**Hume vs. The Social Contract Theory**

Hume’s main claims in “Of the Original Contract”:

1. The idea that one’s duty of allegiance to one’s government stems from one’s having consented to it is false, because its consequences are absurd. If it were correct, then few would have any such duty, because few ever give genuine and voluntary consent to their governments.

2. The duty of allegiance to one’s government derives from utility, not agreement, consent, or promise. The reason why one has a duty to obey the government (when one does) is that such obedience maximizes society’s total utility.

Hume was a Tory. The idea that legitimate government depends on the consent of the governed was popular among the Whigs.

At the very beginning of his essay, Hume seems to agree with the social contract idea if it is understood as a thesis about how the very first governments arose in the distant past. But defenders of the social contract idea seem to think that present government depends on a contract among the people. Hume doesn’t explicitly do this, but we can distinguish two different ways of understanding this idea: i) as a nonnormative thesis of political sociology, and ii) as a normative thesis of political philosophy.

According to i), just as it is a fact of political sociology that people tend to get very angry whenever they believe that their rights have been violated, it is also a fact that people believe (rightly or wrongly) that the duty to obey government derives from consent. Hume’s reply is that this is not a fact at all; it is demonstrably false. “…We find everywhere princes who claim their subjects as their property and assert their independent right of sovereignty, from conquest or succession. We find also, everywhere, subjects, who acknowledge this right in their prince, and suppose themselves born under obligations of obedience to a certain sovereign, as much as under the ties of reverence and duty to certain parents.”

The falsity of i) doesn’t mean that the social contract idea as a normative thesis is false. (“Ought does not follow from is,” Hume himself admitted). The defender of ii) holds that people have a duty to submit to the authority of government only if they have promised or consented to do so. This was John Locke’s view.

Hume has a couple of objections to this idea:

1. In order for consent to carry weight, it has to be voluntary. There can be no moral duty to keep promises that one was coerced into making. Poor people without the resources necessary to emigrate are forced to remain in their country of birth; thus, voluntary consent to their government cannot be inferred from their not emigrating. “Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language 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.” (p. 328)
Here Hume seems to be attacking Locke’s idea that just by walking down the highway, one “tacitly” consents to obey government and its laws.

iii) Since the only reason why we have a duty to keep our promises is that the rule requiring this maximizes society utility, why not just say that the duty to obey government is based on utility and leave promises out of it? To introduce the idea of a promise here creates an idle cog that does no work. “What necessity, therefore is there to found the duty of allegiance or obedience to magistrates on that of fidelity or a regard to promises… when it appears that both allegiance and fidelity stand precisely on the same foundation and are both submitted to by mankind on account of the apparent interests and necessities of human society? … The obligation to allegiance being of like force and authority with the obligation to fidelity, we gain nothing by resolving the one into the other. The general interests or necessities of society are sufficient to establish both.” (p. 330)

“My intention here is not to exclude the consent of the people from being one just foundation of government where it has place. It is surely the best and most sacred of any. I only pretend that it has very seldom had place in any degree, and almost never in its full extent. And therefore some other foundation of government must also be admitted.” (p. 327). Athenian democracy, Hume observes, was probably the most democratic government that has ever existed, but even it was not very democratic (since women, slaves, and foreigners made up ninety per cent of the population but had no right to vote). Hume’s argument here is perhaps this: the consent theory implies that only full/radical democracy is just and creates an obligation in all citizens to obey it; but clearly some nondemocratic and imperfectly democratic forms of government can be just and create such an obligation; therefore, the social contract theory (as a normative idea) is false.

Unlike Hobbes, Hume would admit that disobedience to a tyrant is morally okay. But he would probably say that unless the ruler is a tyrant who is trampling on the traditional liberties of subjects, obedience is likely to produce more utility than disobedience.

Hume would certainly oppose abolishing the House of Lords and giving all competent adults, wealthy and poor, male and female, the right to vote in elections to the House of Commons. Hume was a conservative who believed that such radical reforms would likely have bad consequences for society as a whole; they should be opposed on utilitarian grounds. If Hume were alive today and saw that extending the franchise to “the rabble” in Western Europe and the U.S. did not lead to social chaos, he would have to admit that his opposition to democracy with universal suffrage was misguided.

But because Hume is a utilitarian, he would have to say that in societies where the government should be democratic, the reason why it should be democratic is that such government produces better, more just laws than a nondemocratic government would. Nondemocratic (“authoritarian”) government has a greater tendency to become oppressive, corrupt, and inefficient than democratic government. Democracy is not “intrinsically” more just than all of its competitors; it is more just because/insofar as it produces better, more humane laws. The connection between democratic procedures and just/humane policies is contingent, not necessary. In some societies a “benevolent
“despot” might produce better legislation than rule by an intolerant, bigoted, bloodthirsty mob. (Hume would agree with J.S. Mill’s remark in *On Liberty* that “despotism is a legitimate mode of dealing with barbarians”). In some Middle Eastern societies (e.g. Egypt?) there is good reason to fear that free and open democratic elections would lead to rule by extreme fundamentalist Muslim groups like the Taliban of Afghanistan. In those societies an authoritarian regime might be better.
What is Conservatism?

In one sense of the word a “conservative” is simply someone who supports “orthodoxy” with respect to some doctrine or practice. In this sense one can be a conservative Roman Catholic (no married priests!), a conservative with respect to fashion (no tattoos!), a baseball conservative (get rid of the designated hitter rule!), a conservative with respect to diction and grammar, etc. The press often uses the term in this sense when it refers to the opponents of political and economic liberalization within China’s Communist Party as “conservatives.” The “conservatives” are the ones who feel nostalgia for the good old days of Mao and the Cultural Revolution.

Clearly there is another sense of the term such that “conservative Communist” or “conservative feminist” is an oxymoron. What is it to be politically conservative in this sense? Here are some key characteristics of conservatism:

1. A belief that social stability is fragile and that the forces of social disintegration need to be restrained by the right laws and cultural norms. Individuals with too much freedom are apt to behave in anti-social ways. Religious belief (whether true or false) is socially beneficial insofar as it discourages selfishness and hedonism.

2. Social hierarchy or stratification is “natural.” The ideal of social and economic equality is utopian in a bad way. This anti-egalitarianism led 18th century European conservatives to defend the privileges of the aristocracy; it leads contemporary conservatives to oppose socialism.

3. The reason why long-established social practices got to be long-established is that they are good for society. If we are unable to identify the reasons why they are socially beneficial, that is a defect or limitation in us, not them. Radicals who propose to replace traditional practices with ones that they think would be better for society are arrogant and irresponsible.

This third theme is discussed further on the next few pages, with a focus on its development by Edmund Burke.
Burkean Conservatism and Its Critique of Utopian Reformers

One of the defining features of “conservatism” as a political philosophy is its support of a strong presumption in favor of leaving alone a society’s basic political structure and long-established laws, and of deferring to its moral norms. A “radical” may be defined as someone who disregards that presumption, seeking to replace traditional social practices with ones that his “theory” says would be better for society. Three examples of radicalism are the socialist’s proposal to abolish inheritance, the libertarian’s proposal to legalize prostitution, and the feminist’s desire to replace traditional patriarchal gender roles with more egalitarian ones. Conservatism holds that the radical’s disregard for tradition and confidence in his own ability to identify better practices shows him to be arrogant, irresponsible, and a danger to society.

This conservative theme is prominent in Edmund Burke’s *Reflections on the Revolution in France*. Burke insists that the grand social-political theories that were cooked up by France’s *philosophes* and inspired the French Revolution were false because simplistic; by contrast, the pretheoretical “prejudices” of simple folk contain much wisdom. Though he admits that revolutions against kings may sometimes be justified, he doubts that we can specify in advance exactly when they are and aren’t: “The speculative line of demarcation, where obedience ought to end, and resistance must begin, is faint, obscure, and not easily definable.” (*RRF*, p. 116, Penguin ed.) One of the most famous passages in his *Reflections* is where he contrasts the intellectual hubris of France’s revolutionaries to the humility of the English:

We are not the converts of Rousseau; we are not the disciples of Voltaire; Helvetius has made no progress amongst us. Atheists are not our preachers; madmen are not our lawgivers. We know that we have made no discoveries; and we think that no discoveries are to be made, in morality; nor many in the great principles of government …. We fear God; we look up with awe to kings; with affection to parliaments; with duty to magistrates; with reverence to priests; and with respect to nobility. Why? Because when such ideas are brought before our minds, it is natural to be affected; because all other feelings are false and spurious, and tend to corrupt our minds…. [W]e are generally men of untaught feelings; … instead of casting away all our old prejudices, we cherish them to a very considerable degree…. [W]e cherish them because they are prejudices; and the longer they have lasted, and the more generally they have prevailed, the more we cherish them. We are afraid to put men to live and trade each on his own private stock of reason; because we suspect that this stock in each man is small, and that the individuals would be better to avail themselves of the general bank and capital of nations, and of ages…. Prejudice is of ready application in the emergency; it previously engages the mind in a steady course of wisdom and virtue, and does not leave the man hesitating in the moment of decision, sceptical, puzzled, and unresolved…. Your literary men, and your politicians, and so do the whole clan of the enlightened among us, essentially differ in these points. They have no respect for the wisdom of others; but they pay it off by a very full measure of confidence in their own. With them it is sufficient motive to destroy an old
The scheme of things, because it is an old one. As to the new, they are in no sort of fear with regard to the duration of a building run up in haste….

The claim that there is a "presumption" in favor of maintaining the status quo just means that the "burden" is on the advocates of radical change to show that their reforms are needed or desirable. The conservative believes that would-be reformers seldom meet that burden. The conservative has to say that extension of the franchise to poor, landless males and then to women, the abolition of Jim Crow laws in the South, etc., were rightly resisted at first and supported later only after experience proved that they would not wreak social havoc.

Burkean conservatism’s support for a strong presumption against radical action aimed at abolishing or modifying venerable, long-standing moral norms and political practices is not equivalent to a consistent, unwavering opposition to state interference in the operations of the marketplace. To ban prostitution is to ban a certain economic transaction that needn’t involve fraud or other rights violations. If a legal ban on this act “between consenting adults” has been in existence for a very long time in our society, and if many other societies have it too, the Burkean conservative infers that that creates a strong presumption in favor of retaining it. Here we arrive at a point (there are several others) on which conservatives and libertarians disagree with each other. The libertarian consistently opposes state interference in the economy that goes beyond the enforcement of contracts and punishment of crime. Hence, the libertarian opposes most zoning laws, worker safety and consumer protection laws, and minimum wage laws, as well as bans on prostitution and the recreational use of hard drugs. The true conservative must condemn the libertarian opposition to such laws as doctrinaire and libertarianism itself as a dangerous theory that inspires some reckless attempts as social engineering. To be sure, there is some overlap in the economic views of the conservative and the libertarian: both oppose taxation which aims at redistributing wealth from rich to poor; both are critical of the kind of liberalism that supports a strong welfare state. But the two political philosophies have many deep and important differences.

Burke’s defense of France's semi-feudal status quo may well have rested on an "indirect utilitarianism." That is the view that people ought to act in ways that maximize utility, but those who have utility maximization as their conscious aim tend to be less successful in achieving it than those who go about it in some other, more indirect way. Indirect utilitarianism is morally and politically conservative if it claims that the most effective way to maximize utility is to conform to old, established norms. The utilitarianism of Jeremy Bentham was “direct” because it called for the reform of social practices, especially the criminal justice system, whenever it seemed that a feasible alternative would produce more utility. Burke may think that the French revolutionaries in particular and social radicals in general are, like Bentham, direct utilitarians. He objects that they are arrogant in their indifference to the old and established and overly confident in their ability reliably to gauge the costs and benefits of actual and possible laws and practices. Anyone who is mindful of his fallibility would never propose radical reforms of the status quo, because he would realize that they may well have bad side-effects that he could not possibly foresee, given his limited intelligence and experience.

If Burke’s conservatism does rest such reasoning as this, then there seems to be a decisive objection to it: it requires just as much faith in one's own reason to claim that a
long-standing practice, law, or norm, simply because it is long-standing, is likely to do
more good than the alternative favored by the radical, as it does to ignore age and try to
judge the utilities of the two practices directly. For we have to be able reliably to
measure the costs and benefits of old practices versus new ones, in order to establish that
a correlation exists (if one does) between a practice’s being older and its producing more
utility. Hence, knowing how fallible one's judgment is provides no reason whatsoever to
prefer Burke's conservative brand of utilitarianism over Bentham's more radical one. To
put the point another way: it is true that we are not omniscience and therefore cannot
foresee all of the consequences of our actions. It is also true that sometimes the
unforeseeable consequences of our actions are very bad. But these plain facts do not
justify a general presumption in favor of inaction (leaving things alone, not rocking the
boat), because it is no less true of inaction than of action that it has unforeseeable
consequences which are sometimes very bad.

Sometimes we know that a social institution, practice, or law came into existence
only because an interest group or economic class had greater power than its rivals and
created it to promote its own interests. In those cases why should proponents of an
alternative that seems fairer or more in the public interest need to produce strong,
knockdown evidence that it really would be better? Why should there be any
presumption in favor of maintaining a status quo that came about through the venality of
those with greater political and economic power? Of course, when we say that a social
practice arose because it served the interests of a powerful group or class (and Marx’s
theory of historical materialism says that about all social practices), then we are not
showing the respect for our ancestors or their wisdom which Burke credited the English
with having and faulted France’s revolutionaries for lacking. Instead, we are viewing
them as participants in a sordid power grab. But sometimes that way of viewing our
history, laws, and ancestors is justified.

Consider, for example, that tobacco and alcohol are not subject to regulation by
the FDA and that marijuana but not tobacco or alcohol is classified as a "drug" under the
Controlled Substances Act. I am not now claiming that this is unjustified and should be
changed. But I do claim that the explanation why this is the legal status quo and has been
for some time is that there are entrenched tobacco and alcohol lobbies that influence
legislation in this country, while there is no politically powerful pro-marijuana lobby. If
our social and legal practices are often the product of the “golden rule”— “he has the
gold makes the rules”—that would seem to discredit the view that there should be a very
strong presumption against trying to improve them.

Perhaps the Burkan conservative will respond that behind the clash of lobbies
and other selfish interest groups lies an “invisible hand” which produces the best laws
and practices for society as a whole, even though none of the conflicting groups aimed at
that outcome. But the belief that such a mechanism exists not just in the competitive
markets of a capitalist economy but also in the political arenas of all societies, requires
justification, and it is not clear how it could be justified. We know that the human body
is the product of natural selection, and hence, that its different parts are likely to enhance
its fitness (though even here we know that some of our traits are maladaptive). We know
of no mechanism analogous to the natural selection of biological, inherited traits that
governs the evolution of laws, mores, and practices in all societies and selects those that
are best for each society. If such a mechanism did exist, then the radical who wants to
tinker with its long-established practices would be like a doctor who looks at the human body, cannot understand what good is done by one of its organs, thinks that it may do some harm, and so hastily concludes that it should be surgically removed. Social reformers would threaten societal health and well-being, just as this doctor threatens his patients' bodily health and well-being. But the belief that such an “invisible hand” mechanism does exist seems to rest on faith rather than reason or evidence. If that’s right, then we should reject the idea that there should be a strong presumption in favor of deferring to long-established moral or political practices.