

Dr. James S. Spiegel, Christian Ethics, Session 4, The Social Contract Theory

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This is Dr. James S. Spiegel in his teaching on Christian Ethics. This is session 4, The Social Contract Theory.

Okay, now we're going to talk about social contract theory.

As I noted at the end of our discussion of utilitarianism, one brand of utilitarianism is rule utilitarianism, according to which we strive to abide by those rules, which, if followed, will maximize pleasure for the greatest number. Social contract theory aims to follow that idea and provide certain rules that will guide us as individuals, as well as a whole society, and to ground our concepts of moral obligation, as well as political rights, in these fundamental rules that are chosen to guide society. The idea is that if we as a society can come to some sort of agreement on what the basic rules will be to guide society, then that will make for the most peaceful, harmonious, productive, happy, and satisfied society.

It's called a social contract theory because the idea is that you forge some sort of agreement, a formal agreement, among the citizens in the society in order to achieve this. So, this will avoid some of the problems that plague act utilitarianism, like the problem of application, the problem of rights, and the problem of justice, at least if the social contract theory succeeds in other regards. Some of the major proponents of social contract theory include Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and John Rawls.

We'll talk about three of these philosophers, beginning with Thomas Hobbes, who said that fear and I were born twins because his mother was pregnant with him during the sinking of the Spanish Armada. That was in 1588. She didn't know if, well, this was going to be the end.

We're all going to die here when she heard about this, and she went into labor and gave birth to Thomas Hobbes. But he did just fine. The guy lived for about 90 years.

But he wrote this book, Leviathan, and this is the frontispiece from that book, which, if we were able to zoom in on that character there holding the sword and the trident or whatever that is, that he's made up of hundreds or thousands of individuals, which is a good image for the idea of a social contract where you get people agreeing, coming together and agreeing on certain basic principles to guide society so that they can operate as it were like a single individual. Hobbes' brand of social contract theory is unique among the early modern social contract theorists because

he defends a kind of absolute political sovereignty. The other social contract theorists emphasize the consent of the governed and even the right to revolt.

That isn't Hobbes' approach. He doesn't believe in the right of revolution. But we'll talk about the other ones later.

First with regard to Hobbes, Hobbes begins with this concept of a state of nature where human beings are not governed by any laws, where people just get what they want from nature: food, shelter that they need, and clothes that they need, and there is no governing authority. What would life be like in that circumstance, whether or not there ever was a true state of nature in human history? What would that be like if there were no governing authorities? According to Hobbes, it would be a condition of war. Why? Because you and I, at some point, are going to want the same thing.

And with limited resources, because we don't have an infinite amount of goods out there that we can acquire, we're going to come into competition at some point. And since I want it really bad, and you want it really bad, at some point it comes down to, I'll fight you for it. Right? And this creates a condition of war.

And it's not just you and me. You've got hundreds or thousands of other people in this state of nature. It's going to be chaos.

It's going to be a bloody mess. And so, in such a state of nature, Hobbes famously says, life is solitary, poor, nasty, brutish, and short. But who wants that? Who wants to live in a condition of war and enmity, where we're all living in fear? We need to get what we want out of nature, but I don't want to have to be fighting people for this.

The fact that human beings are roughly equal in terms of our intelligence and our physical strength compounds the problem here. Because each of us thinks I can beat him. I can come up with a way to defeat him.

And if we're equally confident that we can prevail in that competition, then that just adds to the possibility or likelihood of conflict. So, just to kind of represent it here, we have a kind of equality of hope or ability to attain things combined with our desire for the same things. That's what leads to a certain enmity and condition of war in a state of nature.

So, the question is, how can we overcome this problem? How can we avoid this condition of war and likely fight the fear that comes with it? We don't want to always be living in fear. This is where Hobbes proposes that there are certain basic rights and laws that apply to us just because we are rational beings. The most fundamental right of nature, he says, is the liberty of self-preservation.

I have the right to preserve my own life. And I have the right to use whatever power I may to preserve my life. That's a basic right of nature, a basic right to life he's acknowledging there.

And then he also maintains that there's a fundamental law of nature that corresponds to that right to life, liberty of self-preservation. And that is a duty to preserve life, a basic prohibition of destruction. Now, he doesn't, I don't think, adequately ground this law of nature and this right of nature.

He would say it's based ultimately on our capacity as rational beings. But I'd like to know something more. What really grounds this basic right and this law? Where does it come from? Just to appeal to our universal desire for these things and our rational capacities is not enough, but be that as it may.

This is his claim, and that we should strive to respect this right of nature and abide by this law of nature to preserve life. So, his prescription is for all of the people together to transfer their particular rights to some sovereign individual or maybe a small number of people, but usually, it's represented as a monarch, a king, or a queen. To exchange our rights to this political sovereign in exchange for the promise of protection and the preservation of my freedom.

So, I give up something, and I gain something. We're making a deal here. It's a contract.

It's a compact. It's an agreement we're going to enter into. And we're going to have to choose someone who's very trustworthy.

Someone who's reliable and they have the kind of character that you could trust that they won't abuse this sovereign power. But what we will do is surrender a number of our particular rights in exchange for the promise that we'll be protected. Even though we lose our absolute freedom, we gain protection and no longer have to live in fear.

Because this sovereign makes laws that are punishable if you violate those laws, particularly with severe infractions, and you know that you may go to prison or be executed if you murder or rape, then that fear that originally characterized most of life in the state of nature now only applies to those who violate these laws. You don't have to fear anything if you just abide by the laws. So, the sovereign will make these laws, and there are consequences, some of them deadly if you violate the most important laws, in order to create a stable, harmonious society and also to take away the fear that would otherwise prevent us from experiencing true happiness.

The way that this transfer and exchange are made is through the social contract or covenant. And in our society, again, we have one such contract, which is called our constitution, but we have all sorts of other laws. And we have traded in a certain freedom for security, right? I can't just drive down the road at 150 miles an hour if my car could go that fast.

I can probably go 100 or 120, but I'm forbidden. I've given up my freedom to do that, you know, knowing that the consequences will be such that I'll be arrested or I'll get a severe fine, maybe get my license taken away, and then my freedoms are prescribed even more. So, I say, okay, I agree not to drive past a certain limit, you know, which varies from road to road.

In exchange for this security, I have because I can count on other people also abiding by the speed limits, right? And that protects me. So, it's a deal we make. It's a kind of contract we make with those who rule us and our peers in society.

But in Hobbes' proposal, there's one sovereign who's in control of all of it, and the crown in his day was very pleased to see that he was reinforcing their political authority. So, that is something that creates a little bit of suspicion of Hobbes' real motives for many scholars. However, there were other social contract theorists who were not so interested in just defending the status quo in terms of the divine right of kings and queens.

One of those was John Locke, who lived a little bit later, and he, too, was a British thinker. In 1690, he published his two treatises on civil government, and his second treatise on civil government was one of the most influential political documents ever written. Our Declaration of Independence, the U.S. Declaration of Independence, essentially summarizes and applies Locke's political theory.

A good way to learn what Locke thought was to read our Declaration of Independence. Our founding fathers were very astute in terms of following what was going on in terms of social contract theory at that day and also looking back at ancient Greek and Roman thought. And with this new world they had discovered, that they were living in, that had been discovered by Europeans a century or two earlier, they thought, hey, this is our chance now that we've driven out the savages, as they called them, to start from scratch.

We've got basically a state of nature. Of course, the Native Americans would have said things a bit differently. But be that as may, for all that injustice, the Americans at the time from Europe decided we were going to start a new nation.

Who are we going to look to in order to guide us in terms of creating this new system? They decided to go with the social contract theory, which was basically Locke's version of that. Locke, like Hobbes, began with this notion of a state of

nature, as well as the idea of a condition of war and natural rights and laws. He thought that Hobbes was basically on the right track here.

Locke identifies natural rights as life, liberty, and property. In our Declaration of Independence, Jefferson changed that just a little bit, the property to the pursuit of happiness, making it a bit more expansive. However, Locke believed in these natural rights, as well as a basic law of nature, the duty not to harm other people.

But we need, again, to share Hobbes' intuition, some sort of contract to preserve that freedom, to curb human nature, to secure property rights. So, all of that, very much like Thomas Hobbes, but where Locke departs is in his rejection of Hobbes' notion of an absolute political sovereign. He doesn't believe that that's appropriate, absolute sovereignty.

He advocates for this idea of consent of the governed. And thankfully, I would say thankfully, the founding fathers thought this was the best way to go. And let's go with Locke's idea of consent of the governed, where the people rule themselves by way of appointed deputies or political representatives.

So, we elect people to serve us at all these different levels, local, state, and federal levels, to serve in these various capacities as lawmakers, as those who also enforce the law, the executive function, and as judges who judge on the law, even have a kind of tripartite government system with a balance of powers that Locke envisioned, as did other social contract theorists like Montesquieu. But the idea of consent of the governed is rather novel at this time, that you're making the people, as it were, indirectly sovereign. So, you rule over me, civil magistrate, legislator, executor, president, prime minister, and you rule over me only because I and my peers have stipulated that.

We've put you into power. We will vote you in, and we can vote you out. So, it is a kind of rule by consent of the governed.

And even though it's the original founding fathers who drafted this social contract for us, and many generations have gone by since, we're all bound by it. Locke used the term, or the phrase, tacit consent to apply here, where even if an individual has not signed this social contract, and nobody alive today has signed the U.S. Constitution, only a few dozen people signed it originally, but that was meant to represent all of the people. To this day, it represents all Americans.

Locke says by tacit consent that the fact that I've stayed in this country, and I've benefited from all of its laws, and all of the provisions that government gives us, I've accepted all that. The fact that I have flourished because of this system shows that I have shown my consent. That is a demonstration of my consent to abide by the

stipulations within our social contract and all the particular laws that these rulers have made by the consent of those they govern.

So, that is a critical element in Locke's theory. The other one is the right of revolt or the right of revolution. Because the rulers only govern by consent, there is a standing agreement that it is the duty of the governors, of the rulers, to enforce these laws and to serve the people in just ways.

If they significantly depart from that, if they violate their own part of the deal, and don't follow through on their commitment to properly govern, to make laws, to judge laws, and to enforce them, then they have essentially surrendered their right to govern us. That means that we can rebel against a highly oppressive regime because what this oppressive regime has done by violating our rights in this way and departing from the contract is they've thrown us back into a state of nature. And in that condition, then, we have the right to rebel, to revolt, to start a revolution.

This was highly influential on our founding fathers and their rationale all those years later, later in the 18th century, when they judged that the British crown had been abusive, so abusive through taxation without representation and quartering soldiers in people's houses and not respecting property, that it was time to revolt. And so, a revolutionary war happened. Our founding fathers thought this is a simple, straightforward application of the Lockean right of revolution.

So, that's an important distinctive of Locke's political theory that has affected all of our lives. If you're a US citizen, you have Locke to thank, or curse, for that. Now, it's an open question, and we'll talk about this when we talk about war, whether a revolutionary war is ever just.

You know, what are the standards for a just war? For those who believe in just war, there are pacifists who don't. But if you believe that wars are sometimes just, when, if ever, is a revolutionary war appropriate? There are many who would say never, and then they would have to conclude that the American Revolutionary War was an unjust war. And we'll talk about that.

The third and final social contract theorist, a more recent scholar named John Rawls, who taught at Harvard for many years, and wrote this landmark work in social contract theory called *A Theory of Justice*. And it's not controversial to say that Rawls is the most important social contract theorist of the 20th century. Now, he takes a bit of a different route to the fundamental rules or principles that he believes we should be governed by in a social contract situation.

He believes that we should choose the principles that are most just. The question is, how do we get there? And this is where he proposes a rather novel thought

experiment for arriving at basic principles of justice. He doesn't appeal to the notion of a state of nature like Hobbes and Locke do.

That's useful fiction, anyway. It's not a real thing. It's a kind of thought experiment.

Nobody knows what the original state of nature was. Even Hobbes and Locke would have to admit that's just a kind of thought experiment. John Rawls argues that, or he proposes, that another thought experiment will be more useful.

And that is what he calls a veil of ignorance. The question is, what principles would you select as the foundational guiding principles in society? If you were in a condition where you were unaware, say temporarily unaware, a kind of temporary amnesia regarding the particulars of your life, what race you are, what gender you are, what age you are, whether you're abled or disabled, what your IQ is, what your particular talents are. Suppose you forgot all those things about yourself.

What principles would you choose to be the ones that guided your society? Knowing once you remember or your memory of your particular characteristics is restored, you could be handicapped, you could be a minority, or you could be white, you could be talented or not in a certain way. What are the principles you would choose? That's how we should go about this, according to Rawls. He believes this veil of ignorance thought experiment will lead us to the most reliable and useful principles of justice.

He settles on two different principles, which he then applies very thoroughly to various institutions as he develops the nuts and bolts of his theory. One of them is the principle of equal liberty. According to the principle of equal liberty, each person is to have an equal right to the most extensive basic liberty that's compatible with a similar liberty for others.

So, let's maximize liberty as much as possible to the extent that that's compatible with everybody else's liberty. It's kind of an application or articulation of the idea that my right to swing my arm stops at the end of my nose. Generally speaking, we should maximize liberty for individuals to the extent that that's consistent with the liberty of other individuals.

Then this principle is offset by or accompanied by something he calls the difference principle. According to this principle, which recognizes that there will always be inequalities. Inequality to some degree is always unavoidable in a society where you have lots and lots of people.

So, to what extent should these be permitted? According to the difference principle, the social and economic inequalities are to be arranged so that they are one, reasonably expected to be to everyone's advantage, and secondly, attached to

positions and offices that are open to all. Now, this principle is far more controversial than the principle of equal liberty in terms of scholarly attention, discussion, and debate. But the basic idea is that to the extent that there are inequalities permitted, such as social and economic inequalities, they need to be such that everybody can seem to be helped or benefited by them.

Well, what does that mean? How could someone who's in a lower position socioeconomically benefit from someone being in a higher position? Well, if the person in that higher position is doing things that are socially valuable, that benefits people in the other rungs. So a physician, say, a neurosurgeon, like Ben Carson, here's a guy who's extremely wealthy. How did he get wealthy? He's way up the socioeconomic ladder.

Oh, doing brain surgery and saving lives, doing something, executing a procedure, and applying skills that the rest of us don't have. And he was able to do that through years and years and years of intense training. He was willing to do that.

He had the cognitive ability as well as the steady hand and patience to do that. And so, I'm certainly happy to be in a society where people benefit greatly and even become millionaires as neurosurgeons and do all sorts of other excellent work in medicine because it benefits me. And so, it goes even with, depending on who you are, you might say, yeah, athletes and entertainers, they can be paid millions too because I really appreciate the music and the film and watching football games played at a high level and so on.

But these are the sorts of things that, in the context of Rawlsian social contract theory, we may debate. What sorts of services or skills do people have that they earn lots of money for? Is it appropriate for them to earn that much more money? Is it really appropriate for an NBA player or some other professional athlete to make millions of dollars a year putting a rubber ball through a metal ring or hitting cowhide with ash wood? Really? So many would say, Ben Carson, sure. A neurosurgeon, yeah.

But I'm not so convinced that Clayton Kershaw, throwing a ball 95 miles an hour over and over again, should garner him hundreds of millions of dollars. So, there are a lot of particulars we can debate here, but this is a basic idea. The second part of the difference principle is that those socioeconomic inequalities on the upper end, where people are millionaires and billionaires, those opportunities need to be at least available to all.

It needs to at least, in principle, be possible for anybody to get there. Now, is that even achievable? That, again, is open to question, but that's the basic idea. So, Rawls developed this theory extensively, and it's another version of contract theory.

It's the same basic idea as Hobbes and Lott: there would be some sort of formal agreement that would constitute that contract, and society would be constructed accordingly. Now, that's a pretty good taste of major social contract theories, and I think there are certain strengths we need to acknowledge here. Social contract ethics gives us some simple and plausible answers to some difficult questions regarding how we should live, at least in a polis or in a civil society.

It provides moral rules even for skeptics and relativists. It encompasses everyone. I mean, if you're living in that society with that particular social contract, all these rules apply to you, so it involves everyone, and that seems to be a strength of this theory.

It also capitalizes on a very important insight, which is captured in something called the Prisoner's Dilemma, which is a favorite kind of thought experiment in game theory, which shows that in certain situations, people acting in their own self-interest will make choices that actually are not optimum, and that work out against their own self-interest, and that the most rational thing is actually to be willing to make some sacrifices for the sake of the good of the whole, and then that will benefit me, making these sacrifices and being not entirely self-absorbed, that that will be for the best for me and for everyone else. We need to be willing to sacrifice some of our interests to achieve our best interests. That's kind of the paradox captured in the Prisoner's Dilemma, which is affirmed in social contract ethics.

So, those are significant strengths and insights into social contract theory. Here are some problems, though. One problem is that social contract theory is based on some thought experiments that are not entirely reliable.

You've got historical fiction like *The State of Nature* and a thought experiment like *The Veil of Ignorance*. How trustworthy is that? And maybe my intuitions about what we would settle upon as basic principles or rules to govern society are not the same ones that you would choose. And it makes rights and duties artificial.

This is a kind of contrived way of arriving at moral rules. And are they really moral rules so much as political mandates that don't really get to the foundational level of morality? And he would make that criticism, which I think is important as well. Thirdly, there is universal agreement on certain principles.

It does not guarantee that those principles themselves are just. So, take Rawls, for example. He settles on equal liberty and the difference principle, which he believes that people behind a Veil of Ignorance would choose as the ultimate guidelines for society.

One, how can he be so sure that that's what everybody would choose? Wouldn't there likely be some people who would disagree with that? Maybe it would be the

majority. Maybe it's just Rawls and a minority of the best thinkers who would settle on those principles. We are kind of at his mercy when we read his book, right? That these are the principles that rational people would choose behind a Veil of Ignorance.

But even more fundamental than that is even if these are the principles that rational people would choose, it doesn't follow that those principles themselves are just. Just because these are principles that people would tend to agree upon, it doesn't follow that the principles themselves are most just. So there's a leap there.

It's kind of non-sequitur. I think it's a fatal flaw in Rawls' theory, assuming that the likelihood of people choosing certain principles guarantees that the principles themselves are just. So, social contract ethics is a way of working out the utilitarian view that is extremely important historically.

And again, all of our lives have been deeply affected by this. And ingenious in many ways and very practical. And from a political standpoint, you know, this might very well be the best we can do.

But there are still flaws and most importantly, is this really sufficient for morality capturing our deepest moral duties and obligations and rights? There is a pretty significant limitation in social contract theory. Many would argue, I would argue, as useful as this theory is from a political standpoint in crafting a society with a constitution. It isn't really of much help in terms of telling us what our most deep moral duties, universal moral duties and rights are.

And so, we'll have to move on to some other theory that would be more adequate. And that's what we'll do next.

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