

Philos 117AC, Spring 2017

Main Text: David Hume, "Of the Original Contract"

Hume's opposition to the social contract tradition:

Hume concedes the following to the social contract tradition (e.g., Locke). Since men are roughly equal in their natural abilities, there is no way for one person to have power over the rest without their voluntary submission. And they will be willing to go along with it only if they think that it serves their interests to do so. Important among those interests are "the advantages resulting from peace and order."

But the social contract theorists want more than this. They claim that one is *obligated* to obey a government only if one has made a *promise* to obey it. And they claim that this promise is conditional. If the government does not live up to its end of the bargain, then they no longer are obligated to obey it.

The contrast is between the claim that (1) political *power* exists only where people routinely *acquiesce* and the claim that (2) political *obligation* exists only where people have made a *free and informed promise*.

Hume observes that no such promise was ever given, at least not in conditions that would be sufficiently free to make it valid and binding. Nevertheless, people have political obligations.

Tacit consent?

Does, say, residing in a country constitute tacit consent to its government?

Doing X constitutes binding, tacit consent only if (1) the person knows that doing X has that significance, and (2) the person is free to do X or not to do X.

Hume's first point is that people haven't the slightest idea that staying put amounts to consenting to an obligation to obey, since they don't think that obligation depends on their consent in the first place. After all, ordinary people aren't tacit consent theorists! "[S]uch an implied consent can only have place, where a man imagines, that the matter depends on his choice. But where he thinks (as all mankind do who are born under established governments) that by his birth he owes allegiance to a certain prince or certain form of government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims."

Hume's second point is that people aren't free to leave, so their staying can't count as tacit consent. Leaving one's country can have tremendous costs. "Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign languages or manners, and lives from day to day, by the small wages which he acquires? 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." Moreover, rulers may forbid immigration (without forfeiting the allegiance of their subjects).

Hume's final point is that even when acts meet conditions (1) and (2) (or come as close as they can), they don't affect political obligations in the way in which the tacit consent theorist would predict. Consider the most likely candidate of an act of tacit consent to obey government: when

someone emigrates from his native country, A, to another country, B. This is a free and informed choice. He could stay if he wanted to, and he knows what he's getting into. But rather than thinking that he has greater obligations to B than those born in B, we tend to think that he has weaker obligations than they. Moreover, we tend to think that he continues to have some obligations to his own native land, A, even though he may have freely and knowingly left it.

Hume's alternative account of the duty to obey

Are we to conclude, then, that no one has any obligation to obey? No.

Hume *agrees* that we have obligations to obey. Moreover, Hume has no quarrel with the claim that we have obligations to obey *if* we have made a promise. His quarrel is with the claim that we have obligations to obey *only if* we have made a promise. His point is that "some other foundation of government must also be admitted."

To expose this other foundation, Hume distinguishes between two kinds of moral duties:

- *First*, those duties that we are motivated to fulfill without any thought of duty, or of public or private utility, but that nonetheless are duties because they promote public or private utility. As reflective spectators, we recognize that such motives promote public or private utility, and we esteem them for this reason—view them as duties. But, as agents, we need not recognize these facts to be motivated. E.g., love of children, gratitude to benefactors, pity to the unfortunate.
- *Second*, those duties that we are motivated to fulfill only from the thought that they are duties, a thought which arises when we recognize that public utility depends on their general fulfillment. E.g., justice with regard to property, and fidelity with regard to promises. We are moved to steal a rich man's property, or to break a promise with him, in order to benefit ourselves, or our children, or our benefactors, or the less fortunate. What stops us? The thought: "What if everybody did that? Then the system would break down, and chaos would ensue." That is, the thought that there are great benefits to all in people generally complying with rules that give people exclusive use over particular things and that ensure that people will do what they say.

Our obligation to obey the government, Hume argues, is a duty of this latter kind. We are moved to disobey the law, in order to benefit ourselves, or our children, or our benefactors, or the less fortunate. What stops us? The thought: "What if everybody did that? Then the system would break down, and chaos would ensue." In other words, we realize that there are great benefits to all in having law and order. That is why we believe that there is a duty to obey the law.

This means that the justification of the duty to keep promises is essentially the same as the justification of the duty to obey the law: that the system in question brings great benefits to all. This means, in turn, that it is a *pointless detour* to attempt to justify, as the social contract theorists do, the duty to obey the law in terms of the duty to keep promises!

Public utility requires, above all, that we have some effective government. If one government happens to be in power at present, then in almost all cases we ought to obey it, because the loss of public utility that would result from trying to replace it far outweighs the advantages of whatever government we might put in its place.