

*Full Length Research*

# A Defense of Political Consent Theory Through an Analysis of Socio-Cultural Political Covenants

John Engle<sup>1</sup> and Chloe Engle<sup>2</sup>

<sup>1</sup>University of Oxford; Grassroot Institute of Hawaii

<sup>2</sup>College of Lake County

<sup>1</sup>Corresponding author's Email: [englej@tcd.ie](mailto:englej@tcd.ie)

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**This essay seeks to give social contract theory a new breath of life by blending its premises with two other concepts: the established theory of Samaritan duties, and a novel idea of socio-cultural political covenants. In order to do this, it first address the social contract theory as it is conventionally defined and defended by examining the consent theory outlined by Hobbes, Locke, and Beran. Then the essay outlines the alternative theory of Samaritan duties as described by Wellman. Finally, this essay synthesizes the positions of social contract theory and Samaritan duties and couples it with a novel analytical framework we call socio-cultural political covenants. This new framework is meant to offer a deeper and more textured understanding of political obligation and all it entails.**

**Keywords:** Social contract, political philosophy, consent theory, political obligation, Samaritan duties, covenants

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## INTRODUCTION

Virtually all people today live within the borders of self-contained, clearly defined territories, or states. While this was not always the case, it has been the pattern of human existence to form collectives, the nature and extent of which have changed organically through the ages, growing in depth and complexity to their modern form. The contemporary state-society particularly that designated as "Western" has reached a height of intricacy unattained at any other time. States have come to be expected to be the furnishers of necessary public goods, such as security, that could not be obtained by

private action. Yet for all this time and corporeal development, and evolution of states and societies, the question of what generates and constitutes citizens' obligations to the state and the government remains an issue of contention among political philosophers.

It seems clear that the citizens and residents of all liberal democratic states, and indeed residents of all functioning states, have a political obligation to the state, and are thus in some way morally obligated to obey its laws. But of what does this moral obligation consist? One of the oldest and most dominant descriptions of political

obligation is the social contract theory of government. Relying on the idea of consent, social contract theory is frequently used in academic literature and in the rhetoric of political leaders, yet it is an idea that fails to take in much of the nuance of political obligation.

### Thesis Statement

This essay seeks to give social contract theory a new breath of life by blending its premises with two other concepts: the established theory of Samaritan duties, and a novel idea of socio-cultural political covenants. In order to do this, it first address the social contract theory as it is conventionally defined and defended by examining the consent theory outlined by Hobbes, Locke, Gauthier, and Beran. Then the essay outlines the alternative theory of Samaritan duties as described by Wellman. Finally, this essay synthesizes the positions of social contract theory and Samaritan duties and couples it with a novel analytical framework we call socio-cultural political covenants. This new framework is meant to offer a deeper and more textured understanding of political obligation and all it entails. These covenants are idiosyncratic social constructs of citizens' general buy-in to the actions and powers of the nation-state of which they are members. This essay seeks to demonstrate their existence and their power in defending a concept of a revitalized social contract model based on implicit consent and Samaritan duties. After all, social contracts are at the heart of so much of our implicit relations with the state, but it is only through an understanding of socio-cultural political covenants that they may be considered philosophically defensible.

### Examining Consent Theory

Some of the earliest efforts of political theorists to ascertain the link of obligation between citizen and state resulted in social contract theory, also known as contractarianism or consent theory, as initially put forward by thinkers like Hobbes and Locke. At the heart of this theory is the belief that, "Legitimate authority of government must derive from the consent of the governed," (Cudd, 2012). According to social contract theory, the fundamental need for government to exist is the chaos and ugliness of the world absent government, the state of nature. In order to escape anarchy, according to contractarians, individuals band together to form collectives and establish authority figures to govern relations and arbitrate disputes (Hobbes, 1651). As Finn (2006) put it, "Individuals must create a common power by a mutual transferring of rights," (p. 53). This view of political obligation is very attractive on its face, particularly to people of liberal political persuasion who

value personal freedom as the highest political aim. The notion that the state exists by the conscious will of the people, and the position of government as subordinate to the will of the people by being dependent on consent for its existence and authority, speaks to this belief very broadly. The idea holds a certain intuitive appeal, which is perhaps why it has stood the test of time despite near constant attack from a wide range of alternative theories.

The notion of obligation or the right of the state to claim duties from citizens, as derived from consent has found its most able modern day defenders in Harry Beran and David Gauthier, who each developed quite effective defenses of the social contract theory of obligation. Beran was especially effective in arguing for consent as the critical hurdle for the legitimacy of a state, arguing that, "Consent is a necessary condition for there being an authority relationship between a state and its members," (Beran, 1977, p. 261). Consent is the critical piece of the puzzle of obligation for most contractarians. There certainly is an intuitively appealing quality in Beran's analysis. Gauthier (1986) added further insights to the social contract theory by focusing the rationality of human beings and their mutual self-interest to create systems of authority. Gauthier's ideas hold many echoes of the ideas of Locke, but they are especially effective in explicating the apparent rationality of people and what could be called their "natural" decision to congregate in individual-state nexuses.

### Criticisms of the Social Contract

Despite vigorous support from centuries' worth of philosophers, social contract theory does not hold up as a singular explanation of political obligation under careful scrutiny for three reasons. Firstly, there appears to be an inherent logical flaw in that citizens who do not wish to consent to the state are essentially forced to submit to its power, or perhaps emigrate, despite having not ever paid the state fealty. Indeed, a common refrain of opponents of the social contract is, "I didn't sign it," which, while hardly analytically rigorous, certainly calls into question contractarian theory's reliance on strict consent as the sole basis of political obligation and legitimacy. The strict social contract theory is simply unrealistic, as individuals living within states rarely if ever consider the fact of their living within that state as a matter of *explicit* consent, but instead simply as a matter of fact. At best it could be argued that the social contract operates as a sort of *tacit* consent, and do not view their compliance with law, in practice, as an obligation incurred by conscious consent. It is this construction of consent as tacit that will form a critical component of the argument for political obligations emerging from a socio-cultural covenant that will be put forward later in this essay.

The second problem facing the explicit formulation of

the social contract theory is one of moral justification. Indeed, Gauthier's (1986) position in particular has come under criticism for essentially assuming that a state can exert or possess moral authority prior to the consent of the people (Southwood, 2010). As Wellman (2001) put it, the state, "Somehow achieved a position of moral sovereignty over its territory even before it has the consent of its citizens" (p. 736). It is a problem of begging the question to assume that a state could be imbued with moral authority in this way. This issue is not of supreme import in this essay, as the issue of moral obligation is dealt with more resolutely in the later sections.

The third issue with the explicit social contract is one of the historicity of such contracts. As Wellman (2001) put it, social contracts are simply "historically fantastic" (p. 747). Indeed, most states arose from force and coercion, evolving only gradually from tribal authority, to monarchical authority, to more modern state-societies. There has rarely, if ever, been the case of a group of people collectively and unanimously handing over their rights by to a central authority mandated into existence by their common consent. Horton (2007) addressed this issue, pointing out that in the case of membership in a particular society, "Nothing particular needs to be done in the vast majority of cases to acquire such membership, which is, in a perfectly straightforward sense, non-voluntary" (Horton, 2007, p. 12). While individuals' citizenship, and thus membership in a state may be due to birth and be absent strict consent, and while these natural identities may be acquired by apparent chance or communal inculcation, the participatory buy-in to the state and its laws, whether a citizen ever truly consents in the Lockean or Gauthieran sense to the state can be rendered irrelevant, or at least less relevant, by moving away from the explicit construction of the social contract paradigm.

The problems created by explicit social contracts can be dealt with quite effectively by texturing what is meant by the idea of consent. When viewed from the more sensible position of a notional, implicit consent, based on the perception of buy-in, social contract theory holds more water. By notional consent we mean to posit that an individual is not so much consenting to participation, as opposed to dissenting or choosing total non-participation, but is rather notionally consenting to the existence of the state through a performative buy-in. Understood this way, consent theory can be understood to be applicable in the real world. By incorporating concepts of civic morality into the understanding of social contracts, one can begin to see that the consent theory can still be a powerful justifier of political obligations.

### **Understanding Samaritan Duties**

Beginning with a similar stated goal as consent theory,

namely the escape from the state of nature, Christopher Wellman introduced the view that individuals may be coerced into obedience to the state and observance of political obligation to the benefit of everyone, including the coerced individual: "The state would be prohibited from coercing its constituents without their consent unless this coercion were necessary to rescue everyone from the perils of the state of nature," (Wellman, 2001, 746). Wellman avoided the pitfall of sounding overtly paternalistic by emphasizing the benefit to others and the necessity of maintaining the social order through coerced obedience for the benefit of the vast majority who will gladly comply with the directives of the states. Those who will not comply may secede (ie. emigrate) if they do not wish to comply with the state, unless their secession would undermine the state's ability to protect compliant citizens from the state of nature.

Wellman based his analysis on certain Samaritan duties held by individuals, and the state. These duties involve people's moral obligations to help one another, the state's obligation to help individuals, and thus individuals' obligation to obey the state in its prosecution of that aim. As Wellman (2001) put it:

The Samaritan model of political legitimacy explains that a state has a right to force even those who do not consent because this force is necessary to rescue this person and others. Adding Samaritan duties and fairness to this, we can now explain that each person has an obligation to obey the law as her fair share of this Samaritan task. By invoking fairness in this fashion, we may freely admit that no one would slip into peril if a single individual disobeyed the law. Instead, we point out that it would be unfair to shirk one's share of the Samaritan chore. Securing political stability is a communal responsibility that falls upon all of us; it is wrong to leave all the work to others. (p. 749)

According to Wellman, citizens have a responsibility to obey the law and to fulfill their obligation to the state for the benefit of the community. In order for the community to survive, the state must have the power to use coercive force against individuals who threaten the group, and to citizens generally for the promotion of the general welfare.

It is Wellman's particular emphasis on political legitimacy as separate from political obligation that is most important to note in his analysis, and is central to the synthesis that will be outlined in the next section. Social contract theory, as outlined previously, does not effectively differentiate these two concepts and treats them as correlates of one another. The issue of political legitimacy highlights the state's ability and tendency to use coercive force for the sake of the whole community,

and this is acceptable because, "One cannot lead a meaningful and rewarding human life unless one is minimally secure from attack...the coercive laws of the state secure us by providing others with practical reasons to respect our moral rights," (Wellman, 2001, 742). It is this focus on the separation of legitimacy and obligation that offers a key piece to the puzzle of the synthesis of obligations.

### **The Idea of Socio-Political Covenants**

The two theories of political obligation outlined thus far can be synthesized to create a single clearer picture of political obligation. Doing so allows one to understand the abidingly important belief that individuals should accept that their government operates at least partly on the basis of consent. For example, it is neither for mere symbolic, nor empty hyperbole that the Constitution of the United States begins "We the People". That sense of the need to have a say in government is essential to the longstanding survival and continued obligation owed by a people to its government. An undemocratic regime may be legitimate in that it prevents society from descending into chaos within and holds back the marauders without, and it can command an obligation from its people to a degree, but ultimately a country's strength is its people and the popular will inevitably wins out against unaccepted tyranny, as was demonstrated at the fall of the Soviet Union in 1991, and in the groundswell of democratic movements and anti-dictatorial uprising in the Middle East and beyond in recent years. For this reason it is clear that consent in some form must exist for a state to survive and to claim the obligation of its citizens. This need not take the form of direct or representative democracy, but rather must simply, and of necessity, sublimate as some form of feedback loop between governments and governed. It is thus clear, that a notional, or implicit, consent is key to legitimate government, which is government to which citizens are obliged to defer. This notional consent is not the sort of consent of the strict contractarians, whose position is little more than a fiction and has no antecedent in history to lend it truth. Instead, the 'conferral of rights' as described by Locke and Hobbes is a sort of symbol, a shared quasi-fiction citizens can accept as binding them to the state in a reciprocal relationship. This relationship of necessity pervades every political culture, for without it the government will soon find itself overrun with rebellion and civic anger that no amount of repression could halt in the long term.

Beyond the mere democratic process, citizens perceive the state as something they are part of, not in the acculturated manner described by the theory of associative duties, as put forward by scholars such as Horton (2007), but as having a buy-in to the system that

will deal fairly as it is, or at least proximal to, a manifestation of collective will. This sense of buy-in is only possible with a consent-based structure of political will and obligation, which places emphasis on the personal agency of citizens in the creation and legitimization of the state. The acceptance of consent as a source, though not the sole source, of political obligation, is thus extremely valuable to the long term stability and functionality of a polity.

This quasi-fictional, or symbolic, consent, while key to our common understanding of political obligation as it is generally described and viewed by ordinary citizens, is insufficient to describe entirely the obligation of citizens to obey the state, as consent alone cannot bind citizens to the state incontrovertibly, as explained earlier. Rather, there is a need in this philosophical examination to acknowledge the occasional necessity of coercive force to secure the state and its citizens. Because the state provides public goods, services that are essential to society and can only be provided by the state, it has the power to coerce citizens to whom it supplies these collective goods, and citizens likewise are obliged to comply with the dictates of the state. This obligation is based not simply on the arbitrary power of coercion, but rather is keyed into the notion of Samaritanism. This concept, described previously, fits well with political reality. Citizens are protected by the state in such a way that they could never hope to protect themselves alone, or in a state of nature, and thus owe it an obligation so as to do their part in contributing to the collective security. In order to avoid free riders, the state thus requires the power to force participation, but because this force is used to benefit the citizen and his or her fellows, the citizen has a genuine obligation to comply. Citizens of countries the world over recognize this obligation to the state, and recognize such inconveniences as taxes as a necessary component of life in a civilized society.

Samaritanism, like consent theory, is inadequate of itself to delineate the obligations of citizens to the state. Rather, combining the two allows for a more complete, and more realistic, depiction of political obligation. Consent, notional or otherwise, is imperative to the psychic acceptance by individuals of political obligations, just as the need for the state to be able to compel certain behavior of its citizens, irrespective of specific consent on an issue, is imperative to the success of society. By combining consent with Samaritanism, a degree of synergy is achieved, with the necessary obligation of citizen to state defined by both his willingness to participate in that state on at least a notional level, and the power of the state to coerce action, while not stepping beyond the bounds of justice as speculatively laid out through that consent.

We call this synergistic relationship a socio-cultural covenant. It is the bond that links individuals within societies beyond consent or state paternalism. Rather, it

is an intergenerational compact that preserves the state-society as a coherent entity through time and endows it with a specified purpose for the maintenance of the common good of the polity. At the same time, we must recognize that the exact character of this covenant must vary widely across countries. Taking the example of the United States versus European states, we can see that American citizens still expect a greater protection of their personal liberty, which translates broadly into less paternalistic policies and protections of rights such as the right to bear arms. In Europe, on the other hand, we see by and large a tendency toward greater acceptance of a more overbearing state and a collective buy-in to the idea of the government as a purveyor of more services and a greater constrainer of personal liberties. Much of the strife in political discourse and in political philosophy over the ideal nature of a state and its institutions can be laid to rest through the examination of the idiosyncratic characters of these socio-cultural covenants. They exist and are brought into force by the citizens of these states and manifest differently in accord with the underlying nature of the tacit agreements between these citizens and their governments about what constitutes the appropriate bounds of public and private life and action.

## CONCLUSION

Culture is frequently dismissed in the discussion of political philosophy, which so often tries to find a single explanation for a complex concept like political obligation. This essay has sought to show that by combining and expanding two of the prevailing theories can yield a powerful concept of socio-cultural political covenants that serves to unpack some of the issues with more pragmatic analysis of the relationships of citizens with their states. Citizens are not merely wards of the state, and nor is there a strict or explicit social contract to bind them to the state's will. Yet both of these concepts combined show the function of the state as an actor that can only function with a tacit consent and when it acts in the general interests of its citizens.

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