

# The Inalienable Liberty in the Social Contract Theory

## —As the Representative with Hobbes and Locke

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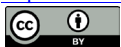
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### Abstract

The social contract is a doctrine about the origin of the state and a hypothesis of Western political philosophy. Many philosophers, jurists, and thinkers in history have put forward set of social contract theories of their own. Although these different theories in different eras have huge differences, the source of the power throughout them is the right of liberty. This article introduces the meaning and origin of the social contract at first, then compares the social contract theories of Hobbes and Locke to raise the question of whether the right of liberty can be alienated, and finally combines some of Rousseau's views to demonstrate the impossibility of transferring the right of liberty in the social contract.

### Keywords

Liberty, Social Contract Theory, Transfer

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## 1. Introduction

Liberty in the sense of free will is a multiway power to do any one of a number of things, leaving it up to us which one of a range of options by way of action we perform (Pink, 2011). From the writer's perspective, liberty is the most important natural right of human beings, but the security of performing it well relies on the consent of the whole society. Therefore, finding how the social contract theory protects the liberty and whether the liberty can be transferred is meaningful.

## 2. Social Contract Theory

1) Social contract and liberty

As for contract, it is an agreement having a lawful object entered into volunta-

rily by two or more parties, each of whom intends to create one or more legal obligations between them. However, before the law system was built, contract was simply an agreement between parties; it only has moral or social constraint nor legal enforcement.

“Humans are born free, but they are often trapped in shackles. He thinks he is the master of all others, and he is more a slave than all others”. As early as a hundred years ago, Rousseau had said that the fundamental natural right of mankind—liberty, which is inherent to human beings, but is also restricted by nature. Human beings are free and unfree simultaneously. This make people can't help but wonder about this contradictory proposition—why should liberty be restricted? As Hobbes said, “The relationships among people are like the relationships among wolves and wolves.” (Bodenheimer, 2004). If we do not maintain the orders by restricting liberty, humans will be in a state of instability and danger all day long. Even if the natural state of mankind is not necessarily as selfish, greedy and full of violence as Hobbes believes, humans in the early civilization will still face the influence of many external factors such as the intrusion of beasts, natural disasters, etc., which forces mankind to move towards unity through contracts to seek better survival and development. In addition, in a primitive society without rules and order, people have the right to do anything according to their wishes, but this is the most primitive and fundamental level of liberty, and this kind of liberty is unstable. To give a simple example, when a natural person wants to pick the fruit from a fruit tree, he has the liberty to pick it. But if there are ten people picking the fruit from this tree, then the probability of the first natural person to get the fruit is greatly reduced. Maybe he can't get the fruit at all. In this way, the first person's unprotected liberty may be deprived at any time. Is this true liberty? The author believes that, when a society tends to be civilized, social rules are established through contracts, the laws in a civilized society stipulate order and guarantee liberty, the liberty that is guaranteed under such rules is true liberty. Putting it in the example upon, when the law stipulates that only the first natural person can pick the fruit of this tree, the behavior of this natural person can achieve the goal, and then his liberty is the protected liberty and can be realized as true liberty. Liberty is the purpose of contract, and contract is a form of liberty. It is the individualistic connotation of pursuing liberty that ultimately gave birth to the social contract theory. The author will briefly introduce the origin of social contract theory and the representative theories in its heyday, taking the social contract theory of Hobbes and Locke as an example.

## 2) The origin of social contract theory

Marx once asserted that, “the country originated from the contract among people. And this view was first put forward by Epicurus” (Pan, 2003). Epicurus used “Atomic Theory” to expound the nature of humans' liberty and the contractual nature of the origin of the country in a metaphysical way. He compares every natural person in the society to an atom, which is equal and independent of each other. The material world is in motion, and atoms are the material of the

material world, so atoms are in motion. There are many ways of movement of atoms such as linear movement, tilting movement and repulsion. Epicurus metaphors the linear movement as the regulation of people by the external society, metaphors the oblique movement as the self-worth and inner liberty of each person, and he finally uses the repulsion between atoms to describe the realization of inner liberty in the society. Therefore, the basic point of the coordination and unification of individual human and political life is: the state is produced by the individual's contract, and the state is derived from the social contract (Pan, 2003). Epicurus' social contract theory is of great significance and his atomic theory embodies the most fundamental natural rights of natural persons. Just as the unfettered movement of atoms in space, individuals are equally free in society. After Epicurus pioneered the social contract theory, it reached its peak during the Renaissance.

### 3. The Analysis of Hobbes and Locke Theory

#### 1) "Leviathan" in Hobbes' mind

Hobbes' social contract theory is mostly embodied in "De Cive" and "Leviathan". His theory pays more attention to the security of the individuals and the country, because he presupposes that people are selfish, greedy, and aggressive under the natural state, additionally, the state of war is the original state of mankind. He believes that in order to ensure every individual is fully protected, every conflict can be treated by just ruling and the country is more cohesive, everyone should transfer all their rights at once to one core—the State, which is a centralized entity of high-level. In this way the state has a reasonable and legitimate basis to judge conflicts and dispose the rights and obligations of citizens. From then on, it can also be seen that Hobbes favors the autocratic monarchy. Basically, "Leviathan" is a kind of terrible giant sea monster mentioned in the Old Testament, which later became synonymous with demons in Christianity (Liu, 2012). Hobbes used "Leviathan" in 1651 to refer to a powerful country or government. Leviathan has all the rights of all individuals in society, it is supreme, and its orders are beyond doubt. It can determine the rules of survival for all people and the order of the entire society. Hobbes argued that, individuals cannot oppose the state so as not to cause conflicts. Neither ethics nor laws can impose any restrictions on sovereigns. Then, this kind of arbitrarily ruled society will inevitably cause some people to have different opinions. At this time, John Locke came forward and proposed a completely different theory of social contract.

#### 2) Locke domesticates "Leviathan"

In response to Hobbes's vigorous defense of the monarchy and the admiration of the centralized government, Locke put forward his own point of view. He believes that the unrestricted supreme right is likely to lead to arbitrary tyranny, unfair judgments and even unjust legislation (Wang, 2017). He does not believe that all the rights of individuals need to be transferred to the state at one time.

He believes that the state should not be superior to individuals. Since the state itself is composed of free individuals who are voluntarily joining by signing contracts, so it is just an agent which is authorized by the individuals to set standards and resolve disputes. The decisions which are made by the state must reflect the common will of the individuals. Although the original intention of Locke's theory is to protect the rights of individuals, he is not as extreme as Hobbes in pursuing that all disputes should be resolved by absolute authority. This may be related to their presupposed natural state. Compared with the natural state of wolf-like humans created by Hobbes, Locke is more inclined to believe that humans are inherently good at the very beginning. He believes that all individuals are not aggressive and humans' nature does not drive them to violate the rights of others. Instinct will drive humans to unite and seek development through cooperation. But even in this generally peaceful state of nature, people's liberty will still cause disputes. As the example cited above, multiple individuals picking fruits from a fruit tree, subjectively no one wants to infringe on the rights of others, but objectively there is a conflict of rights, and the liberty of each individual will overlap. At this time, for this kind of economic and property dispute resolution, a definite measurement standard is required to decide who has the right to pick and who has no right to pick. It is for this kind of demand that people establish a state through a contract. Each individual joins this state voluntarily and surrenders some of his rights, but not all of them.

People retain their natural rights, but are still free and equal in the country. "People have the right to depose the king and overthrow the arbitrary ruler above the people. This is the people's sacred duty" (Xiao, 2009). This revolutionary view under the social background at that time, he was undoubtedly full of courage. Locke tried his best to weaken the centralization status of the state and government and put forward the theory of "decentralization". It is not difficult to imagine that if the same individual has legislative power and judicial power or any two of the three rights of legislative power, administrative power, and judicial power, or even both of the three rights, it will inevitably induce them to abuse power for personal gain. Even grab the rights to make laws that free yourself from restraint. In this way, the purpose and the rights exercised by the rights holders are no longer consistent with other members of the society, which violates the purpose of the existence of society and the state.

Locke was the first modern bourgeois thinker to propose the theory of "separation of powers". He advocated the separation of legislative power, judicial power and administrative power, allowing different departments to exercise the three types of powers, and then perform their duties and responsibilities. Mutual supervision, trying to achieve the purpose of weakening centralization through internal checks and balances. Locke's social contract theory and decentralization theory greatly promoted the process of democratic politics, and gently promoted a democratic politics that guarantees people's liberty and rights in a society where absolute kingship is supreme.

For the theory of modern political science, Locke's theory is obviously ac-

cepted. The legitimacy of a country is not only related to the source of state power, but also to the tension relationship between state power and civil rights: a legitimate country (even if it can't be the best, at least it can be the worst), that is, a country with legitimacy basis, its legitimacy and legitimacy first lie in. All its powers must come from the rights transferred and entrusted by all citizens who constitute the community (such as the right to protect personal safety and property safety, and the right to safeguard the same interests as all others in the community, namely, the public interest).

Additionally, the state, as a public power institution created by the entrustment of citizens, must not only protect and protect the rights that every citizen has not transferred, but also can not damage or even deprive every citizen of these rights which can not be transferred, such as freedom of speech, freedom of thought, freedom of the press, freedom of association, freedom of movement, freedom of belief and so on. These basic freedom rights can not be transferred, replaced and deprived (Huang, 2011).

### 3) Comparison between Hobbes and Locke's social contract theory

In order to facilitate the comparison, the author made the following table to analyze the social contract theory of Hobbes and Locke.

The first stage of Hobbes and Locke in the social contract theory, the presuppositions of the natural state are totally opposite (Table 1), which lead to the different purposes of individuals signing social contracts. In a state of war, individuals obtain peace through contracts; however, in a state of peace, individuals guarantee liberty through contracts. The different starting points considered by these two theories will inevitably lead to different social systems based on their theories. In order to achieve security, an autocratic monarchy may be efficient. Its advantage lies in absolute coercion. Although arbitrary but unconditional obedience is indeed the safest solution to disputes, that means two parties need to be unconditional accept the rules regardless of whether it is fair or not, so that there will not be many factors of instability. In order to achieve the goal of liberty, it is necessary to conform to the will of the individuals, so there must be a democratic political system so that every administrative act, legislative act, and judicial decision can reflect the will of the people. Only a democratic government can embody the free will of the people and protect the people's liberty from violation.

Objectively speaking, the social contract theory of Hobbes and Locke is not a parallel opposition, and it is impossible to say who is right and who is wrong. It

**Table 1.** Comparison table.

	<b>Hobbs</b>	<b>Locke</b>
State of nature	State of war	State of peace
Social contract purpose	Safety	Free
Political system	Monarchy	Constitutional monarchy (democratic politics)
Transfer of power	All	Section

is an evolution of the development of civilization in the changing times (Jin, 2014). From security to liberty, individuals' pursuits are increasing. Hobbes' theory deprived people of their liberty for safety. Then, with the realization of the goal of safety, Locke overthrew autocracy in order to liberate liberty. This can't help but make people think about it, what if the goal of liberty is achieved? What will people pursue after that? The author believes that as Lord Acton said: "Liberty is not a means to achieve higher political ends. It is the highest political end in itself". A society that satisfies everyone's needs for liberty is the ultimate state, because only security can guarantee liberty, and only equality can achieve liberty. If liberty is achieved, people's most fundamental natural rights will be completed.

#### 4. The Inalienability of Liberty

##### 1) Liberty and human beings are an inseparable community

Liberty is different from property. When an individual chooses to transfer property, he will break all ties with the property and lose all the rights of possession, income, disposal, etc., and the transferee will inherit the right to the property. But when an individual has given up his liberty, the disposition of others to his liberty will be closely related to his spirit and body, and he will never be able to get rid of the combination of himself and liberty. To give a simple example, if an individual surrenders liberty, then he will be controlled by others. In Rousseau's "On the Origin of Human Inequality", there is a sentence that reveals the close connection between liberty and people: "If someone else abuses my liberty, it's impossible to have nothing to do with me. If others let me commit a crime, I can't stop it, then I will become a tool of crime, and turn to be guilty." Therefore, the transition of liberty will not cut off the connection between people and liberty, but establishes a long-term bond between people and illiberality. After transferring the liberty, people can only become unfree, therefore, it is obviously a false proposition to transfer the liberty which is an inseparable right of people.

##### 2) Humans yearn for liberty

The "religious judge" in Dostoyevsky's "Brother Karamazov" believes that people are inherently servile, and it is a good choice if they can gain some benefits through the transfer of liberty. These people do not value liberty, and they are willing to unconditionally obey all the arrangements of others, even give up liberty and become a slave. The author believes that this view is untenable. If such extreme views that do not conform to universal rationality can be established, the author can also make the same extreme assumption to refute: if there is a completely safe society and all individuals in it are selfless, humble, and willing to sacrifice everything for the development of others and society, so there is no way to talk about the state, government, laws, and rules... social contracts are totally useless.

Based on universal reasoning, people yearn for liberty. If people don't yearn for liberty, then how can the punishment or deterrence which restrict personal

liberty such as imprisonment and detention in penalties can be punishment? “The most unfortunate thing that a person can encounter is probably to allow oneself to be dictated by others” (Ma, 2012). Throughout history, we can also conclude that humans yearn for liberty. Any country develops from autocracy to democracy, from slavery to revolution, there has never been a country that has developed from a democratic system to a despotism, from a free society to a slave society, which obviously violates objective laws. People continue to move towards civilization and value rights, and the view that they voluntarily surrender liberty is obviously untenable.

Human nature is selfish and yearning for material abundance. The existence of any kind of creature yearns for survival and prosperity. No creature exists for the sake of extinction. This also gave birth to private ownership, slavery and other means conducive to the creation of wealth by individuals. The history of human civilization is the history of human degradation. “The true founder of civilized society is such a person. He was the first to circle a piece of land and say: ‘This is mine!’ And he could find a group of simple-minded people to believe in him”. Through this confirmation by way of private property, he can create a safe production environment and higher production efficiency, but at the same time he also opens the door to inequality. The emergence of private ownership led to the polarization between the rich and the poor and even gave birth to the later slavery system, with some people surpassing others. Liberty can be described as the core of slavery. Slaves do not have the right to choose their own lives. All rights and even life and liberty are controlled by the slave owner, but this does not deny the desire and pursuit of liberty by slaves as people.

To take a step back, if the point made above is exist, that some people are willing to give up their liberty and become slaves. Regarding this, the author and Rousseau stand in the same position, “Slaves are not worthy of liberty”. The sorrow of slaves is that they have been deprived of their liberty, and the greater sorrow is that they do not know to resist and are insensitive. Such slaves abandon the natural rights given to them by God. Even though they are treated as animals by the slave owners and are wrapped in cages, they do not have human thinking and spirit of resistance. In the strict sense, they are more like animals than ordinary people. In order to avoid ambiguity, the author added to the view that “slaves are not worthy of liberty”: “Slaves” here must meet objective and subjective requirements at the same time. Objectively, they must be slaves under the control of slave owners during the period of slavery. Subjectively it is also a slave who voluntarily accepts slavery. If it is a slave who resists slavery in his heart or resists by action, of course he does not belong to the slave mentioned in this view, he is already a free man in his heart. As for the descendants of the slavery society, the descendants of the slave system will automatically become the objective system of the slave system. It cannot be denied that the descendants of slaves have the right of liberty in essence.

In summary, no one does not yearn for liberty, no one voluntarily surrenders

liberty, because all kinds of people who have unfortunately lost their liberty will still regain their liberty through efforts.

### 3) Liberty is needed to transfer liberty

As mentioned above, liberty is a natural right of mankind, and no one is willing to surrender liberty. But objectively speaking, can liberty as a human right be punished or even surrendered? The author believes that liberty is the same as life, it is an attribute of mankind nor a right of mankind. Without liberty, it is like a person without life. It is no longer a person in the strict sense.

If we regard liberty as only a right, then the premise of transferring the liberty is to have the liberty to transfer it. Only with the liberty to transfer the right of liberty can dispose liberty, however, once the liberty is transferred, the ability to control and dispose of other property or rights which are acquired through transferring the liberty will be lost. In this way, surrendering liberty is not a choice that rational people can make. To take a step back, even at the moment of the transfer of liberty, the transferor is free and he can make the choice to transfer liberty. However, the transfer of liberty will cause the transferor to lose all meaning of existence. To some extent, people are dead without liberty.

If the right of liberty is defined as transferable, to a certain extent, it is equivalent to approving that a person can commit suicide. Although it is undeniable that there are people who commit suicide, in terms of values, we cannot advocate that people have the right to commit suicide, and we cannot use facts to reverse the rules of what should be. In the same way, only by defining that the right of liberty is non-transferable, can people be guaranteed the right to dispose of liberty, and make it consistent with the protection logic of liberty in the law.

## 5. Conclusion

The liberty in the social contract is also liberty, and as discussed above, it is also inalienable. Hobbes advocated the transfer of all natural rights to Leviathan; from then on, people will unconditionally obey its orders, and Leviathan will use its own power to protect people's rights. This seems like a reasonable "transaction", but it is actually against reason. Different people may have different wealth and different rights, but whether they are poor or rich, officials or civilians, they have the same natural rights, which is liberty. This is obviously a paradox that let people sell their liberty to protect their property from infringement.

In Hobbes's state of nature, society is a turbulent state of war, and such a mechanism is not useless. Taking the current gun management as an example, if everyone has the right to hold a gun and society is in a state of war, the author believes more people will choose Hobbes' theory and give everyone their guns to Leviathan for safekeeping. Everyone has no guns. It should be safer than that everyone has a gun in a state of war. But liberty still cannot be transferred to Leviathan, since no one can cope with the risk of Leviathan attacking the people if all of them gave their weapons to Leviathan. So facing the powerful Leviathan, people should not only establish a mechanism of checks and balances within it,



but also retain liberty outside to resist it. This is why the author supports Locke. After the contract is signed, people still retain their original natural rights. The right which people transfer to it is the right to implement natural law, not liberty.

Milton Friedman once said: “Liberty is a rare and delicate plant.” People must take good care of it to make it a towering tree. Liberty is about the meaning and value of life. Everyone should have a desire for liberty. Remember Patrick’s last sentence in the Virginia State Assembly speech in 1775: “Give me liberty or give me death.”

### Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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