Of the Original Contract: Outline

Hume kept adding and changing things in this important piece between different editions of the *Essays*. It is profitable to read it in conjunction with *Treatise* 3.2.7–9.

¶1 [Introduction.] Parties justify their policies by ‘unshapely’ speculative principles. Government is justified either with appeal to God (roughly, the ‘court party’, the Tories), or with appeal to a *original contract* (roughly, the ‘country party’, the Whigs).

¶2 [Thesis.] Both systems are reasonable albeit for different reasons than intended, and to a minimal extent their practical implications are sensible.

¶3 [The divine theory.] If we accept general providence, it is impossible to deny that political institutions are created for everyone’s benefit. But generalisation is a problem: everyone in authority acts by ‘divine commission’.

¶4 [The contract theory.] This theory seems undeniable too, given considerations about equality.

¶5 [1777 addition.] Since early savages could not make contracts, what is meant is that particular or regular obvious benefits generate a customary ‘acquiescence’, which is perhaps such a voluntary agreement.

¶6 [The contract theory explained.] The promoters say that government is impossible and unthinkable without voluntary contract, that in return for justice and protection people promise allegiance. Obligation ceases if the contract is violated.

¶7 [First criticism.] There is no empirical or factual evidence.

¶8 [Second criticism.] Insofar as the contract is ‘original’, it is too old to be binding.

¶9 [Third criticism.] Contract theory is historically wrong: most government is founded on usurpation or conquest.

¶¶10–8 [Discussion of these criticisms.] Force and violence are at the centre of changes of government marriage, elections, revolutions. The total dissolution of government in this case gives people most liberty: but never was making a contract the consequence of it. In the most extensive democracy, 10% ruled the rest, who had no choice.

¶19 [Summary.] New governments come about in a tumultuous and irregular way, which at best has the semblance of consent, but could never legitimise authority.

¶¶20–1 [1753 addition.] Of course it is possible to establish government by consent. If we were perfect, this is exactly what we would do—if we needed to form a state at all. But the *fact* is that consent is *least* involved exactly when government changes.

¶22 [Reminder.] At first, people oblige out of fear, not a moral sense of allegiance. In time, people come to think that a long possession justifies authority. But this voluntary consent is still not a contract.
[Fourth criticism.] By living under a given authority, everyone tacitly (or implicitly) consents to this authority. But consent implies choice; and we do not choose our place of birth. And neither can most of us choose to leave the country. One could say that a settler who is well acquainted with the prince and the situation consents to the authority. But this is not the case, for the native authority does not depend on that person’s allegiance.

[1777 addition.] Thought experiment: suppose a government is wiped out and succeeded by a new one. They could indeed choose any version of ‘civil polity’—even a contract. (Given that humans are rarely sensible, it is dubious they would.) But in reality, violent changes or innovations upset stability and jeopardise society. So, the ‘new brood’ ought to follow the established system. This does not rule out innovation; which has to be reasonable and ‘enlightened’.

[Tacit consent again.] The tacit ‘consent’ we give to an usurper is the same we ‘give’ to the ‘lawful sovereign’, viz. none. We do not establish an authority by consent, when we merely happen to live in its domain. It also flatters us too much: when a republic fails, say, people may well be happy to see an authoritarian usurper who restores a ‘regular succession’ and hence stability.

[Fifth criticism.] Some moral duties are natural and we follow them independently of ideas of obligation or utility (e.g., ‘love of children, gratitude to benefactors, pity for the unfortunate’). Though beneficial for society, the power of these duties is immediate and instinctive. Other moral duties ‘are performed entirely from a sense of obligation’, and the sense that we fail society if we neglect them (e.g., ‘justice or a regard to the property of others, fidelity or the observance of promises’). Social duties ‘restrain’ the natural ones. Allegiance is of this kind: we forgo certain liberties for the sake of ‘peace and public order’, without which society is impossible. This public interest is the source of allegiance and the associated moral obligation.

(The circularity issue.) Contractarians claim that allegiance is grounded in a ‘tacit promise’, and thus fidelity. But when asked about the grounds for fidelity, then can only appeal to allegiance. A better approach is to ground both allegiance and fidelity in the essential requirements of society.

(The object of allegiance.) The questions of who we owe allegiance too, and who is thus a legitimate sovereign is very difficult, and complicated by considerations about property and succession.

[Conclusion.] If a theory is paradoxical, inconsistent with ‘the common sentiments of mankind’, and empirically false, then we should reject it. Since the contract theory is of this kind, we should reject it.

[Afterthoughts.] Only Socrates refuses to violate what he agreed (ὡμολογητο, homologeto [Crito 50c]) with the state. Irony: he passively obeys a tacit but voluntary contract, thus is a Tory and Whig at the same time.