

supplies it. The interesting question is what constitution, at its best, can contribute to strong political foundations.

2. What's Wrong with Contract? Here is how vintage social contract theory proceeds: In a prepolitical condition, also known as the "state of nature," life is precarious. The sorts of disagreements that regularly present themselves in a world of scarcity and partiality are apt to escalate into rampant violence. Life is hard enough when it is only sabertooth tigers that need to be fended off, let alone one's fellow men, so sooner or later people have the wit to appoint a common judge over themselves in order to secure the peace. If that original compact does not constitute a civil order, then another step or two of institution-creation does. The result is government by the consent of the governed. The story is enormously edifying. It is also dubious.

A. It never was If I have agreed to supply you with apples in exchange for your oranges, then there is a moral onus on me to be forthcoming with the apples (especially if you have already transferred the oranges). But if we never actually agreed to exchange apples for oranges, however appealing that exchange might be in principle, then no such obligation obtains. Contracts that we could have made or even those that we would have made under various specified circumstances lack the force of promissory performances. Hypothetical consent may have normative significance as a heuristic for ascertaining achievable reciprocal benefit, but what it cannot do is ground obligation in performance.

One liability of contractarianism, then, is that the primordial compact establishing a civil order never occurred. None of the classical theorists of liberalism is of a mind to declare otherwise. At best, they are vague about the particulars of egress from the state of nature. No hypothesis is hazarded concerning the place or date of the epochal transition; the contractors themselves are bathed in anonymity. Once human beings lived without benefit of political institutions, and then in the foggy past of the species, political structures emerged. In the telling of this story, contract is a black box hypothesized to account for the transition. The only indispensable content of the box is that the changeover was voluntary, an act of men rather than an act of God or of unthinking nature. So, for example, John Locke argues against Sir Robert Filmer at stupefying length in the First Treatise of Government that no divine proclamation subsequent to the creation of Adam establishes any one man as rightful ruler over his fellows. In the Second Treatise, Locke observes that human beings are so similar one to another in mind and body that there can be no assumption that they are sorted into exclusive classes of natural rulers and ruled. The only remaining explanation of the fact that people in every civilized realm are united under institutions of government is that states originated as products of free choice. "[The state of nature is] a state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection." "A Commonwealth by Acquisition is that, where the Sovereign Power is acquired by Force; And it is acquired by force, when men singly, or many together by plurality of voyces, for fear of death, or bonds, do authorize all the actions of that Man, or Assembly, that hath their lives and liberty in his Power."

Perhaps the most noteworthy fact about the inference to contract is its fragility. At least one other potential origin of states presents itself as no less plausible a mechanism: subjugation of the weak by