

# The Long and Winding Doctrine: Social Contract

by

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*caveat lector*

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### Sovereignty and Jurisdiction

Rulers have claimed a variety of justifications for their authority. Some have claimed it as a matter of divine right. Some have professed an inherent superiority over their subjects, and a consequent authority. Others have suggested that leadership is a duty, done for the good of those from whom they exact obedience. In recent centuries, rulers have begun to claim that their powers are given to them willingly by the people and that they rule in the people's name. That claim is based on the idea that all political power derives from the people and that governments exercise only powers delegated to them by the people. Simply stated, it's the two ideas that people are sovereign and that jurisdiction is voluntary.

They aren't new ideas. For quite some time now, men have been struggling toward an understanding of them. Over 2200 years ago, Aristotle observed in *Politics* (Book 3, Chapter 14), that "... kings rule according to law over voluntary subjects, but tyrants over involuntary; and the one are guarded by their fellow-citizens, the others are guarded against them."

The 17th-century English philosopher Thomas Hobbes (1588-1679) gave considerable thought to the nature of sovereignty and jurisdiction.

**SOCIAL CONTRACT** .... According to Hobbes, men lived originally in a state of nature and enjoyed the right to act as they chose without interference from any source. As this condition of anarchy made life insecure and enabled the strong to dominate the weak, men entered into a compact or contract whereby they submitted voluntarily to necessary limitations on their freedom of action in order to secure the benefits of organized social existence; specifically, they surrendered their right to act as they chose to a sovereign to whom they owed obedience but who was under no obligation to his subjects....  
—*Funk & Wagnalls*, 1963

Hobbes believed government to have originated by the voluntary actions of men but viewed opposition to government as treason.

**SOCIAL CONTRACT** .... Hobbes' theory contained contradictory elements. In positing a social contract as the origin of human society, he synthesized ideas advanced in the latter part of the 16th century and in the 17th century by various Protestant philosophers and writers who sought a democratic doctrine to oppose the authoritarian theory of the divine right of kings. In postulating an absolute sovereign, however, Hobbes included in his theory the central conception against which the doctrines of his predecessors were directed. In effect, Hobbes' theory was an attempt to adapt democratic ideas to conservative political doctrines; in accordance with his theoretical views, he regarded opposition to the government as a species of treason.  
—*Funk & Wagnalls*, 1963

I view the distinction that Hobbes made between "the strong" and "the sovereign" to be irrelevant, if not actually in error. I regard the sovereign in Hobbes' philosophy as nothing more than the most successful of the strong. Since the contract according to Hobbes was irrevocable, those men who entered into it didn't gain anything. They remained weak and under the domination of the strong. What they lost under the contract, as Hobbes described it, was their right to oppose the strong.

The authors of the *Mayflower Compact* (1620) appear to have considered King James to have been unconditionally sovereign.

## The Long and Winding Doctrine: Social Contract

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We whose names are underwritten, the loyal subjects of our dread Sovereign Lord King James, by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, etc.... In witness whereof we have hereunder subscribed our names at Cape Cod, the 11th of November, in the year of the reign of our Sovereign Lord King James....  
—*Mayflower Compact*, November 11, 1620

A different view was expressed by John Locke (1632-1704), in the latter part of the 17th century. Locke advocated not only that governments operated with powers that were voluntarily delegated, but that government could exercise only those powers. He advocated the sovereignty of the people.

**SOCIAL CONTRACT** .... He made a notable presentation of the theory that in constituting social groups men sought a means of preserving life, liberty, and property; and that the powers they had delegated to government were limited to the achievement of those ends. According to Locke, sovereignty rested in the people....  
—*Funk & Wagnalls*, 1963

Locke also believed that the rights of men were superior to the powers of government, and that opposition to government was a right of the people.

**LOCKE, JOHN** .... In his views on government Locke believed with Hobbes that government is the result of an original contract. Right existed before the foundation of society, which is a means to the better enjoyment of natural rights. Locke distinguishes in government the three functions of legislation, execution, and adjudication. Of these the legislative function is supreme, but even over this stands the sovereign will of the people. When the people enforce their will against the government, there is no rebellion. They are acting within their rights.... —*Funk & Wagnalls*, 1963

Thus, Locke's view was that government is a tool of the people to be used or discarded by them as they choose.

In the *Declaration of Rights of 1774*, the American colonists implied that the sovereignty of a king was predicated upon powers ceded to him by the people.

.... That the inhabitants of the English colonies in North America, by the immutable laws of nature, the principles of the English Constitution, and the several charters or compacts, have the following rights:

*Resolved*, N. C. D. 1. That they are entitled to life, liberty, and property, and they have never ceded to any sovereign power whatever, a right to dispose of either without their consent....  
—*Declaration of Rights*, October 14, 1774

They still didn't properly understand the idea of sovereignty. If a king is sovereign then he doesn't rely on delegated powers. On the other hand, if the people are sovereign then they do not cede powers to a sovereign king but only to an agent of the people, whose job it is to carry out their will.

Less than two years later, the writers of the *Declaration of Independence* made a better statement of the doctrine.

.... That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it....  
—*Declaration of Independence*, July 4, 1776

## The Long and Winding Doctrine: Social Contract

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Those writers had a better understanding of sovereignty and of the powers of government. One remark particularly reveals their views regarding the Doctrine of Social Contract. That remark is with regard to the legislative power.

... He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people. He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise....

—*Declaration of Independence*, July 4, 1776

That's a clear statement of the opinion that the powers of government, when terminated, revert to their origins, that is, to the people.

After the *Declaration of Independence*, the reasonably clear vision of sovereign people was lost. Sovereignty was assigned to the states in the *Articles of Confederation*.

Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this Confederation expressly delegated to the United States in Congress assembled. —*Articles of Confederation*, Article 2, 1778

In the *U.S. constitution*, sovereignty was denied even to the states.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. —*U.S. constitution*, Article 6, clause 2, 1789<sup>1</sup>

... and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution....

— *U.S. constitution*, Article 6, clause 3, 1789

The Fourteenth Amendment to the *U.S. constitution* drove the final nail into the coffin of the sovereignty of the people.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States....

— *U.S. constitution*, Fourteenth Amendment, 1868

That's true because the meaning of *jurisdiction* includes a power of enforcement.

**JURISDICTION**.... The authority by which judicial officers take cognizance of and decide causes. Power to hear and determine a cause.... The right of a judge to pronounce a sentence of the law, on a case or issue before him, acquired through due process of law. It includes power to enforce the execution of what is decreed....

—*Bouvier's Law Dictionary*, 1889

Since the enactment of the Fourteenth Amendment, and under the present view of government, people are not sovereign and jurisdiction is mandatory.

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1 See the *Afterword in Some Important Things to Know About the U.S. Constitution*, in the June 2016 issue of the *Frontiersman*.

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### Government

Although constitutions have not caused a reduction in the powers of governments, they have changed the fundamental nature of government. A government based only on the whims, desires, or authority of a ruler is merely an extension of that ruler. However, a government based on a constitution embodies all of the defining characteristics of a corporation.

Bouvier's definition of corporation contains the following:

**CORPORATION** (Lat. *corpus*, a body). A body, consisting of one or more natural persons, established by law, usually for some specific purpose, and continued by a succession of members.

It is this last characteristic of a corporation, sometimes called its immortality, prolonging its existence beyond the term of natural life, and thereby enabling a long-continued effort and concentration of means to the end which it was designed to answer, that constitutes its principal utility.... —*Bouvier's Law Dictionary*, 1889

The pedigree of constitutional government identifies it as a corporation.

**CORPORATION** .... In Roman law the most common word for expressing this idea was *universitas*. A *universitas* might either be *personarum* or *rerum*, that is to say, might consist either of an aggregate of persons or of things. The highest example of a *universitas personarum* was the Roman state itself: others were municipalities and private societies, on which the law had expressly conferred corporate privileges....

—*Funk & Wagnalls*, 1963

It's important to recognize the similarities between constitutional governments and other kinds of corporations.

Bouvier claims that a corporation is formed by a government, viewed as a sovereign authority with regard to the corporation.

**CORPORATION** .... By both the civil and the common law, the *sovereign* authority only can create a corporation.... —*Bouvier's Law Dictionary*, 1889

The same is true of constitutional governments which, under the Doctrine of Social Contract, are created by sovereign people.

A corporation is defined by its charter or act of incorporation.

**CORPORATION** .... All corporations, of whatever kind, are moulded and controlled, both as to what they may do and the manner in which they may do it, by their charters or acts of incorporation, which to them are the laws of their being, which they can neither dispense with nor alter.... —*Bouvier's Law Dictionary*, 1889

Similarly, a constitutional government is defined by its constitution, which is equivalent to a charter or act of incorporation. A constitution describes the objectives, powers, duties, and limits of a government, just as a charter of incorporation does for other corporations. Constitutions are defined similarly to charters or acts of incorporation.

**CONSTITUTION.** The fundamental law of a state, directing the principles upon which the government is founded, and regulating the exercise of the sovereign powers, directing to what bodies or persons those powers shall be confided and the manner of their exercise.... —*Bouvier's Law Dictionary*, 1889

## The Long and Winding Doctrine: Social Contract

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Most corporations consist of officers, often elected by voting stockholders, and various kinds of property. The officers exercise authority in the name of the voting stockholders. They hire or appoint various employees to do the work of running the corporation, and to manage its property. While doing so, they remain answerable to the voting stockholders.

A constitutional government consists of some kind of a legislative body, and officers, at least some of whom are elected by the voters. Those officials exercise authority in the name of the voters. They hire or appoint various bureaucrats and employees to do the work of running the government, and to manage its property. While doing so, they remain answerable to the voters.

The only intrinsic parties to the contract represented by a charter of incorporation are the stockholders, the officers, and the employees. Only by an express act of consent can someone else become a party to such a contract. Similarly, the only intrinsic parties to the contract represented by a constitution are the voters, the elected or appointed officers, and the various employees and bureaucrats. Only by an express act of consent can any other individual become a party to a constitution. The Doctrine of Social Contract not only is completely consistent with this view of governments as corporations, but requires it.

This leads to a new insight into the relationship between people and governments. The Doctrine of Social Contract defines the residence of sovereignty. The corporate character of constitutional government identifies the parties from whom the government can expect obligations. The result is this.

The legitimate boundaries of lawful government are not geographical. They are contractual.

This deceptively simple idea is the most important political statement that has ever been made.

## The Legitimate Boundaries

Since the legitimate boundaries of lawful government are contractual, not geographical, a government can have legitimate jurisdiction only over individuals who are parties to the contract. That requires a change in our understanding of participation in government. Such participation must be understood in terms of the principles of contracts.

**CONTRACT** .... The use of the word *agreement* (*aggregatio mentium*) seems to have the authority of the best writers in ancient and modern times ... as a part of the definition of contract. It is probably a translation of the civil-law *conventio* (*con* and *venio*), a coming together, to which (being derived from *ad* and *grex*) it seems nearly equivalent....

There is an idea of mutuality in *con* and *traho*, to draw together, but we think that mutuality is implied in agreement as well. An *aggregatio mentium* seems impossible without mutuality. Blackstone in his analysis appears to have regarded agreement as implying mutuality; for he defines it (2 Bla. Com. 442) ‘a mutual bargain or convention.’ In the above definition, however, all ambiguity is avoided by the use of the words ‘between two or more parties’ following agreement....

To constitute a sufficient parol agreement to be binding in law, there must be that reciprocal and mutual assent which is necessary to all contracts....

*Parties.* There is no contract unless the *parties* assent thereto; and where such assent is impossible from the want, immaturity, or incapacity of mind of one of the parties, there can be no perfect contract....  
—*Bouvier’s Law Dictionary*, 1889

In accordance with the principles of contract, no group of men, however large, can rightfully compel another group of men, however small, into the jurisdiction of a contract. Similarly, and in accordance with the principles of constitutional government and the Doctrine of Social Contract, no group of men, however large, can rightfully compel another group of men, however small, into the jurisdiction of a government.

There are very few ways in which an individual can become a party to a contract of government and, thereby, come voluntarily under the legitimate jurisdiction of such a government. He can voluntarily become a voter. He can voluntarily run for office and be elected. He can voluntarily be hired into the service of the government. He might also, for some reason or another, voluntarily execute some other contract with the government that might include in its provisions an obligation to some jurisdiction of the government. Marriage licenses, driver’s licenses, and business licenses, if they were voluntary, would be examples of such contracts. An individual can volunteer into the jurisdiction of the United States of America<sup>2</sup> by voluntarily declaring himself to be a citizen. Any such voluntary action makes an individual a party to a contract and allows the accrual of legitimate obligations and jurisdictions.

Conversely, if an individual isn’t a party to some such contract of government, then the government doesn’t have any legitimate jurisdiction over him. Any enforcement of the authority of a government on any such individual is an act of aggression by that government by which the government departs from the domain of constitutional government and the Doctrine of Social Contract, and becomes a despotism.

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<sup>2</sup> See the Fourteenth Amendment of the *U.S. constitution*.

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### Consequences

Since the legitimate boundaries of lawful government are contractual, not geographical, any legitimate government may extend anywhere in the world where there is an individual under its jurisdiction, or where it owns property.<sup>3</sup> Any number of sovereign individuals greater than one might form such a government. However, that government exists in any particular location only with regard to individuals within its legitimate jurisdiction or to property that it owns. Many such governments might exist within the same geographical region, enjoying many possible kinds of coexistence.

Given the consequences of constitutional government and the Doctrine of Social Contract, national boundaries as they are presently understood are not legitimate. All geographically based authority that is presently exercised by governments is invalid. If constitutional governments really operated according to the Doctrine of Social Contract, then wars would be more difficult to administer than they presently are, and weapons of mass destruction would make even less sense than they do now, if such a thing is possible.

While many governments in the world today make a pretense of acknowledging the sovereignty of their people, none of them behave as if it's actually true. They display their various constitutions and broadcast the rhetoric of human rights<sup>4</sup> but rigidly maintain their geographical boundaries and forcibly control the people within those boundaries. An example can be found in the State of California, where the sovereignty of the people is acknowledged.

All people are by nature free and independent and have inalienable rights....

—*Constitution of the State of California*, Article 1, Section 1, 1879

Nowadays, most constitutions contain some such verbiage, but it's usually ignored by the actual operation of government. As a handy example, consider this definition of a municipal corporation.

**Municipal corporation** .... A body corporate consisting of the inhabitants of a designated area created by the legislature with or without the consent of such inhabitants....

—*Black's Law Dictionary*, 1979

Thus, some of the rhetoric of governments has undergone a change but that change isn't reflected by the actual power or behavior of governments. That's why elections, which allegedly exert the will of the people, have so little real control over the actions of governments. Present governments continue to exercise the ancient powers of the despot, disguised by the recent vocabulary of constitutional government and the Doctrine of Social Contract.

A large part of the blame for the failure, so far, of constitutional government and the Doctrine of Social Contract, must rest with the people themselves. All of the information that's necessary to understand such things as sovereignty, jurisdiction, des-

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3 It's extremely difficult, maybe impossible, to find any doctrine other than Might Makes Right by which to successfully and rationally defend the idea of the ownership of land. See my article *Losers Weepers*, on page 2 of the August 2011 *Frontiersman*.

4 Regarding so-called Human Rights, see my article *Rights Galore*, on page 1 of the May 2010 issue of the *Frontiersman*.

## The Long and Winding Doctrine: Social Contract

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potism, and social contract is readily available. People have failed to study it. They don't seem to have the slightest interest in it. Instead, they're completely preoccupied with the pursuit of luxury and security. They've allowed themselves to be deceived by the slick promises of politicians who want to have power over them, and the glossy schemes of marketers who want to sell things to them. It isn't a new phenomenon.

A democracy cannot exist as a permanent form of government. It can only exist until the voters discover that they can vote themselves largesse from the public treasury. From that moment on, the majority always votes for the candidates promising them the most benefits from the public treasury, with the result that a democracy always collapses over a loose fiscal policy, always followed by a dictatorship. The average age of the world's great civilizations has been 200 years. These nations have progressed through this sequence: From bondage to spiritual faith; From spiritual faith to great courage; From courage to liberty; From liberty to abundance; From abundance to selfishness; From selfishness to complacency; From complacency to apathy; From apathy to dependence; From dependence back into bondage.

—Alexander Fraser Tytler, Scottish economist, 1776

It's been about 232 years, now, since the present constitution went into effect, on March 4, 1789. It seems that we're living on borrowed time.

## The Long Road

The Doctrine of Social Contract must follow from the idea of sovereign individuals. Otherwise, it lacks any meaning. Additional thoughts regarding liberty and personal sovereignty can be found elsewhere in my writing.<sup>5</sup> For the purposes of this essay, it's sufficient to note that a sovereign individual doesn't have any inherent legal obligation to any government, whether or not that government is legitimate. However, there is a certain *noblesse oblige* associated with being a sovereign. See my essay *Personal Sovereignty*, in *Pharos*.

A sovereign cannot be legitimately compelled by any court or by any legislature. He may choose to negotiate with a government, as a sovereign, or he may demand something from a government, as a sovereign, but he must never do anything that can be construed as submitting to the jurisdiction of a government. A sovereign who does that lowers himself to the position of a subject of that government.

Seek justice from tyrannical governments not with your hat in your hands but with a rifle in your fist.  
—Emiliano Zapata (1877-1919)

To force governments to actually recognize individual sovereignty, and to enforce upon governments the legitimacy of constitutionality and the Doctrine of Social Contract, will be a long and winding road. In my opinion, it's an effort that we must make. The alternative, as I see it, is an ever deepening state of slavery. Given the increasingly powerful technologies that continue to fall into the hands of governments,<sup>6</sup> I believe that, lacking our success in this endeavor, such slavery will eventually become absolutely irreversible.

... no cause is left but the most ancient of all, the one, in fact, that from the beginning of our history has determined the very existence of politics, the cause of freedom versus tyranny.  
—*On Revolution* [1963], introduction  
by Hannah Arendt (1906-1975)

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5 I suggest my essays *Personal Sovereignty* and *The Principles of Liberty*. They're available in *Pharos*.

6 I suggest my article *What a Tangled Web We Weave: The Spider, The Wasp, and Spanish Fly*, on page 1 of the July 2006 *Frontiersman*.

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## Glossary

**CONSTITUTION.** The fundamental law of a state, directing the principles upon which the government is founded, and regulating the exercise of the sovereign powers, directing to what bodies or persons those powers shall be confided and the manner of their exercise.

*Constitution*, in the former law of the European continent, signified as much as decree, -a decree of importance, especially ecclesiastical decrees. The decrees of the Roman emperors referring to the *jus circa sacra*, contained in the Code of Justinian, have been repeatedly collected and called the Constitutions. The famous bull *Unigenitus* was usually called in France the Constitution. Comprehensive laws or decrees have been called constitutions; thus, the *Constitutio Criminalis Carolina*, which is the penal code decreed by Charles V. for Germany, the Constitutions of Clarendon (*q.v.*). In political law the word constitution came to be used more and more for the fundamentals of a government, - the laws and usages which give it its characteristic feature. We find, thus, former English writers speak of the constitution of the Turkish empire. These fundamental laws and customs appeared to our race especially important where they limited the power and action of the different branches of government; and it came thus to pass that by constitution was meant especially the fundamental law of a state in which the citizen enjoys a high degree of civil liberty; and, as it is equally necessary to guard against the power of the executive in monarchies, a period arrived - namely, the first half of the present century - when Europe, and especially on the continent, the term constitutional government came to be used in contradistinction to absolutism.

We now mean by the term constitution, in common parlance, the fundamental law of a free country, which characterizes the organism of the country and secures the rights of the citizen and determines his main duties as a freeman. Sometimes, indeed, the word constitution has been used in recent times for what otherwise is generally called an

organic law. Napoleon I. styled himself Emperor of the French by the Grace of God and the Constitutions of the Empire.

Constitutions were generally divided into written and non-written constitutions, analogous to *leges scriptæ* and *non scriptæ*. These terms do not indicate the distinguishing principle; Lieber, therefore, divides political constitutions into accumulated or cumulative constitutions and enacted constitutions. The constitution of ancient Rome and that of England belong to the first class. The latter consists of the customs, statutes, common laws, and decisions of fundamental importance. The Reform act is considered by the English a portion of the constitution as much as the trial by jury or the representative system, which have never been enacted, but correspond to what Cicero calls *leges natæ*. Our constitutions are enacted; that is to say, they were, on a certain day and by a certain authority, enacted as a fundamental law of the body politic. In many cases enacted constitutions cannot be dispensed with, and they have certain advantages which cumulative constitutions must forego; while the latter have some advantages which the former cannot obtain. It has been thought, in many periods, by modern nations, that enacted constitutions and statutory law alone are firm guarantees of rights and liberties. This error has been exposed in Lieber's Civil Liberty. Nor can enacted constitutions dispense with the "grown law" (*lex nata*). For the meaning of much that an enacted constitution establishes can only be found by the grown law on which it is founded, just as the British Bill of Rights (an enacted portion of the English constitution) rests on the common law.

Enacted constitutions may be either *octroyed*, that is, granted by the presumed full authority of the grantor, the monarch; or they may be enacted by a sovereign people prescribing high rules of action and fundamental laws for its political society, such as ours is; or they may rest on contracts between contracting parties, - for instance, between the people and a dynasty, or between

## The Long and Winding Doctrine: Social Contract

several states. We cannot enter here into the interesting inquiry concerning the points on which all modern constitutions agree, and regarding which they differ, - one of the most instructive inquiries for the publicist and jurist. See Hallam's Constitutional History of England; Story on the Constitution; Sheppard's Constitutional Text-Book; Elliot's Debates on the Constitution, etc.; Lieber's article (Constitution), in the Encyclopædia Americana; Rotteck's article Constitution, in the Staats-Lexicon, 2d ed.

—*Bowvier's Law Dictionary*, 1889

**despotism**, n. 1. Absolute power; authority unlimited and uncontrolled by constitution or laws, and depending alone on the will of the ruler.

2. An arbitrary government; the rule of a despot; absolutism; autocracy.

3. Figuratively, absolute power or influence of any kind. Such is the *despotism* of the imagination over uncultivated minds. -Macaulay.

—*Webster's Universal Dictionary of The English Language and Complete Atlas Of The World*, 1910

**DURESS**. Personal restraint, or fear of personal injury or imprisonment. 2 Metc. Ky. 445.

*Duress of imprisonment* exists where a man actually loses his liberty. If a man be illegally deprived of his liberty until he sign and seal a bond, or the like, he may allege this duress and avoid the bond; 2 Bay, 211; 9 Johns. 201; 10 Pet. 137; 26 Barb. 122. But if a man be legally imprisoned, and, either to procure his discharge, or on any other fair account, seal a bond or a deed, this is not by duress of imprisonment, and he is not at liberty to avoid it; Co. 2d Inst. 482; 3 Caines, 168; 6 Mass. 511; 1 Lev. 69; 1 H. & M. 350; 17 Me. 338; 18 How. 307; 2 Wash. C. C. 180. Where the proceedings at law are a mere pretext, the instrument may be avoided; Al. 92; 1 Bla. Com. 136.

*Duress per minas*, which is either for fear of loss of life, or else for fear of mayhem or loss of limb, must be upon a sufficient reason; 1 Bla. Com. 131. In this case, a man may avoid his own act. Lord Coke enumer-

ates four instances in which a man may avoid his own act by reason of menaces: - for fear of *loss of life; of member; of mayhem; of imprisonment*; Co. 2d Inst. 483; 2 Rolle, Abr. 124; Bacon, Abr. *Duress, Murder*, A; 2 Stra. 856; Foster, Cr. Law, 322; 2 Ld. Raym. 1578; Savigny, Dr. Rom. § 114.

It has been held that restraint of goods under circumstances of hardship will avoid a contract; 2 Bay, 211; 9 Johns. 201; 10 Pet. 137. But see 2 Metc. Ky. 445; 2 Gall. 337; 8 Ct. Cl. 461; 50 Ala. 437.

The violence or threats must be such as are calculated to operate on a person of ordinary firmness and inspire a just fear of great injury to person, reputation, or fortune. See 4 Wash. C. C. 402; 39 Me. 559. The age, sex, state of health, temper, and disposition of the party, and other circumstances calculated to give greater or less effect to the violence of threats, must be taken into consideration; 32 Am. Rep. 180, n.; 1 Ky. Law Rep. 137.

Violence or threats are cause of nullity, not only where they are exercised on the contracting party, but when the wife, the husband, the descendants or ascendants, of the party are the object of them.

If the violence used be only a legal constraint, or the threats only of doing that which the party using them had a right to do, they shall not invalidate the contract. A just and legal imprisonment, or threats of any measure authorized by law and the circumstances of the case, are of this description. See Norris Peake's Ev. 440, and the cases cited, also, 6 Mass. 506, for the general rule at common law.

But the mere forms of law to cover coercive proceedings for an unjust and illegal cause, if used or threatened in order to procure the assent to a contract, will invalidate it; and arrest without cause of action, or a demand of bail in an unreasonable sum, or threat of such proceeding, by this rule invalidates a contract made under their pressure.

All the above articles relate to cases where there may be some other motive besides the violence or threats for making the contract. When, however, there is no other cause for

## The Long and Winding Doctrine: Social Contract

making the contract, any threats, even of slight injury, will invalidate it.

Excessive charges paid to railroad companies refusing to carry or deliver goods, unless these payments were made voluntary, have been recovered on the ground of duress; 27 L. J. Ch. 137; 32 *id.* 225; 31 *id.* 1; 30 L. J. Exch. 361; 28 *id.* 169.

See, generally, 2 Watts, 167; 1 Bail. 84; 6 Mass. 511; 6 N. H. 508; 2 Gall. 337.

—*Bouvier's Law Dictionary*, 1889

**lawful** - .... Further, the word “lawful” more clearly implies an ethical content than does “legal.” The latter goes no further than to denote compliance, with positive, technical, or formal rules; while the former usually imports a moral substance or ethical permissibility....

—*Black's Law Dictionary*, 1979

**LICENSE** (Lat. *licere*, to permit).

**In Contracts.** A permission. A right given by some competent authority to do an act which without such authority would be illegal....

—*Bouvier's Law Dictionary*, 1889

**Municipal corporation.** A legal institution formed by charter from sovereign (*i.e.* state) power erecting a populous community of prescribed area into a body politic and corporate with corporate name and continuous succession and for the purpose and with the authority of subordinate self-government and improvement and local administration of affairs of state. A body corporate consisting of the inhabitants of a designated area created by the legislature with or without the consent of such inhabitants for governmental purposes, possessing local legislative and administrative power, also power to exercise within such area so much of the administrative power of the state as may be delegated to it and possessing limited capacity to own and hold property and to act in purveyance of public conveniences.

Municipal corporation is a body politic and corporate, created to administer the internal concerns of the district embraced with its corporate limits, in matters peculiar to such place and not common to the state at large.

*Tribe v. Salt Lake City Corp.*, Utah, 540 P.2d 499, 502. A municipal corporation has a dual character, the one public and the other private, and exercises correspondingly two-fold functions and duties—one class consisting of those acts performed by it in exercise of delegated sovereign powers for benefit of people generally, as arm of state, enforcing general laws made in pursuance of general policy of the state, and the other consisting of acts done in exercise of power of the municipal corporation for its own benefit, or for benefit of its citizens alone, or citizens of the municipal corporation and its immediate locality. *Associated Enterprises, Inc. v. Toltec Watershed Imp. Dist.*, Wyo., 490 P.2d 1069, 1070.

*Quasi municipal corporations.* Bodies politic and corporate, created for the sole purpose of performing one or more municipal functions. Public corporations organized for governmental purposes and having for most purposes the status and powers of municipal corporations (such as counties, townships, school districts, drainage districts, irrigation districts, etc.), but not municipal corporations proper, such as cities and incorporated towns.

—*Black's Law Dictionary*, 1979

**PAROL** (more properly, *parole*. A French word, which means, literally, word, or speech). A term used to distinguish contracts which are made verbally, or in writing not under seal, which are called parol contracts, from those which are under seal, which bear the name of deeds or specialties.... It is proper to remark that when a contract is made under seal, and afterwards it is modified verbally, it becomes wholly a parol contract....

—*Bouvier's Law Dictionary*, 1889

**SOCIAL CONTRACT, or COMPACT**, a theory of the origin of human society, first formulated in systematic manner by the 17th-century English philosopher Thomas Hobbes (q.v.). According to Hobbes, men lived originally in a state of nature and enjoyed the right to act as they chose without interference from any source. As this condition of anarchy made life insecure and enabled the strong to dominate the weak, men

## The Long and Winding Doctrine: Social Contract

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entered into a compact or contract whereby they submitted voluntarily to necessary limitations on their freedom of action in order to secure the benefits of organized social existence; specifically, they surrendered their right to act as they chose to a sovereign to whom they owed obedience but who was under no obligation to his subjects. Hobbes' theory contained contradictory elements. In positing a social contract as the origin of human society, he synthesized ideas advanced in the latter part of the 16th century and in the 17th century by various Protestant philosophers and writers who sought a democratic doctrine to oppose the authoritarian theory of the divine right of kings. In postulating an absolute sovereign, however, Hobbes included in his theory the central conception against which the doctrines of his predecessors were directed. In effect, Hobbes' theory was an attempt to adapt democratic ideas to conservative political doctrines; in accordance with his

theoretical views, he regarded opposition to the government as a species of treason. In the latter part of the 17th century the philosopher John Locke (q.v.) recast Hobbes' theory in the interest of democratic government. In justifying the Glorious Revolution (q.v.) of 1688 in his *Treatise of Civil Government* (1690), he made a notable presentation of the theory that in constituting social groups men sought a means of preserving life, liberty, and property; and that the powers they had delegated to government were limited to the achievement of those ends. According to Locke, sovereignty rested in the people. In the 18th century Locke's ideas influenced the thinking of the French philosopher Jean Jacques Rousseau (q.v.) and through Rousseau the leaders of the French Revolution of 1789. Locke's views were also influential in shaping the conceptions of government of the leaders of the American Revolution.

—Funk & Wagnalls, 1963

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