

Who Owns Countries?

On the Fallacy of Consent to Authority

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Do you consent to the State's authority? According to a certain line of reasoning, we all do. The argument goes like this: Some specific action, such as voting, or worse, non-action, such as not leaving a country (or even not voting!) implies an acceptance of the State's authority over that country and its inhabitants.

Any form of protest is therefore to be contained within the system; opposition is to be expressed only under the rules of the game: if you don't like one State, you can leave the country it controls for another one. If you don't like the current president, you can vote for his opponent at the next election. If you don't like his opponent either, then you can create your own party and be a candidate yourself. And if you don't do any of those things, then obviously you aren't *that* unhappy with the current state of affairs. You like to complain, but in fact you accept the status quo.

Is this line of reasoning valid? In this paper, I successively comment the following elements that are supposed to imply consent: residence, citizenship, voting, and social contract. I show that all of them rely on one premise necessary for them to imply consent: the ownership of the country by the State. I conclude by discussing that premise.

Residence

A State rules over a given country. If you live in that country, you accept that: *like it or leave it*. Not only are libertarians told that, but the argument is also used against immigrants who complain¹. After all, no one forced them to come, so how dare they criticize the country (State and country being often confused) they voluntarily chose to live in? Haven't they *demonstrated their preference* for living in that country over living in some other country?

A prompt reply is that their options were limited. After all, in a world controlled by States, an individual's choices are quite restricted. A choice under some given conditions therefore tells us nothing about what someone's preference would be if the conditions were different and the individual had more possibilities. If a person has to choose between being robbed or being killed (and then robbed), the choice of the first over the latter tells us nothing about whether he approves of the robbery². The same applies for choosing one country over another, whether by remaining in one's country of birth or by moving to another country.

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¹ The current French president Nicolas Sarkozy famously declared that those who don't like France shouldn't hesitate to leave. Similar statements have already been used as slogans for a long time by the French nationalist parties *Mouvement Pour la France* and *Front National*.

² In the same way, the fact that an individual chooses to participate in a trade doesn't prove that he is happy with all the conditions of the trade, be they the prices, the regulations or protectionist taxes involved, or even the voluntary nature of the trade itself. But it does show that he is better off with the trade than without it: to stop him from engaging in it could only limit his options to ones less favored by him. I differ

But this reply has a downside. At a restaurant, I also have a limited choice between various menus, and can't force the owner to cook me my favorite meal if he doesn't want to.

The main issue, then, is *whether the restriction of choices is legitimate or not*. How to distinguish between those various choice restrictions? What is the difference between having a limited choice at a restaurant on the one hand, and a limited choice at the point of a robber's gun on the other?

When you go to someone's house, can you complain of being aggressed if he asks you to remove your shoes, refrain from smoking, etc., and suggests you leave if you don't like it? On the other hand, would your remaining in a neighborhood where you got mugged once a year imply your consent to being mugged?

The difference, simply put, is nothing but *legitimate property*. The *owner* of a restaurant chooses what to sell, and the *owner* of a house defines the rules he likes. A robber, on the other hand, is not the owner of the neighborhood, despite his claims to the contrary.

But what about countries?

If the State owns the country, it³ can set any rules it likes, and libertarians can't rightfully complain against those laws. The same applies to immigrants: being accepted or turned away at the border are decisions rightfully made by the State, *if* the State is the legitimate owner of the whole country.

Of course, the State could still make no distinction between foreigners and citizens, but States usually do choose to make such a distinction. Discrimination between foreign and local people is generally considered to be politically acceptable⁴, and the State asks foreigners to abide by all of its laws, even more so than it does of local citizens⁵.

The crux of the matter, then, is *who owns the country?*

Citizenship

Being born a citizen can hardly constitute consent, since the citizen has no say at all in the matter. The citizen didn't choose to be one, and renouncing one's citizenship is not easy, often requiring being granted another citizenship.

here from Rothbard (1956, p. 29) who wrote, "welfare economics can make the statement that the free market increases social utility, while still keeping to the framework of the Unanimity Rule." First, there is no such thing as social utility, and attempting to defend the free market on such a basis will inevitably lead to what Reisman (1990, p. 434) described as the "dead end of the attempt to defend capitalism on a collectivist base." Second, the fact that an individual engages in a voluntary exchange proves that he is better off with this exchange than with any other option currently available to him, but tells us nothing about whether he would, or not, actually be happier under some other political system or simply with another set of options. The fact that I buy something doesn't prove that I accept the free market anymore than it proves that I accept paying sales or import taxes.

³ Of course, "State" is an abstraction here used for simplicity. Any actual decisions are made by the men and women who happen to control the relevant State apparatus.

⁴ It is ironic that the only form of discrimination that is *not* acceptable, i.e. state discrimination as opposed to entirely legitimate private discrimination, is the one least subject to critique. As Rand (1967, p. 326) would put it, "the process consists of ascribing to private citizens the specific violations constitutionally forbidden to the government (which private citizens have no power to commit) and thus freeing the government from all restrictions."

⁵ For instance, foreigners might get expelled from a country and be banned from entering it again on top of a jail sentence, whereas citizens can only get the jail sentence.

A more interesting case is that of a foreigner who applies for citizenship. In this case, there is a deliberate action on the part of the person, and in some countries, naturalization requires a vow to obey the constitution or the laws⁶.

If the State owns the country, it can set rules on how to become a privileged citizen, and promises can be seen as contracts. If I promise someone that I will not smoke in their house since they asked me, it is a valid promise. But if the State is *not* the legitimate owner of a country, then even a vow to obey the laws or the constitution is not binding in any way whatsoever. In the same way as it is entirely legitimate to lie or make false promises to a mugger attacking you on “his street” (his gang’s “territory”), lying to the State on “its territory” is a pure act of legitimate defense, as long as that territory is *not* rightfully its territory.

Voting

Another element that is supposed to imply consent is *voting*⁷. By voting, you participate in the system, you are therefore supposed to have accepted it.

A first point is that this does not correspond to reality: The state asks obedience of all, not just voters or people with the right to vote (Simmons, 1993, p. 89). The reality is that whether you vote or not, whether you can vote or not, you will be arrested if you are caught disobeying the State’s laws. In short, *whatever* you do, you are supposed to have consented:

“The citizen is understood to have assented to everything his representative may do, when he voted for him. But suppose he did not vote for him; and on the contrary did all in his power to get elected some one holding opposite views—what then? The reply will probably be that, by taking part in such an election, he tacitly agreed to abide by the decision of the majority. And how if he did not vote at all? Why then he cannot justly complain of any tax, seeing that he made no protest against its imposition. So, curiously enough, it seems that he gave his consent in whatever way he acted—whether he said yes, whether he said no, or whether he remained neuter!” (Spencer, 1851, p. 211-212)

But let us assume for the sake of argument that the State would consider only those who vote as having accepted its authority. Would it be right in assuming that? No:

“As we can have no legal knowledge as to who votes from choice, and who from the necessity thus forced upon him, we can have no legal knowledge, *as to any particular individual*, that he voted from choice; or, consequently, that by voting, he consented, or pledged himself, to support the government. Legally speaking, therefore, the act of voting utterly fails to pledge *any one* to support the government. It utterly fails to prove that the government rests upon the voluntary support of anybody. On general principles of law and reason, it cannot be said that the government has any voluntary

⁶ The paradox is that it is precisely by becoming a citizen that one can vote to change (directly or through electing politicians, depending on the country) the very constitution or laws one has promised to obey. A foreigner never swore to obey them, has no way to change them, but must nevertheless abide by them as much (or more) as the citizen.

⁷ Incidentally, it is also worth mentioning that in countries such as Belgium, voting is mandatory, and therefore cannot by any stretch of the imagination be considered as a voluntary action implying consent to anything. Another paradox is that if voting were to imply consent and acceptance of the laws, then if prisoners or convicted felons no longer have the right to vote, then there would be no grounds for asking them to obey the law or keeping them in jail.

supporters at all, until it can be distinctly shown *who* its voluntary supporters are.

As taxation is made compulsory on all, whether they vote or not, a large proportion of those who vote, no doubt do so to prevent their own money being used against themselves; when, in fact, they would have gladly abstained from voting, if they could thereby have saved themselves from taxation alone, to say nothing of being saved from all the other usurpations and tyrannies of the government. To take a man's property without his consent, and then to infer his consent because he attempts, by voting, to prevent that property from being used to his injury, is a very insufficient proof of his consent to support the Constitution. It is, in fact, no proof at all. And as we can have no legal knowledge as to *who* the particular individuals are, if there are any, who are willing to be taxed for the sake of voting, we can have no legal knowledge that any particular individual consents to be taxed for the sake of voting; or, consequently, consents to support the Constitution.” (Spooner, 1867)

Voting, however, can be a perfectly legitimate way of taking a decision, but only in two cases: if an owner decrees that decisions regarding his own property shall be taken through this procedure (e.g., parents might let their children vote on what to watch on TV), or if it has been accepted as a decision-taking procedure by contract (e.g., in a co-ownership).

Does either of these cases apply to a country? The first case would apply if the State owned the country, on the same grounds as the “residence” argument which I have discussed above. The second case would hold if the “social contract” were a true contract, an issue which I discuss below.

Social Contract

Others attempt to claim that consent is rooted in the constitution of the country, or in some sort of “social contract”. From the outset, it can be noted that a thing is either a contract or it is not a contract, that is, a voluntary agreement among two or more parties. There can be no such thing as a “social” contract anymore than there can be “social” justice or “social” thinking.

But let us nevertheless explore the idea further. After all, the fact that an idea as ridiculous as that of the social contract is still taken seriously would be funny if it were not so dramatic. Theories from Rousseau to Buchanan are still taught while their masterful ridiculing by Spooner⁸ is blatantly ignored. Even such great minds as de Soto⁹ and Mises¹⁰ have fallen for

⁸ “The Constitution has no inherent authority or obligation. It has no authority or obligation at all, unless as a contract between man and man. And it does not so much as even purport to be a contract between persons now existing. It purports, at most, to be only a contract between persons living eighty years ago. And it can be supposed to have been a contract then only between persons who had already come to years of discretion, so as to be competent to make reasonable and obligatory contracts. Furthermore, we know, historically, that only a small portion even of the people then existing were consulted on the subject, or asked, or permitted to express either their consent or dissent in any formal manner. Those persons, if any, who did give their consent formally, are all dead now.” (Spooner, 1867)

⁹ “How, then, does [de Soto] articulate property rights? And why should they be defended? De Soto's defense of property rights is not grounded on justice, nor is it a pure, logical defense. Rather, de Soto takes an extremely narrow utilitarian approach based on efficiency and rooted in social contract. He argues that property derives its legitimacy from ‘social contracts that determine the existing property rights.’”(Calzada, 2004)

¹⁰ “Der Liberalismus spricht sich nicht im Interesse der Besitzer für die Aufrechterhaltung des Eigentums aus. Er will nicht das Sondereigentum darum erhalten, weil er es nicht ohne Verletzung der Rechte der Eigentümer aufheben könnte. Würde er die Beseitigung des Sondereigentums für nützlich im Interesse der Allgemeinheit halten, dann würde er für seine Aufhebung eintreten ohne Rücksicht darauf, ob er dadurch die Eigentümer schädigt. Die Beibehaltung des Sondereigentums aber liegt im Interesse aller Schichten der Gesellschaft. Auch der Arme, der nichts sein Eigen nennt, lebt in unserer Gesellschaftsordnung unverhältnismäßig besser als er in einer Gesellschaft leben würde,

some form of the “social contract” or the related anti-concept of “general interest”. Mises, however, did later correctly point out that:

“The worst enemy of clear thinking is the propensity to hypostatize, i.e., to ascribe substance or real existence to mental constructs or concepts.

In the sciences of human action the most conspicuous instance of this fallacy is the way in which the term *society* is employed by various schools of pseudo science. There is no harm in employing the term to signify the cooperation of individuals united in endeavors to attain definite ends. It is a definite aspect of various individuals’ actions that constitutes what is called society or the ‘great society’. But society itself is neither a substance, nor a power, nor an acting being. Only individuals act. Some of the individuals’ actions are directed by the intention to cooperate with others. Cooperation of individuals brings about a state of affairs which the concept of society describes. Society does not exist apart from the thoughts and actions of people. It does not have ‘interests’ and does not aim at anything. The same is valid for all other collectives.” (Mises, 1962, p. 80-81)

Indeed, since a society does not have any will or interests, there can be no such thing as a “general will” or “national interest” or “general interest” or “the will of the people” or “common good” or “social utility”. A contract is either binding identifiable individuals (or companies which are themselves nets of identifiable contracts between free-willing individuals) or it is no contract at all. Another way of saying this is that a contract that would be to bind “everyone” would indeed have to be unanimously approved by the same “everyone”. As Rousseau (1762, p. 55) himself correctly points out:

“En effet, s’il n’y avait point de convention antérieure, où serait, à moins que l’élection ne fût unanime, l’obligation pour le petit nombre de se soumettre au choix du grand, et d’où cent qui veulent un maître ont-ils le droit de voter pour dix qui n’en veulent point ? La loi de la pluralité des suffrages est elle-même un établissement de convention, et suppose au moins une fois l’unanimité.”

[Indeed, if there were no prior convention, where, unless the election were unanimous, would be the obligation on the minority to submit to the choice of the majority? How have a hundred men who wish for a master the right to vote on behalf of ten who do not? The law of majority voting is itself something established by convention, and presupposes unanimity, on one occasion at least.]

But that unanimity was never achieved:

“In view of the undeveloped communications system, the absence of roads, and the huge size of the rural population, it is probable that a vast majority of Americans of European, Asian, or African origins didn’t even know that conventions had been held or that an instrument had emerged claiming to be a contract with them. [...] In further support of this argument, the evidence shows that popular voting for presidents,

die sich unfähig erweisen würde, auch nur einen Bruchteil von dem zu erzeugen, was in unserer Gesellschaftsordnung erzeugt wird.” (Mises, 1927, p. 27)

[“It is not on behalf of property owners that liberalism favors the preservation of the institution of private property. It is not because the abolition of that institution would violate property rights that the liberals want to preserve it. If they considered the abolition of the institution of private property to be in the general interest, they would advocate that it be abolished, no matter how prejudicial such a policy might be to the interests of property owners. However, the preservation of that institution is in the interest of all strata of society. Even the poor man, who can call nothing his own, lives incomparably better in our society than he would in one that would prove incapable of producing even a fraction of what is produced in our own” (p. 30)]

beginning with George Washington, was so meager that no effort was made to preserve the figures. Thus, for the first ten presidential elections the only figures available are those showing electoral votes. However, in 1824, when no candidate obtained a majority of electoral votes and the election was decided in the House of Representatives, for the first time the popular totals were retained. The four candidates running that year polled an aggregate of 352,062, while the population of the United States according to the census of 1820 had reached a total of 9,638,453. Only slightly more than three per cent of the total population was voting even at this late date. [...] To assume that the people of the United States entered voluntarily into a contractual relationship of such unbalanced character that specific performance on the part of one of the contracting parties is enforced under the threat of death while specific performance on the part of the other contracting party is totally unenforceable, is a patent absurdity. No sane or reasonable human being would voluntarily bind himself by any such contract.” (LeFevre, 1974, p. 39-40)

And of course:

“Quand chacun pourrait s’aliéner lui-même, il ne peut aliéner ses enfants ; ils naissent hommes et libres ; leur liberté leur appartient, nul n’a droit d’en disposer qu’eux. [...] Il faudrait donc pour qu’un gouvernement arbitraire fut légitime qu’à chaque génération le peuple fût le maître de l’admettre ou de le rejeter : mais alors ce gouvernement ne serait plus arbitraire.” (Rousseau, 1762, p. 51)

[Even if each man could alienate himself, he could not alienate his children: they are born men and free; their liberty belongs to them, and no one but they has the right to dispose of it. [...] It would therefore be necessary, in order to legitimize an arbitrary government, that in every generation the people should be in a position to accept or reject it; but, were this so, the government would be no longer arbitrary.]

Therefore, the reality is thus:

“Soit d’un homme à un homme, soit d’un homme à un peuple, ce discours sera toujours également insensé. Je fais avec toi une convention toute à ta charge et toute à mon profit, que j’observerai tant qu’il me plaira, et que tu observeras tant qu’il me plaira.” (Rousseau, 1762, p. 54)

[It will always be equally foolish for a man to say to a man or to a people: “I make with you a convention wholly at your expense and wholly to my advantage; I shall keep it as long as I like, and you will keep it as long as I like.”]

Having thus exposed the issue clearly, Rousseau proceeds to ignore it through the rest of his verbiage, relying on his *volonté générale*, and quietly ignoring the fact that there is no such thing, referring to it as if it were some sort of God that needs not be defined or shown. At least since Arrow, if not Spooner, it could be expected for everyone else to know better than that.

Conclusion

Either the State is the legitimate owner of the whole country, and then it can rightfully choose which foreigners to expel and which immigrants to admit, and then indeed, libertarians can’t complain of its laws, or it isn’t, and it has no right to choose whom to admit or expel, and libertarians are entirely right in criticizing the State’s unfounded laws.

Since the idea that the State would own the whole country is precisely the premise that libertarians question, all other arguments grounded on this premise are circular: one cannot prove the legitimacy of the State by starting from a premise that assumes the legitimacy of the State. If a statist wants to prove to a libertarian that he should either quit complaining or leave, the only issue that can logically be debated is whether the State owns the country or not; the rest are mere consequences of the answer to that question.

All these statist arguments therefore *are* valid – as long as we accept one single premise: that the State is the legitimate owner of the whole of the country. Can this be the case?

First, we can note that States *do* act as owners: property can be defined as the right to exclude¹¹, and States certainly do exclude, by refusing entry into the country to some immigrants. But then again, even a robber might have the power to exclude someone from a stolen car, but he has no *right* to do so.

So then, does the State rightfully own the country? For a libertarian, the answer is clearly no: if legitimate property is property that has been either homesteaded or received from a previous legitimate owner (through voluntary means of exchange), then no, it doesn't. First, States have no rightful claim over the private properties of their citizens, or the private properties that their citizens freely chose to sell to foreigners. Private properties were homesteaded by someone and then sold or bequeathed to other people, thus States have no claim on them. Second, States have no rightful claim on land that has no private owner and is not used by anybody, since no one actually homesteaded it. Third, States have no legitimate properties of their own, save those that they received from voluntary donations. The rest of States' "property" is either directly confiscated or bought with confiscated money, and therefore, is *not* legitimate property.

Therefore, a statist who would like to justify the legitimacy of the State would have to start by presenting a cogent theory of property rights, one that would allow him to both recognize theft as illegitimate (as States' laws do) *and* show why the same type of aggression committed by gangs of thugs calling themselves "States" should be legitimate.

The reality of political obligations is therefore nothing else than *the law of the strongest*. We are supposed to obey the State's orders—because it is the strongest thug in town. That is all. And it is worth noting that whatever the State's defenders' rhetoric may be, *the State itself acts in exactly that way*. The State considers that it can force its laws upon you by the mere fact that you are within the reach of its power. Policemen do not ask you, before arresting you for a false crime¹², whether you can vote or not, whether you voted or not, whether you are a citizen or not, whether you promised to obey the laws or not, whether you live in the country or not. Unless some other thug (another State) stops them, they don't care: they have more guns than you, and you are to obey.

¹¹ See for instance Salin, 2000, p. 361.

¹² They don't ask you before arresting you for a real crime either, of course. If they think that they have the right to stop an aggression because the aggressor has somehow consented to their authority, they are wrong: they have the right to police and justice aggressors for the same reason anybody else has – the fact that the aggression is an infringement on someone's rights.

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