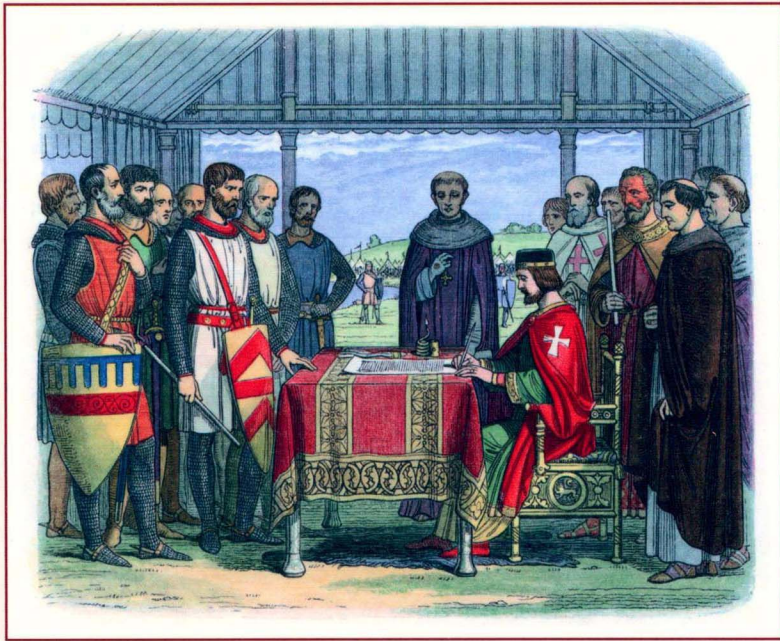


CONTRACT THEORY IN HISTORICAL CONTEXT

ESSAYS ON GROTIUS, HOBBS,
AND LOCKE



By

DEBORAH BAUMGOLD

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BRILL

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Essays on Grotius, Hobbes, and Locke

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Contract Theory in Historical Context

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VOLUME 187

For Daniel F. Baumgold

PREFACE

The social contract is usually regarded as a quintessentially modern political idea, which telegraphs the root modern principles of popular sovereignty and governmental accountability to the people. By setting classic contract theory in historical context, these essays present a different view. Seventeenth-century contractarianism was a parochial genre, they argue, that addressed problems which disappeared with the advent of modern, electoral politics. A further theme is the parochial nature of the texts; several essays relate Hobbes's texts, in particular, to the 'history of the book' in the seventeenth century.

While my readings show the distance between classic social contract theory and modern electoral politics, in doing so they illuminate problems in the revival of contractarianism in the twentieth century. The impulse to be skeptical of abstract, universal formulations of the social contract, and instead to tie contract arguments to their contexts, reflects a common critique of Rawls's initial formulation in *A Theory of Justice*. As he would later acknowledge, the theory in fact builds in his local horizon. The essays in Part I of the volume extend this insight to Grotian, Hobbesian, and Lockean contract theories, making the argument that they centrally address the 'ancien regime' question of the right to resist tyrants. Part II examines the logic of universalizing, 'philosophical' contractarianism; these essays discuss the role of historical 'facts' in Hobbes's political theory and the origin of modern contract theory's curious mix of voluntarist and nonvoluntarist reasoning.

The first essay in the volume ("Hobbes's and Locke's Contract Theories: Political not Metaphysical") introduces the major themes of Parts I and II—namely, the subject, logic, and legacy of seventeenth-century contract theory. Inspired by John Rawls's admission that his twentieth-century contract theory builds in the horizon of modern constitutional democracy, the essay critically examines two truisms about seventeenth-century contract theory. The first is the stock view that the English case is irrelevant to the logic of *Leviathan* and the *Second Treatise*; the second, the Whiggish characterization of contract theory as an important step in the development of democratic sovereignty. Regarding the first, I show how Hobbes's and Locke's contract

theories logically build in their local horizon, in the specific sense that their political conclusions depend on introducing facts about hereditary monarchy. Second, I argue that the apparent continuity between contract theory and modern representative democracy hides a deeper discontinuity. Hobbesian and Lockean contract theories address an issue peculiar to the ancien regime—namely, whether and when it could be permissible to resist a legitimate ruler. This issue evaporated with the onset of electoral politics. Seventeenth-century contract theory is therefore better regarded as a sophisticated approach to an age-old issue that would soon disappear than as a stage on the road to democracy. For reasons both of logic and substance, Hobbes's and Locke's social contracts are properly described as ancien-regime theories of politics.

The second essay—"Pacifying Politics: Resistance, Violence, and Accountability in Seventeenth-Century Contract Theory"—looks at another facet of these theorists' preoccupation with the resistance question: their concern with the reality of unpacified politics. Medieval and early-modern thinkers inhabited a world in which political accountability customarily took violent forms, and it was this that gave the resistance question its force. Working out the idea of a pacified society was a principal problem for seventeenth-century social contract theory. Early in the century, Grotius' *De Jure Belli ac Pacis* (1625) defined the problem in terms that would be taken up in the subsequent theories of Hobbes and Locke. Grotius framed the idea that an organized political society must be a pacified—that is, a civil—society. In similar vein, both Hobbes and Locke made a ban on the use of force by private individuals the necessary and defining condition of political society. The 'Grotian problem' inherited by Hobbes and Locke was to specify the scope and limits of the requisite ban. Their opposing constitutional positions—absolutism combined with an individual right of self-defense, in Hobbes's case, versus Locke's defense of limited government and an extraordinary right of resistance—represented alternative solutions to the problem. Yet both were transitional figures who envisioned pacified societies but nevertheless assumed the reality of unpacified politics. Not until peaceful elections replaced violent rebellion as the usual means of governmental transition would the resistance question finally be resolved.

The essays in Part II critically examine the logic of universalistic contract formulations. Hobbesian contract theory is commonly taken to exemplify 'philosophical contractarianism,' a genre devoted to gen-

erating abstract, universal principles, in contradistinction to a 'constitutional contractarian' preoccupation with particular national histories of compacts between ruler and ruled. "When Hobbes Needed History" argues against the orthodox view that Hobbes *never* needed history. To be sure, he intended to construct an ahistorical argument, and his contract theory starts out this way in *The Elements of Law*. But political events forced him to make the argument more historical when they brought to the fore the question, 'Who is sovereign?'. So long as readers took for granted that England was a hereditary monarchy, Hobbes did not need to ground his principles in historical detail. However, when the success of the parliamentary cause dissolved that assumption, his political conclusions came logically to require the 'fact' of the Norman Conquest. This is made explicit in *Leviathan*, where Hobbes appeals to the Conquest as the defining constitutional moment in English history. In conclusion, I argue that his historical arguments are the strongest contractarian element in his theory because they combine voluntarism with the idea of foundational constitutional decisions.

Voluntarist and nonvoluntarist dimensions of contract thinking are the subject of the fourth essay, "Hobbesian Absolutism and the Paradox in Modern Contractarianism." Hobbes's defense of absolutism involves the dual claims that consent is the foundation of legitimate authority and that sovereignty is necessarily absolute. It is a paradoxical combination of claims: If absolute government is the product of choice, how can it also be the sole possible constitution? While all of Hobbes's contractarian successors have rejected his preference for absolutism, his dual claims have become commonplace. Since Hobbes, contract thinkers routinely assert that people will choose their preferred constitution and that it is the only possible one. The essay examines the genesis of this paradoxical argumentation: Hobbes's genius lay in merging Grotius's contractarian rationale with Bodin's analytical view that sovereignty must be absolute. The final section discusses related criticisms of Rawls's contract theory, and shows that these criticisms are also applicable to classic contract theory. Rawls inherited a genre already flawed by the impulse to combine voluntarist with non-voluntarist reasoning.

Part III turns from the subject and logic of classic contract theory to the process of textual composition. The 'History of the Book' is a field that directs attention to the history and sociology of book and manuscript production. Contributing to the field, the essays in this section examine the process of composition of the three versions of

Hobbes's political theory, *The Elements of Law* (1640) and *De Cive* (1642 and 1647) and, finally, the masterpiece *Leviathan* (1651). A process of 'serial composition' was typical in the period and left its mark on Hobbes's arguments; the essays consider its effects and relate Hobbes's methods and circumstances to the practice and position of other early-modern authors.

The first essay—"The Composition of Hobbes's *Elements of Law*"—addresses the illustrative problem of dating the theory's original composition. Hobbes claimed to have written *The Elements* during the Short Parliament of the spring, 1640, and the claim has been accepted by many scholars. However, it seems unlikely that such a lengthy, systematic treatise could have been composed in so short a time. The essay closely examines the text to make the case that the bulk of *The Elements of Law* was written prior to the 1640 political crisis. What were likely written that spring were chapters defending absolutism; thus the evidence suggests that this least-admired part of Hobbes' political theory was also the least well thought out. The puzzle surrounding the composition of the *Elements* opens up general issues concerning Hobbes's method of writing, which are considered in the final essay.

"The Difficulties of Hobbes Interpretation" lays out common and idiosyncratic aspects of Hobbes's composition process and details interpretive difficulties created by that process. These are exacerbated by the paucity of reliable autobiographical materials. Interpretive difficulties are surveyed under three headings: (1) the process of 'serial' composition (meaning the production of multiple, often expanded, versions of a work), which was common in his period; (2) the relationship between Hobbes's three political-theory texts, which is basic to defining the textual embodiment of his theory and is controversial; and (3) his method of writing. The survey supports the thesis that some amount of inconsistency and muddle in Hobbes's arguments is attributable to his method of writing. The essay includes several appendices that outline the contents of the three versions of Hobbes's political theory and concretely demonstrate his process of revision and expansion.

Is the social contract tradition the most portentous development in political theory of the seventeenth century? In an "Afterword" I discuss an alternative tradition—theories of the absolutist state—in which Bodin, Grotius, and Hobbes are leading figures and which has affinities even with the philosophy of the great critic of contractarianism,

Hume. Where the contract tradition shared a common idiom, these theories shared a common political project: namely the construction of a state strong enough to control the religious conflicts that bedeviled post-Reformation Europe. The sensibility behind this project, however, was hardly one of state worship. Just as, later, there would develop a 'liberalism of fear,' which is born of awareness of the vulnerability to political harm of subjects in the modern world, theirs was an 'absolutism of fear,' rooted in a similar awareness of ordinary people's vulnerability. In their world, religious conflict, and elite conflict more generally, was the worst evil and a strong state necessary as its antidote. The tradition went out of fashion when the state became what early-modern theorists of the absolutist state had desired it to be.

When, two decades ago, I began thinking about the 'ancien regime' character of classical contract theory, I could not have imagined where the subject would take me, intellectually and personally. I have many colleagues and friends to thank for sharing their ideas, helping with mine, and generally keeping company along the way. To start with, I've been lucky to have smart and sympathetic political-theory colleagues in my home departments—first, Alfonso Damico and, more recently, Leonard Feldman. These essays could not have been completed without their suggestions and criticisms, nor would the journey have been so pleasant without their companionship.

The project bears the imprint of the Cambridge School of historians of political thought, which I first came to know through John Dunn. I have relied on his comradeship and expertise in the years since. More recently, Istvan Hont has given superb advice and recommendations on these essays and related projects. I am grateful to Wolfson College and Clare Hall of the University of Cambridge for their hospitality during the period in which the essays were completed. I thank Quentin Skinner and Richard Tuck for conversation and support during that time. I am also indebted to Hans Blom for helping bring this volume to completion and, in particular, for advice on the concluding chapter.

A number of other people have helped with various essays, including John Christian Laursen (chapter one), Alan Houston (chapter two), Tom Sorell (chapter three), Barbara Altmann and Iain Hampsher-Monk (chapter five), Mary Dietz and Richard Serjeantson (chapter six), and David Leitch (chapter seven). Gerald Berk, a long-time friend in my department in Eugene, helped me formulate a key argument in the first chapter. My deepest thanks go to two friends who

are also professors of politics, Jennifer Hochschild and Julie Novkov. Both have encouraged me, in large and small ways, for many years. This volume is dedicated to my son, Daniel. He has grown up during the writing of these essays, and I hope they reflect the influence of his generous and insightful nature.

With the exception of the Afterword, all the essays have been published previously. They are presented as originally published with some minor corrections and alterations in style. The only major correction pertains to the discussion of Hobbes's 'democracy first' argument in chapter five (see note 62). References have been standardized, with the exception that essays employ different editions of Hobbes's *Elements of Law*. Acknowledgements are collected in the preface.

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ABBREVIATIONS

In the notes, abbreviations have been used for the following frequently-cited works.

- SB Bodin, Jean Bodin. *The Six Bookes of a Commonweale*. Translated by R. Knolles and edited by Kenneth Douglas McRae. Cambridge, Mass.: Harvard University Press, 1962. Reprint of 1606 ed. References cite the book, chapter, and page.
- DJB Grotius, Hugo. *De Jure Belli Ac Pacis; Libri Tres*. Translated by Francis W. Kelsey. Oxford: Clarendon Press, 1925. References cite the book, chapter, section, and page.
- DC Hobbes, Thomas. *De Cive: The English Version entitled in the first edition Philosophicall Rudiments Concerning Government and Society*. Edited by Howard Warrender. Oxford: Clarendon Press, 1983. References cite the chapter, section, and page.
- EL(G) Hobbes, Thomas. *The Elements of Law Natural and Politic*. Edited by J. C. A. Gaskin. Oxford: Oxford University Press, 1994. References cite the chapter, section, and page.
- EL(T) Hobbes, Thomas. *The Elements of Law: Natural & Politic*. Edited by Ferdinand Tönnies. Cambridge: Cambridge University Press, 1928. References cite the part, chapter, section, and page.
- LV Hobbes, Thomas. *Leviathan*. Edited by C. B. Macpherson. London: Penguin Books/Pelican, 1968. References cite the chapter and page.
- ST Locke, John. "The Second Treatise of Government," in *Two Treatises of Government*. Edited by Peter Laslett. Revised edition. Cambridge: Cambridge University Press, 1960. Reprint. New York: New American Library/Mentor, 1965. References cite the section and page number.

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PART I

AN ANCIEN REGIME QUESTION: RESISTANCE