

## I. Pre- thesis of the Social Contract

### 1. Men's Nature

Men can never live in isolation, so they form society and live in accordance with their own social norms, which is one of the striking features that parts human beings from other beasts. "Mutual social relationship" as used in Max Weber's definition of rights, also indicates "society" and the existence of it becomes the fundamental basis for any further discussion on rights.

### 2. Society as a prerequisite to rights

The concept of "rights" is the most essential core in law and any legal relationship that may be derived from it. One of the most important role of law, actually, is to regulate the rights-obligation relationship among the member of its society. However, on the flipside of this concept, one can easily reason that in order for "rights" to be realized, the existence of society is needed. Without society for its members to interact, the concept of rights and obligation becomes void.

Generally, it's accepted that for "rights" to be realized, these three conditions must be satisfied :

- (1) There must exist an interaction among the parties(with the possibility of confrontation).
- (2) The parties must be considered equal in their relationship.
- (3) There must exist common set of **rules** and objective system to regulate their relationship.

### 3. Definition of Mutual Social Relationship

According to Webster's College Dictionary, **the** word "mutual" means "having the same relationship each toward the other; held in common" and the word "social" means "living or disposed to live in companionship with others or in a community, rather than in isolation; of or pertaining to the life, welfare, and relations of human beings in a community".

Weber's description of society which is "mutual social relationship" fulfills the conditions mentioned above, in that it's "social"(condition (L)) and "mutual"(condition (Z) relationship that he's basing his theory upon. The last condition indicates the need for government(state?) and law as an objective regulator and rules it's guided by. The theory of social contract legitimizes the existence of such system in society.

## II. The Theory of Social Contract

### 1. Meaning

The theory of social contract is one of modern political thought. It says that human being, who have the rights of life, freedom and equality from their birth, make a contract to secure their rights and that man establish a society on the ground of the contract.

### 2. Representative Scholars

#### (1) T. Hobbes

- (1) State of Nature
  - (2) Social Contract
  - (3) The Birth of a State(leviathan)
2. From Civilian to the God (2) J. Locke

#### (2) J. Locke

- (1) Natural State
  - (2) Social Contract
2. The Formulation of **Community**

#### (3) J. J. Rousseau

**Rousseau** criticized the system of **law and** monarchy of 18th century. He said that that system did not reflect the will of all the people and that people, who are rational contract is shown in the institution like election and law.

### **III. Criticism and Contribution**

#### **1. Criticism on the Social Contract School**

**(1) T. H. Green(1901)**

The central fallacy of contract, theories is that they presuppose 'savage' men sitti notions of nights and **regality** which could only be generated within a society.

**(2) Hume, Bentham, Paire**

Existing governments were blatantly based **on** coercion, **not** consent, and operated **largely** for the benefit of the governors.

#### **2. Correction and Replacement of Contract Theory**

**(1) Idea of Democratic Consent**

**(2) Revival in Rawl's Theory of Justice**

#### **3. Contributions - Relation to Central Political Ideas**

**(1) The Will of the People**

**(2) Legitimacy**

**(3) Political Obligation**