

The Liberal Social Contract Theory: A Marxist and Foucauldian Critique

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Introduction

This essay seeks to provide arguments in support of the position that the social contract theories put forward by liberal thinkers such as Hobbes, Locke, and Rousseau is an illusion and arguments from Marxist theory and Foucauldian discourse analysis are employed to this end. Foucault's discourse analysis of the social contract theory bears out the Marxist stance against liberalism i.e. the rights offered by the liberal social contract theories are illusory, that society is indeed characterised by an antagonistic class struggle, and that neither positive nor negative freedom can be achieved through any form of government that operates on the basis of the social contract founded on liberal values. It also lends support to the Marxist position that society merely achieves "freedom to" function within the constraints determined by the ruling class but not "freedom from" those constraints which would constitute real freedom. The methodology used is mainly descriptive textual analysis.

Liberalism

Liberalism refers to the political philosophy that has dominated much of the modern era in the Western world. It is established on values such as liberty and equality, and is most often represented by a philosophy of justice and rights that proceeds with individuals as the basic unit of analysis. Its fundamental values are expressed in a number of allegedly "natural" and "self-evident" rights that all individual persons inherently possess, the most famous examples of which are found in the 'Declaration of the Rights of Man' of the United States of America (USA), and other significant constitutional documents of the eighteenth century such as the various 'Declarations of the Rights of Man and Citizen' of the French Revolution.¹ The rights declared in these documents include, *inter alia*, the right to liberty, equality, and property, which are considered by liberals to be the basis of a just society. Thinkers such as Locke, Hobbes, Rousseau provide the philosophical justification and framework for this line of thought through their social contract theories, presenting it as the origin of the State.

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¹ Declaration of the Rights of Man (National Assembly of France, August 26, 1789).

Article 2: "The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression."

The Liberal Conception of Freedom or Liberty

“Freedom”, defined as the absence of restraint or coercion imposed by another person, has been central to the tradition of European individualism and liberalism. According to this conception, a person is considered to be free to the extent that she can choose her own goals or course of action, between the options available to her, and is not forced to act as she would not choose to act, or prevented from acting as she would choose to act by the will of another, the State, or by any other authority. This is referred to as negative freedom.² Similarly, Isaiah Berlin differentiates between two types of liberty - positive liberty and negative liberty. Briefly, negative liberty can be defined as freedom from coercion,³ and positive liberty as the opportunity to strive to fulfil one's potential i.e. to act as one's own master, not restricted by conditions of nature or irrational impulses, unrestrained desires, and the pursuit of immediate pleasures.⁴ Positive liberty requires one to have the freedom to construct one's life according to one's own values. This becomes a problem when the processes and environment through which one develops one's character and values are themselves oppressive. An analysis of how neither of these freedoms are afforded by the liberal social contract theories will be presented later in this essay.

Liberalism and the Social Contract Theory

Classical liberals attribute the genesis of the State to the social contract theory which has been used to lay out an account of the origins of the State through an agreement between individuals in a society and the State, and also to set out the nature and the limits of the authority of the State. In its earliest form, it goes right back to Plato who, in *Crito*,⁵ describes Socrates using an argument that has leanings of the social contract theory to explain to Crito that he must not flee to a neighbouring Greek city but must instead agree to remain in the current city and accept the death penalty because of the obedience he owes to his city as a result of having received benefits by virtue of being a citizen. In political theory, social contract refers to a group of overlapping concepts and traditions which are organised around the premise that collectivity is a result of the agreement between the individuals it comprises. More relevant to the purposes of this paper however, are the versions put forward by Hobbes, Locke, and Rousseau.

The Hobbesian absolutist social contract theory posits that prior to the establishment of the social contract, humankind lived in a state of nature that was “solitary, poor, nasty, brutish, short”,⁶ and in order to fulfil its natural desire for security and order, self-preservation, and self-protection, it entered into a contract with the State, exchanging all its rights and freedoms for protection and preservation of life and property. Under this social contract, subjects had no rights against the absolute sovereignty of the ruler who had to be obeyed at all times i.e. it was absolutism.

² John Stuart Mill, *On Liberty* (Batoche Books 2001) 16.

³ Isaiah Berlin, *Four Essays On Liberty* (Oxford University Press 1969) 6.

⁴ Ibid 8.

⁵ ‘Crito By Plato’ (*The Internet Classics Archive*, 1994-2009)

<<http://classics.mit.edu/Plato/crito.html>> accessed 24 October 2019.

⁶ Thomas Hobbes, *Leviathan* (first published in 1651, Oxford University Press 1965) 97.

The Lockean social contract theory, in contrast to that of Hobbes, depicts the state of nature as a reasonably good and enjoyable condition, but one in which property rights are not protected. Importantly, Locke refers to the state of nature as a “state of liberty” where all persons are equal, independent, and free to pursue their own interests without interference. The purpose of the State in Locke’s social contract theory is to uphold and protect the natural rights of persons i.e. the right to life, liberty, and estate. Contrary to the sovereign role of the State in the Hobbesian social contract, Locke favours a constitutionally limited government which can be removed from power if it fails to fulfil its purpose of protecting the natural rights of persons.⁷

Rousseau sets out in his version of the social contract theory that individuals existed in a state of nature where there was no scarcity or competition. However, as the population increased, competition for resources arose and this resulted in the people wanting to leave this intolerable state of competition. It was to this end that political power in the form of the State was justified i.e. they entered into a social contract so that the State would ensure a just distribution of resources in exchange for their “general will”.⁸

These contractarian accounts of the origin of the State have elicited many criticisms which can be classified into three categories; historical, legal, and philosophical. The most compelling criticism from a historical perspective is the apocryphal idea that there was a point in time when hitherto free men came together of their own volition to enter into a contract to establish the State. It will be shown that there is nothing in history to justify that this was indeed the case, and that it is more likely that the State arose as a result of violence that was constantly exerted by a few against the remaining majority. In order to prove this point, it is necessary to refer to the origins of the State from the Marxist viewpoint, and this is presented in the following section. Additionally, the level of rationality and intelligence the social contract theory attributes to men in the state of nature is also questionable, as the theory holds that people in the state of nature were ‘primitive’; how, then, did they come up with a method of societal organisation as elaborate as this?⁹ This adds weight to the argument that the social contract is merely a hypothetical device arrived at by excessive deductive reasoning i.e. an illusion that was invented as an attempt to rationalise the origins of the State and not a genuine account of the origins of the State.

From a legal perspective, even if one assumes for the sake of argument that people in the state of nature had evolved to the extent that they could devise an organisation of society through a voluntary contract between individuals and the State, such a contract would not have any binding force upon the parties involved because a contract requires the force and authorisation of the State to be validated, and since this contract occurs prior to the establishment of the State, it logically follows that it cannot be considered to be a valid contract. As T.H. Green states in support:

⁷ John Locke, *Two Treatises of Government* (first published in 1689, Printed for Thomas Tegg 1823) 162-167.

⁸ Christopher Bertram, ‘Jean Jacques Rousseau’, *The Stanford Encyclopedia of Philosophy* (Fall edn, 2018) <<https://plato.stanford.edu/entries/rousseau/>> accessed 23 October 2019.

⁹ Eddy Asirvatham, *Political Theory* (1st edn, The Upper India Publishing House Limited 1936) 44.

The covenant by which a civil power is for the time constituted cannot be a valid covenant. The men making it are not in a position to make a valid covenant at all for there is no imponent behind it.¹⁰

It is possible to extrapolate this argument further and contend that if the original contract is not valid, then neither are the subsequent contracts based on the original, and any rights derived from any of these contracts can be considered to have no legal foundation. Another criticism from the legal perspective is that a contract is supposed to be binding only on parties who voluntarily enter into the contract. Where, then, does this leave the generations of people who have been thrust into this contractual arrangement without their consent simply by virtue of being born into a post-State society?¹¹

Most importantly, however, a criticism from the philosophical perspective that undermines the very basis of the social contract theory is that it suggests a false notion of rights. According to T.H.Green, the basis of any robust theory of rights is social recognition i.e. a societal recognition of a common good which intrinsically contains the individual good.¹² Given that rights can exist only amongst persons with a rational will i.e. only a prudent rational agent will assert a "prudential right claim",¹³ firstly, how can 'primitive' individuals in the State of Nature even be aware that they possess any rights at all, let alone go on to choose which ones they will give up in exchange for the creation of the State? Secondly, since these individuals exist in a pre-social state i.e. in a state that is independent of society, no form of rights could have even existed, as a recognition on the part of society of the good that constitutes a right is necessary for a right to exist in the first place.¹⁴

In light of these criticisms against the social contract theory, Marxist theory provides a more feasible account of the origins of the State as mentioned earlier. The next section considers this in more detail.

The Marxist Theory

Marxist theories of the State arose primarily as a reaction to liberal or liberal-democratic i.e. capitalist theories of the origin of the State¹⁵ and they clearly reject liberal theories. Marxism is not a theoretical orientation that is generally considered to be concerned with individuals or the well-being of individuals, as opposed to liberalism. There is a distinct propensity in the Marxist lines of thought to treat individuals and individualism as a function of capitalism, therefore stripping them of their value and their capacity to function as conscious actors who shape the history of humankind.¹⁶ Principles of rights and justice do not figure prominently in Marx's analyses of society because the

¹⁰ Thomas Hill Green, *Works Of Thomas Hill Green* (Richard Lewis Nettleship, 2nd edn, Cambridge University Press 2011) 521.

¹¹ Asirvatham (n 9) 45.

¹² Green (n 10) 523.

¹³ James Nickel, 'Human Rights', *The Stanford Encyclopedia of Philosophy* (Summer edn, 2019) <<https://plato.stanford.edu/entries/rights-human/>> accessed 16 December 2019.

¹⁴ Asirvatham (n 9) 48.

¹⁵ Ugunanin Bassey Obo and Maurice Ayodele Coker, 'The Marxist Theory of The State: An Introductory Guide' (2014) 5 *Mediterr J Soc Sci* 527, 530.

¹⁶ Ernest Mandel, *Introduction to Marxism* (Pluto Press 1982) 33.

fundamental ideas that drive his analysis stem mainly from historical materialism, which cannot accommodate such ostensibly universal standards. Consider the following passage from *The Marx-Engels Reader* which explains historical materialism:

Does it require deep intuition to comprehend that man's ideas, views, and conceptions, in one word, man's consciousness, changes with every change in the conditions of his material existence, in his social relations and in his social life? What else does the history of ideas prove, than that intellectual production changes its character in proportion as material production is changed?... When people speak of the ideas that revolutionise society, they do but express that fact within the old society the elements of a new one have been created, and that the dissolution of the old ideas keeps even pace with the dissolution of the old conditions of existence.¹⁷

It is evident from this that Marx considers principles of justice and rights, like any other moral principle, to be the social and historical consequences that arise from and express the norms that preside over the social relations of every society. This means that each society gives rise to different values and principles according to the predominant norms of that society. In other words, Marx holds that there are no universal and timeless principles of justice or right.

It is important to contextualise the Marxist theory of the State within the framework of historical materialism. This is an approach which connects the material substructure of society i.e. the mode of production and its corresponding production relations to the political superstructure of the same i.e. the social, political, moral, cultural, intellectual life of society. The superstructure of a society justifies and reinforces the substructure of that society. Briefly stated, according to Marx, the primary concern of human history is the production and reproduction of material life.¹⁸ To this end, human productive activity involves three elements: raw materials from nature, technology, and human labour. The first two elements i.e. raw materials from nature, and technology constitute the means of production, and all three elements combined together form the forces of production. These forces of production are structured by what is known as "the relations of production" - this refers to the social forces that organise and determine who has access to the forces of production. The class of people who dominate the relations of production are known as the bourgeoisie and the dominated class is known as the proletariat.

Essentially, the Marxist theory holds that the State came about as a result of a permanent social surplus product which created the material conditions favourable for the existence of a select group of people who took over the duties of administration that were until that point carried out by members of the society as a whole.¹⁹ By virtue of the nature of their duties in society, this exclusive group of people were able to orchestrate the exclusion of the other members of the society from performing duties that would enable them to eliminate the exploitation that was imposed upon them. This resulted in a society ruled by a property-owning class i.e. the bourgeoisie, whose function is to exercise constraint over the ruled property-less productive class i.e. the proletariat, in order to

¹⁷ RC Tucker, *The Marx-Engels Reader* (2nd edn, W W Norton & Company 1978) 489.

¹⁸ Mandel (n 16) 27.

¹⁹ Ibid.

maintain their position as a member of the ruling class and to perpetuate this class division.

One of the basic principles that underpin Marxist theory is that human history is dominated by class conflict. Consider the following quote by Marx and Engels in the Communist Manifesto as evidence of this:

Freeman and slave, patrician and plebeian, lord and serf, guild-master and journeyman, in a word, oppressor and oppressed, stood in constant opposition to one another, carried on an uninterrupted, now hidden, now open fight, a fight that each time ended, either in a revolutionary reconstitution of society at large, or in the common ruin of the contending classes.²⁰

And another quote by Marx and Engels from *The German Ideology*:

...all struggles with the State, the struggle between democracy, aristocracy and monarchy, the struggle for franchise, etc., are nothing but the illusory form in which the real struggles of different classes are carried out among one another...²¹

It is clear that early Marxists regarded the State as a tool of oppression in the hands of the dominant class that protects and furthers the interests of the privileged few at the expense of the many i.e. the State is an agent of exploitation utilised by the members of the dominant economic class to coerce the members of the lower classes into economic and social disadvantage. Thus, according to the Marxists, the very existence of the State serves as a symbol of injustice.

In line with his views on universal standards of right and justice, and acknowledging that it is only the interests of the ruling class that are represented by the liberal social contracts, Marx criticised a number of declarations of the rights of man for not proceeding “beyond egoistic man as he is in civil society”.²² This has led to criticisms from Marxist thinkers of the Hobbesian and Lockean social contract theories as being premised on assumptions of “possessive individualism” which lead to “inadequate bourgeois conceptions of justice”.²³ The Marxist critique of the social contract is further buttressed by Foucault’s analysis of the social contract as a discourse that conceals disciplinary power.

Foucault: Discourse and Disciplinary Power

Discourse in its simplest sense, can be taken to mean information - as a means of constituting knowledge which drives society forward. Echoing Marx in the Communist Manifesto when he says that “the ruling ideas of every age have ever been the ideas of

²⁰ Tucker (n 17) 473.

²¹ Karl Marx and Friedrich Engels, *A Critique of The German Ideology* (Progress Publishers 1932) 15.

²² Tucker (n 17) 42.

²³ Mandel (n 16) 95.

the ruling class”,²⁴ Foucault holds that discourse is created and maintained by those who are in power, and that those who are in control decide what the rest of the society is by setting the limits for what they can discuss.²⁵ Like Marx, Foucault concludes that this means that every society has its own general politics of truth that is determined by those in power i.e. the ruling class.²⁶

Foucault maintains that the social contract theory disguises a dynamic of disciplinary power exercised by the State under the discourse of rights, which when accepted leads to the creation of the bourgeoisie code of liberty and rights. As he put it in his College de France lectures:

The jurists of the seventeenth century and especially the eighteenth century were, you see, already asking this question about the right of life and death. The jurists ask: when we enter into a contract, what are individuals doing at the level of the social contract, when they come together to constitute a sovereign, to delegate absolute power over them to a sovereign? They do so because they are forced to by some threat or by need. They therefore do so in order to protect their lives.²⁷

According to Foucault, this discourse surrounding rights was a disciplining technology or device used by the State to, in his own words:

...ensure spatial distribution of individual bodies (their separation, their alignment, their serialization, and their surveillance) and the organization around those individuals of a whole field of visibility. They were also techniques that would be used to take control over bodies.²⁸

Essentially, this indicates that the social contract theory itself is a fictional discourse propagated by the State in order to ensure control over the masses by subjecting them to constant but subtle, or concealed disciplinary practices that are perpetuated by institutions like schools, prisons, hospitals, and mental health establishments, amongst others, which help to keep the dominant discourse i.e. that people voluntarily came together and decided to give up some of their rights in exchange for the State, in place.

Conclusion

It is necessary at this point to return to the notion of liberty. It was established earlier that liberalism accords a high level of importance to the concept of rights to freedom or liberty, particularly individual freedom or liberty. It purports to offer the right of liberty to individuals through the social contract, positing that by voluntarily entering into the social contract and creating the State, they are ensuring that all members of society are free to

²⁴ Tucker (n 17) 489.

²⁵ Michel Foucault, *Discipline and Punish: The Birth of The Prison* (2nd edn, Vintage Books 1995) 176.

²⁶ David F. Gruber, 'Foucault's Critique of the Liberal Individual' (1989) 86(11) J Philos 615.

²⁷ Michel Foucault, *Society Must Be Defended: Lectures at the College de France, 1975-76* (1st edn, Picador 2003) 241.

²⁸ Ibid.

pursue their own interests under the protection of the State, thereby ensuring the maximum amount of liberty for each individual as well as for the collective.

However, in light of the above arguments, it is evident that the social contract theory itself is a false discourse propagated by the ruling class and there is nothing in history to justify the liberal bourgeois thesis that the State arose as a result of a 'contract' or a covenant of any kind where the collective voluntarily gave up some of its rights in exchange for the State. A more plausible explanation of the origins, purpose and operation of the State is presented by Marxist theory which holds that the State is the product of a violent class struggle between the bourgeoisie and the proletariat, erected by the dominant class to keep political and economic power in the hands of a few to be used against the remaining plurality. It follows therefore, that neither positive nor negative liberty is possible in a society that is dominated by a class conflict because, as shown above, the ruling class *always* controls the dominant discourse or ideology and enforces it through concealed disciplinary power, which limits the parameters of choice that members of the exploited class are exposed to, albeit unknowingly, which limits what they are free to do, as well as placing limits on what they are free from.

Naturally, this means that even democracies, where "the people" participate in deciding the public good, are compromised, as their conception of the public good is informed by the dominant discourse which is controlled by the ruling class. This inevitably results in a government that is not necessarily representative of the true interests of the people it is meant to serve. It must be noted here that this is merely philosophical criticism of a widespread systemic problem, and not a condemnation of any particular government.

Therefore, true to the maxim that history repeats itself, not much has changed since Oppenheimer so aptly remarked in the early twentieth century:

The State is [after all] essentially a class-structure; an organisation of one class dominating over the other classes.²⁹

²⁹ Franz Oppenheimer, *The State* (4th edn, Free Life Editions 1975) xxvii.