

Consent and Legal Obligation

1 Is Socrates's case relevant?

A covenant not to defend myself from force, by force, is always void. For (as I have showed before) no man can transfer, or lay down his right to save himself from death, wounds, and imprisonment, (the avoiding whereof is the only end of laying down any right), and therefore the promise of not resisting force, in no covenant transferreth any right; nor is obliging. For though a man may covenant thus, *unless I do so, or so, kill me*; he cannot covenant thus, *unless I do so, or so, I will not resist you, when you come to kill me*. For man by nature chooseth the lesser evil, which is danger of death in resisting; rather than the greater, which is certain and present death in not resisting. And this is granted to be true by all men, in that they lead criminals to execution, and prison, with armed men, notwithstanding that such criminals have consented to the law, by which they are condemned.¹

2 Could it be true if people don't believe it?

We find that magistrates are so far from deriving their authority, and the obligation to obedience in their subjects, from the foundation of a promise or original contract, that they conceal, as far as possible, from their people, especially from the vulgar, that they have their origin from thence. Were this the sanction of government, our rulers would never receive it tacitly, which is the utmost that can be pretended; since what is given tacitly and insensibly, can never have such influence on mankind as what is performed expressly and openly. A tacit promise is, where the will is signified by other more diffuse signs than those of speech; but a will there must certainly be in the case, and that can never escape the person's notice who exerted it, however silent or tacit. But were you to ask the far greatest part of the nation, whether they had ever consented to the authority of their rulers, or promised to obey them, they would be inclined to think very strangely of you: and would certainly reply, that the affair

¹Thomas Hobbes, *Leviathan* Ch. 14, par. 21.

depended not on their consent, but that they were born to such an obedience.²

3 Is there a real choice?

Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given a tacit consent to his authority, and promised him obedience; it may be answered, that such an implied consent can only have place, where a man imagines, that the matter depends on his choice. But where he thinks (as all mankind do who are born under established governments) that by his birth he owes allegiance to a certain prince or certain form of government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims.

Can we seriously say, that a poor peasant or artizan 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.³

4 The laws of Athens are pretty cheeky

The republic of ATHENS was, I believe, the most extensive democracy, that we read of in history: Yet if we make the requisite allowances for the women, the slaves, and the strangers, we shall find, that that establishment was not, at first, made, nor any law ever voted, by a tenth part of those who were bound to pay obedience to it: Not to mention the islands and foreign dominions, which the ATHENIANS claimed as theirs by right of conquest.⁴

²David Hume, *A Treatise of Human Nature* (1740), III.ii.8.

³David Hume, "Of the Original Contract" in *Essays Moral, Political, and Literary* (1777), par. 23-24.

⁴Hume, "Of the Original Contract", par. 16.