but not knowing what position we would have in it.

This is the initial position (often known as the ‘original position’), it allows us to explore whether or not a principle of justice meets Rawls’ test of being one that could be publicly upheld by everyone living in a society whose institutions implemented these principles well.

It also allows us to reconcile our common interest in producing as much as possible with our conflicting self-interests to secure as much of this production as we can when determining what is just.
The social contract, for Rawls, is not a means of ‘justifying’ the state, but a means of determining what makes states (more or less) ‘just’.

“Existing societies are of course seldom well-ordered in this sense, for what is just and unjust is usually in dispute.” (ToJ 5)

But what if they were? Would the Hypothetical social contract give us an obligation to obey the law? Ronald Dworkin didn’t think so “A hypothetical contract is not worth the paper it is written on”, why does the simple fact that everybody ‘could’ uphold a particular principle of justice mean that everybody should uphold it, or ought to abide by this principle? (Hume, you can’t obtain an ‘ought’ from an ‘is’ – or even a ‘could’)

Rawls thinks that his hypothetical social contract theory does oblige everyone to obey the law... but not because of their hypothetical consent!
References


