

## The Social Contract Theory: A Model for Reconstructing a True Nigerian Nation-State

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### Abstract

*The ideal purpose of the state has been variously conceived in political theory, leading to competing theories of state, one of which is the Social Contract Theory. With its earliest systematic postulation in the political philosophy of Thomas Hobbes, this theory gained much currency in the modern era. Although it was briefly eclipsed towards the turn of that era after Kant, it has been revived in contemporary political discourse, such as it is posited by John Rawls. The Social Contract Theory is both a theory of morality as well as a theory of the state. This study focuses on the latter dimension of the theory, in which it attempts to provide philosophical basis for the existence of the state and offers justifications for political obligation. It regards the state as the product of a pact or covenant. Perhaps most importantly, it offers a rational framework for reconciling the imperatives of governmental authority with the rights of the governed. It follows from this theory that the Constitution of the state must originate from the people or at least, according to some versions of it, be a hypothetical expression of their rational will. From that premise, this work suggests that the Nigerian state should be governed on the basis of commonly shared principles of justice. It goes further to argue that the Social Contract Theory of the state is an ideal model for reconstructing Nigeria into a truly united nation-state.*

**Key Words:** Social Contract, State, Community, Society, Nation-State, Political Obligation, Authority.

### Introduction

Nigeria is like the United States of America in some important ways, notably in terms of their ethnic configurations and a colonial history. Regrettably, whereas the latter represents an excellent—although not perfect—model of a truly united nation-state, the former remains a mere state of nations with a variegated locus of allegiance amongst her diverse nationalities. Three key political variables that account for the disparity in their levels of national integration are: (i) the fundamental principles upon which the two States were founded; (ii) the type of constitution operated by them; and (iii) the level of constitutionalism. All these have shaped their values and ideologies differently and also fostered differing kinds of faith in the commonwealth. The first two factors verge on the notion of the state, whilst the last factor translates to the use of the state's juridical apparatuses for the preservation of shared values and norms and entrenchment of justice, all of which are cardinal thrusts of the social contract theory.

The main line of argument in this work is that it is expedient and logical to construe the modern state as the product of a covenant, a compact or *Social Contract*. There are different accounts of the Social Contract Theory by its various proponents, but they all hold the view that the outcome of a social contract. The logical import of this postulate is that the *people*, by whose contrivance *governments* were instituted, ought to determine how they should be governed. The constitution of the state should thus truly be 'The Constitution of the People.' This will promote democracy, and, as Alexis de Tocqueville, rightly opines, 'Democratic laws generally tend to promote the welfare of the greatest possible number; for they emanate from the majority of the citizens, who (although) are subject to error, ... cannot have an interest opposed to their own advantage.'<sup>1</sup> The Nigerian State deviates from this provision and the phrase 'WE THE PEOPLE...' <sup>2</sup> in the pre-chapter of her constitution appears to be merely presumptuous. This is largely responsible for much of her political and ethno-religious crises as well as the prevalence of militant agitations across the country.

## The Background

Nigeria is at a critical historical moment. The people of the Niger Delta region in the southern part of the country have long felt marginalised. This sense of exclusion, real or perceived, sparked off virulent agitations, involving a clamour for justice. The emergence of a Southerner as President of the Republic and the establishment of the Federal Government's Amnesty Programme for the Southern "ex-militants" have significantly doused the tension in the South, but these are merely short-term palliatives. The federal Amnesty Programme, in my view, appears more to be a deliberate interim containment strategy than a well-coordinated long-term poverty reduction measure. It does not address the key legal, political and socio-economic issues that threaten the stability and existence of the state. In other words, it only addresses the 'symptoms' (or manifestations) of poverty rather than the root causes. There still exist armed militia in the South as in other parts of the country. Even more threatening is the resurgence of organised terrorism in the northern part of the country, spearheaded by the Boko Haram, widely perceived to be an Islamic fundamentalist sect.

Within the relatively short period of emergence of the Boko Haram group, official reports have linked them to the killing of hundreds of innocent people across the country, especially in Borno and the other northern states where they are most entrenched. In a recent attack on a church in a northern state, for which the group claimed responsibility, the majority of the casualties were Ibos, who have been similarly attacked in the north several times in Nigeria's post-civil war history. Hence, a serving Ibo senator, voicing what many of his kinsmen feel, lamented that the Ibos now constitute an endangered species within the Nigerian State. Developments such as this spell doom for the country.

To navigate out of the status quo, there is need to re-examine and reconstruct the foundations of the Nigerian State in order to transform the federation into a united nation-state that fosters the *interests* of her citizens without discrimination, advances their happiness and, thus, secures their unforced allegiance. It is in this context that the basic postulates of the social contract theory of the state become very relevant as a framework for the re-ordering of the state. We are, however, aware of the growing complexities in the configuration, character and concerns of states in the contemporary period. These mutations also impose a need for the modification of some traditional modes of theorizing about the state. Thomas Hobbes, John Locke and Jean-Jacques are among the most prominent of the traditional 'contractarian's. Of them, Locke is arguably the most influential. Much of his theory—and the basic idea of the other traditional versions—will remain relevant for all ages. Yet, a deeper apprehension of the contending forces and dynamics of the state gives some contemporary versions of the Contract Theory, such as John Rawls', the benefit of dynamic adaptation.

One noteworthy point that emerges out of our preceding analysis is that the social contract theory is not a monolithic model; it has variants. The idea of contemporary adaptation of the social contract theory as urged in this work is an attempt to complement certain basic principles of the modern "contractarian" versions of the theory, notably Locke's, with more contemporary "contractualist" versions. This approach offers the advantage of furthering democratic rule beyond its traditional frontiers, promoting individual freedom and property rights (which are critical in the resolution of the Niger Delta conflicts), the separation of governmental powers, and the rule of law through the enactment of a people-oriented constitution. Let us, therefore, explore the social contract theory and highlight some of its underlying canons as they relate to our present engagement.

## The Social Contract Theory

Generally, social contract theorists advance the view that the state or, more precisely, civil society is the product of a contract, a covenant, an agreement, or a compact.<sup>3</sup> Its earliest recognizably modern form dates back to Thomas Hobbes and continues through John Locke, Baruch Spinoza, Samuel Pufendorf, Jean-Jacques Rousseau (and others) to Immanuel Kant; whilst John Rawls stands out among its contemporary proponents, not only for resurrecting it from the disrepute into which it fell after Kant but, perhaps more importantly, for incorporating into it some key elements for its adaptation to the contemporary requirements of the state and citizenship. *Contractarianism* and *Contractualism* are often generally used as synonymous terms for social contract theories, the central idea of which is that 'the legitimacy of the state and/or the principles of sound justice derive their legitimacy from a societal agreement or social contract.'<sup>4</sup> However, the two terms are also sometimes distinguished respectively as the Hobbesian model, and the Kantian interpretations of the justificatory problem, which is a central issue in the modern conceptualizations of the theory.

But, as noted by Frederick Rauscher:

These categories are imprecise, and there is often as much difference within these two approaches as between them; yet, nevertheless, the distinction is useful in isolating some key disputes in contemporary social contract theory. Among those “contractarians” who—*very* roughly—can be called followers of Hobbes, the crucial justificatory task is, as David Gauthier puts it, to resolve the “foundational crisis” of morality.<sup>5</sup>

To explicate the idea of the Social Contract Theory, Rauscher suggests five variables into which contractual approaches may be analysed, namely: (1) the nature of the contractual act; (2) the parties to the act; (3) what the parties are agreeing to; (4) the reasoning that leads to the agreement; (5) what the agreement is supposed to show.

Tints of the Social Contract Theory, however, exist in the natural law theories, for example in the medieval Aristotelianism of Thomas Aquinas and in the modernized natural law theories of Johannes Althusius and Hugo Grotius. The element of contract in Aquinas’ theory derives from his views on the basis of moral obligation, which according to him is located in man’s nature. Samuel E. Stumpf paraphrases Aquinas thus:

The basis of moral obligation ... is found, first of all, in the very nature of man. Built into man’s nature are various inclinations, such as the preservation of his life, the propagation of his species, and, because he is rational, the inclination toward the search for truth. The basic moral truth is simply to “do good and avoid evil”. As a rational being, then, man is under a basic moral obligation to protect his life and health... Secondly, the natural inclination to propagate the species forms the basis for the union of man and wife... And thirdly, because man seeks for truth, he can do this best by living in peace in society with his fellow men who are also engaged in the quest. To ensure an ordered society, human laws are fashioned for the direction of the community’s behavior.<sup>6</sup>

Civil society and human laws thus become logically imperative for man’s pursuit of full self-realization. For Aquinas, human laws are statutes of government and they derive from the general precepts of natural law, which he conceives of as ‘nothing else than the rational creature’s participation of the eternal law’.<sup>7</sup> The eternal law, he posits, is Divine Reason.

Althusius appropriated the notion of a basic social propensity contained in Stoicism, making the important point of regarding this propensity as a sufficient explanation of human social groupings, hence avoiding an explanation that rests on appeal to theological sanctions.<sup>8</sup> George Sabine and Thomas Thorson point out the two ways in which contract featured in Althusius’ theory, namely that ‘it had a more specifically political role in explaining the relations between the ruler and his people and a general sociological role in explaining the existence of any group whatever.’<sup>9</sup> As further noted by Sabine and Thorson, the first corresponded to the contract of government and the second to a social contract in a broad sense. This latter sense implies the existence of a tacit consent by members of the association or *consociatio*, which Aristotle calls *community*. It is by this agreement that persons become “dwellers together” (*symbiotici*) and sharers in the benefits and laws of the community.<sup>10</sup> Althusius thus modernized the natural law doctrine and developed a political theory which ‘depended logically upon the single idea of contract and owed substantially nothing to religious authority.’<sup>11</sup>

The ideas of the political community as deriving tendentially from man’s social being and of the social contract as implying some consent, at least tacitly, also run through Grotius’ theory. Accordingly, Grotius argued that the appeal of natural law within the polity is explained by a sense of general agreement amongst members of the community on what should constitute their common grounds and not the self-evidence of its principles.<sup>12</sup> All binding obligation arising from the contract is, as captured in the following statements by Pufendorf, represented as self-imposed. His argument is that:

On the whole, to join a multitude, of many men, into one Compound Person, to which one general act may be ascribed, and to which certain rights belong, as ‘tis opposed to particular members, and such rights as no particular members can claim separately from the rest; ‘tis necessary, that they shall have first united their wills and powers by the intervention of covenants without which, how a number of men, who are all naturally equal, should be link’d together, is impossible to be understood.<sup>13</sup>

Thomas Hobbes presented the first crystallized modern form of the contract theory of the State. He developed the idea of a *State of Nature*—in which life was ‘solitary, nasty, brutish and short’—and posited a social psychological theory of an inherent instinct of self-preservation in man. All men were equal in the State of Nature, equality here meaning ‘simply that anyone is capable of hurting his neighbour and taking what he judges he needs for his own protection.’<sup>14</sup> In a similar vein there was ‘right of all to all, but this *right* simply means a man’s liberty ‘to do what he would, and against whom he thought fit, and to possess, use and enjoy all that he would, or could get.’<sup>15</sup>

Four factors are responsible for ‘war’ in the Hobbesian State of Nature, namely: (i) equality of needs, (ii) scarcity, (iii) essential equality of human power, and (iv) limited altruism.<sup>16</sup> But the interesting irony is that a twist in circumstances could occasion the overpowering of the strong by the weak. This made life very precarious. Worse, still, the social cooperation necessary for industry, housing, technology, and suchlike endeavours was lacking in the State of Nature. Driven by fear of death, especially violent death, and the desire for the advancement of social cooperation, reason dictated to men to agree among themselves to submit their individual rights (except that of self-preservation) to an absolute sovereign for the preservation of lives in the community. The contract, by which men emerge from the state of nature into civil society, Hobbes holds, is between/among individuals, not between citizens and the government.

Hannah Arendt describes the Hobbesian version of the social contract as *vertical* to explain the idea of a top-to-bottom relationship between the sovereign and the people in the exercise of power and authority. The people relinquish their individual rights and power and vest them in the sovereign to insure their safety. Except the right to impose death on the citizens, which is for all practical purposes excluded in the contract, these rights are absolute and ir retrievable. The sovereign who is established by the contract is high up, at the vertex of the hierarchy of power and authority.

Locke posits a version of the social contract that differs from Hobbes’ in some interesting regards. One, Locke’s theory fits into what Arendt describes as a *horizontal* version. This version logically implies a dual contract, the first leading to the formation of society and the second to the institution of government. As Arendt puts it:

There was, third, Locke’s aboriginal contract, which brought about not government but society—the word being understood in the sense of the Latin *societas*, an “alliance” between all individual members, who contract for their government after they have mutually bound themselves.<sup>17</sup>

Locke’s “contract of government” presupposes that the people had earlier given their mutual consent to the formation of society. And, then, as members of society, they later chose their rulers to form their government, each party having specific duties and obligations. The rulers hold power on fiduciary grounds and are accountable to the people. This provision wherein the people choose and can remove their rulers constitutes the source of the people’s power. Locke’s version is also different from Hobbes’ with regard to the conditions of life in the state of nature, the ideal type and form of government, right to property, etc. According to Locke, the state of nature is a state of perfect freedom and equality, devoid of subjection or subordination. People are their own judge and master, each seeking his good individually.<sup>18</sup> Also, according to Locke’ theory, unlike Hobbes’, the reality of moral restraints on power, the responsibility of rulers to the communities which they ruled and the subordination of government to law are regarded as axiomatic.<sup>19</sup> In other words, moral rights and duties are intrinsic and prior to law; hence governments are obligated to enact legislations that protect ‘what is naturally and morally right.’ These requirements contrast his *liberalism* with Hobbes’ *absolutism*. Also noteworthy is Locke’s interpretation of ‘natural law as claim to innate, indefeasible rights inherent in each individual.’<sup>20</sup> These rights include ‘life, liberty, and estate.’ He regards the right to private property (estate) as the typical case of these natural rights, and avers that ‘The great and chief end ... of men’s uniting into commonwealths, and putting themselves under government, is the preservation of their property.’<sup>21</sup> Since these rights, according to him, are not created by society, they can *ipso facto* not be regulated by it, except to the extent that is necessary to give them effective protection.

Another difference in Locke’s theory that is relevant to our present concern is its inherent democratic principles. Public policies and actions are based on the consent of the governed, which is determined by the majority of the members of society.

That which acts any community, being only the consent of the individuals of it, and it being necessary to that which is one body to move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority.<sup>22</sup>

However, Locke fails to articulate any proviso that will save the above postulate from possibly leading to the tyranny of the majority. As noted by G. H. Sabine and T. L. Thorson, if an individual's rights are indefeasible, it makes no essential difference whether he is deprived of them by a majority or by a single tyrant; apparently it did not occur to Locke that a majority could be tyrannous.<sup>23</sup>

As we have seen, Locke posits two contracts, namely the contract of society and that of government. The former pact binds men together into a body politic (society), whereas the latter is made between the people (as a community) and government. The government's responsibility to the governed is explained by the logic of its being a party to the contract.

Unlike Hobbes and Locke, according to whom people are better off in the properly constituted state than in the state of nature, Rousseau maintains that in the state of nature where there was neither state nor civilization people were essentially innocent, good, happy and healthy. In the state of nature, men had absolute freedom, equality, and enjoyed idyllic happiness, but they were enslaved. As he puts it, 'Man is born free, and everywhere he is in chains.'<sup>24</sup> All this, Rousseau further maintains, changed with the advent of civil society and private property. As he asserts, "'The first man who, having enclosed a piece of ground, bethought himself of saying *This is mine*, and found people simple enough to believe him, was the real founder of civil society'" which brought with it the destruction of natural liberty and which, "for the advantage of a few ambitious individuals, subjected all mankind to perpetual labor, slavery, and wretchedness."<sup>25</sup> Writing this indictment of civilization during the Enlightenment when civilization was stuffed with so much glaring benefits, Rousseau was considered to be out of his mind for denying the facts that were all too glaring. He, however, later came to think that in a properly constituted society, people would trade their *individual* liberty with a more important *collective* liberty through a social contract:

'To find a form of association which may defend and protect with the whole force of the community the person and property of every associate, and by means of which each, coalescing with all, may nevertheless obey only himself, and remain as free as before.'<sup>26</sup> Such is the fundamental problem of which the social contract furnishes the solution.<sup>26</sup>

Through a social compact, a people may agree, in effect, to unite into a collective whole called "the state" or "the sovereign," and through the state or sovereign enact laws reflective of the *general will*.<sup>27</sup>

The concept of the general will is, perhaps, Rousseau's most important innovation on the social contract theories of Hobbes and Locke. The concept of general will amounts to much the same thing as such familiar terms as 'sentiment of a nation' and 'the will of the people'. It defines the *Common Good* and establishes the moral foundation of the society, which is expressed in the statutes of the state. Furthermore, the general will, the aggregate of the will of the people, also represents the will of each person. As explained by B. N. Moore and K. Bruder, 'the idea is that a group of people may collectively or as a group desire or wish or want something and that these desires, though it may coincide with the desires of the individuals in the group, is a metaphysically distinct entity.'<sup>28</sup>

The state, according to Rousseau, is a "moral person", a social organism possessing its own life and will. It is an *entity in its own right*. The assumption here is that the state is a politically united community; hence, the will of the state becomes that of a politically united people.<sup>29</sup> Also implicit in the notion of the general will is the assumption that:

... in so far as the individual's actions coincide with the common will, he is acting as he "really" wants to act—and to act as you really want to act is to be free...Compelling a person to accept the general will by obeying the laws of the state is forcing him to be free...So we may lose individual or "natural" liberty when we unite to form a collective whole, but we gain this new type of "civil" liberty, "the freedom to obey a law which we prescribe for ourselves."Thus it is to law alone that men owe justice and [civil] liberty.<sup>30</sup>

Rousseau also distinguishes between *the will of all* and *the general will*. The latter refers to the common interests of the citizens, whereas the former relates to self-interests, and 'is merely a sum of particular wills; but take away from these same wills the pluses and minuses which cancel one another and the general will remains as the sum of the difference.'<sup>31</sup>

On the question of how we can know the general will, given the fact that all the citizens may not agree on the same choice on every occasion, Rousseau answers that if the citizens are *enlightened* and are not allowed to influence one another, then the general will can be determined by a majority vote: 'The general will is found by counting votes. When, therefore, the opinion which is contrary to my own prevails, this proves neither more nor less than that I was mistaken, and that what I thought to be the general will was not so.'<sup>32</sup> The hypothesis of an *enlightened* community is important, and we shall elaborate on it in a later section of our study.

Immanuel Kant's term for the social contract is the *Original Contract*. He provides two distinct discussions of the social contract. The first concerns property, and he defines property as that 'with which I am so connected that another's use of it without my consent would wrong me.'<sup>33</sup> He further distinguishes two senses of right in terms of possession (i.e. right to possession of property), namely: (i) "physical" or "sensible" possession, and (ii) "intelligible" possession. The former is a physical right, the denial of which would cause "bodily" harm, as for example one would experience if one's apple were taken from oneself without one's approval or consent. However, according to Kant, physical possession is not a sufficient sense of possession to count *as rightful* possession of an object. Rightful possession consists in intelligible possession. This is the possession of an object without physically holding it so that another's use of the object without my consent harms me even when I am not physically affected and not currently using the object.

Kant's proof that there must be some intelligible possession and not merely physical possession turns on the application of human choice. An object of choice is one that some person may find useful for his purposes. Rightful possession would be the right to use such an object. If, for some particular object, no one has rightful possession of it, this would mean that a usable object would be beyond possible use; that is, although the object is usable, it has not *actually* been put into use. Kant grants that such a condition does not contradict the principle of right because it is compatible with everyone's freedom in accordance with universal law. But putting an object beyond rightful use when humans have the capacity to use it would "annihilate" the object in a practical respect, i.e. it would treat the object as *nothing*, when it is indeed *something*. This, Kant claims, is problematic because in a practical respect an object cannot be treated as nothing, rather it is considered as at least potentially in rightful possession of some human being or another. Thus, all objects must be subject to rightful or intelligible possession. Frederick Rauscher paraphrases Kant's argument regarding rightful possession thus:

Intelligible possession, then, is required by right in order for free beings to be able to realize their freedom by using objects for their freely chosen purposes. This conclusion entails the existence of private property but not any particular distribution of private property. All objects must be considered as potential property of some human being or other. Now, if one human being is to have intelligible possession of a particular object, all other human beings must refrain from using that object. Such a one-sided relation would violate the universality of external right. Kant further worries that any unilateral declaration by one person that an object belongs to him alone would infringe on the freedom of others. The only way that intelligible possession is possible without violating the principle of right is when each person agrees to obligate mutually all others to recognize each individual's intelligible possessions. Each person must acknowledge that he is obligated to refrain from using objects that belong to another. Since no individual will can rightfully make and enforce such a law obligating everyone to respect others' property, this mutual obligation is possible only in accordance with a "collective general (common) and powerful will", in other words, only in a civil condition. The state itself obligates all citizens to respect the property of other citizens. Without a state to enforce these property rights, they are impossible.<sup>34</sup>

As stated by Rauscher in the above passage, in Kant's view, the state is the product of a social contract, and without it rightful possession could not be guaranteed since individuals lack the capacity to make and enforce laws by which everyone will respect the property rights of others.

The second of Kant's discussion of the social contract comes in the context of an *a priori* restriction on the powers of the sovereign. The contract is presented as a postulate of reason that compels the sovereign to 'give his laws in such a way that they could have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will.'<sup>35</sup> The contract imposes rational limitations on the sovereign as legislator. Kant emphasizes that the social contract is not a historically real act, and even the idea of consent implicit in the contract is also not an empirical consent in a historical context. It is rather based on a set of choices which citizens would possibly consent to on the dictates of reason. In other words, it is based on possible rational unanimity. This consent is not determined by any particular set of desires on which citizens are agreed; it is rather a possible consent based on an abstract idea of fair distributions of burdens and rights.

Kant offers two examples to underscore how the application of reason in the distribution of burdens and rights constitutes the basis for possible rational consent. His first example is a law that would exclusively give hereditary privileges to members of a certain class of subjects. Such a law would be unjust because it would be irrational for those who would not fall within this class to agree to accept the odds of fewer privileges than members of the class. His second example concerns a war tax. Such a tax would not be unjust if it is administered fairly, because, as he explains, even if some actual citizens were opposed to the war, the war tax would still be just based on the possibility that the war is being waged for legitimate reasons that the state but not the citizens know about. This view is in line with the Hegelian postulate that the state is an organic *rational* whole. Here empirical information might cause all citizens to approve the law. As stated by Frederick Rauscher, 'in both these examples, the conception of "possibly consent" abstracts from actual desires individual citizens have. The possible consent is not based upon some hypothetical vote given actual preferences but is based on a rational conception of agreement, given any possible empirical information.'<sup>36</sup>

John Rawls, like many other contemporary social contract theorists, shifts emphasis to *agreement* as the basis of political obligation without, however, completely dismissing the idea of *consent*. They try to distinguish the question of the source of political obligation, which is the central concern of the consent tradition, from the question of what constitutional orders or social institutions are mutually beneficial and stable over time. It is Rawls' contention that a person's *duty* to obey the law or social rules hinges on a morality as it pertains to the individual. Although the apparatus of an "original agreement" persisted in Rawls' theory, obligations are not regarded as based on consent but on normative principles of public morality. The question of the design and justification of political and social institutions becomes that of public morality. In other words, the justification for those institutions is rooted in public morality. This explains James Buchanan's view that a crucial feature of contemporary contractual thought has been to refocus political philosophy on social morality rather than on individual obligation.<sup>37</sup>

Rawls employed the concept of the *Original Position* to convey the idea of a contract which is anchored on justice and designed through a deliberative process. The "original position" is synonymous to what some other contract theorists call the *State of Nature*, and it is both imaginary and hypothetical. In the original position, individuals who are concerned with engineering a just society are brought together to deliberate. It is the original position that provides the forum to strike an agreement that would lead to a well-ordered society. Rawls' prime task in the Original Position is to define the conditions for meaningful and impartial negotiations. The original position is central to Rawls' conception of justice, namely justice as fairness. It is in the original position that the voluntary choice to participate in civil society is made by free individuals.

Interestingly, according to Rawls, in the state of nature, 'No one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and liabilities, his intelligence, strength, and the like.'<sup>38</sup> The parties to the contract meet to deliberate as equals; no one has any privileged information and superior background over others. Rawls makes certain basic assumptions about the individuals in the original position. These assumptions suggest who these individuals are and their aim in the original position. They also highlight the conditions surrounding the individuals in the original position. One assumption is that the individuals are contract-seeking parties. Their main aim is to *agree* through *deliberation* on what rules are to guide their society and political life. The rules they choose would affect how social institutions are to distribute fundamental rights and basic duties in society. The rules would also guide the division of advantages from social cooperation.

The original position hypothetically places parties to the social contract in a situation where they can deliberate and, without any form of external coercion or subjective prejudices, agree on principles of justice that would guide a future society which they are hoping to enter. As he puts it, 'It is merely a way of recalling someone to a kind of moral judgment he would make in the absence of distorting influence derived from special situation.'<sup>39</sup> Another important assumption is that in selecting the principles, the parties are all ignorant of one another's and their own wealth, status, abilities, intelligence, inclinations, aspirations and even beliefs about goodness. To put it more succinctly, they are unaware of their future chances and circumstances. So, the contract is made behind a "veil of ignorance". This simply means that they are prevented from knowing how the various alternative principles will reflect and advance their own particular cases. Hence, in the choice of principles, nobody is advantaged or disadvantaged by his or her own unique circumstances. Equality and ignorance of the parties are important in guaranteeing impartiality and ensuring that they choose principles which they believe to be fair.

Rawls also assumed that persons in the original position are all equally rational and that in choosing between principles each person tries as best he can to advance his interest objectively. The fairness of the agreement derives substantially from taking the interests of all parties to the contract into consideration without forcing conditions on any individual. The individuals' sense of agreement (that is, of his having agreed to the principles) and fairness (of the principles being fair) constitutes the main source of post-contract obligation. However, it is important to note that this agreement also conveys some idea of consent, at least implicitly.

Based on the awareness that certain intervening variables could influence decision-making, Rawls adopts the maximum rule of the game theory of economics, which states that everyone selects from available alternatives the one whose worst possible outcome is better than the worst possible outcome of the other alternatives. He posits that this applies to decision making in the original position, since the absence of information does not mean misinformation.<sup>40</sup> For, if we are to choose a principle of justice in a society where our enemy is to decide our places, Rawls says, it is likely we will insist on the maximum rule. In Rawls' view, only *moral persons* are entitled to justice. And, by moral persons he means those who have a sense of justice, which also involves the wish to apply and to act upon the principles of justice. In his words, 'Equal justice is owed to those who have the capacity to take part in and act in accordance with the public understanding of the initial situation.'<sup>41</sup> Hence, dangerous criminals are excluded from negotiation in the original position. Rawls adopts the principle of *paternalism* to compensate for the disadvantage of mentally retarded and physically weak persons in the original position. This principle is simply the practice of governing or controlling people in a father-like manner. That means, those who are mentally and physically sound have a duty not to use their special attributes to the detriment of the mentally retarded and physically weak.

### **The Critique and Relevance of Social Contract Theory**

Some criticisms have been raised against the contract theory of the state. Eddy Asirvatham and K. K. Misra<sup>42</sup> categorized them into three perspectives, namely the historical, legal and philosophical. The strongest criticism from a historical perspective is that the idea of a period in time when hitherto free men came together to enter into a contract for the establishment of the state is fictitious. It is also argued that 'primitive men lacked the level of rationality which the contract theory ascribes to men in the State of Nature.

From the legal perspective, it is argued that that even if, for the sake of critical argumentation, it is conceded that primitive men had attained the level of rationality and intelligence ascribed to them, the resultant contract would still lack a binding force over the parties. The nullity of the contract derives from the argument that for a contract to be valid, it requires the force and sanction of the state, and since the contract is supposedly temporally *prior* to the state, it logically follows that the contract operated outside of any validating legal framework. And, if the original contract is invalid, the argument further goes, then all subsequent contracts based on it are equally invalid, and the rights derived from it have no legal foundation.<sup>43</sup> The third criticism from a legal stand-point notes that a contract is supposed to be binding on only those who accept it voluntarily. Based on this fact, the question is raised concerning how the social contract can be binding on generations of peoples who were not party to the contract. This will be discussed later in this work.

From a philosophical perspective, one criticism that has been levelled against the contract theory is that it assumes that the relation between the individual and the state is voluntary. But according to the critics, membership in a state is obligatory; hence, the obligations of an individual to the state are not contractual.

A person is born into one state or another, neither on his own terms nor based on his prior consent, in much the same way he is born into a family. Granted, one could decide, when one becomes an adult, to transfer one's citizenship to another state, but even in such a case, it is obligatory for one to accept the already established laws of that state. This view is expressed by Edmund Burke thus:

Society is indeed a contract ... but the State ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties....it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born. Each contract of each particular state is but a clause in the great primeval contract of eternal society.<sup>43</sup>

However, this view has been criticized by others, for example Thomas Paine, who anchor the relationship between government and the governed on more liberal democratic principles.

A second philosophical criticism of the Social Contract Theory concerns the assumption, inherent in it, that the 'state of nature' and whatever modes of life that preceded the contract are natural whereas all post-contract arrangements, including the institution of the state, are artificial. Both this assumption and the contrary argument of the critics, that man is a part of nature and the state is an expression of his nature, are not very relevant to our present concern because it does not matter any much whether an arrangement is natural or artificial insofar as it satisfactorily resolves the problem(s) it is meant to address. It is also argued that if the state of nature was such that could allow for the emergence of a contract, then such a state must be a society that is conscious of what constitutes the common good of her members. Furthermore, it is argued that the social contract fosters a false notion that rights can exist in or outside (or prior to the establishment) of society; whereas, contrary to such a notion, social recognition constitutes the basis of political rights and obligation.<sup>44</sup>

Some scholars have also criticised the social contract theory, especially in its contemporary forms, as hinging on the idea of a hypothetical agreement rather than an actual one. However, this criticism appears to be rather otiose in the light of the distinctions made by Rawls among the perspectives of: (i) "you and me"; (ii) the parties to the deliberative model; and (iii) persons in a well-ordered society. To be sure, Rawls seems to suggest, and rightly so, that the agreement of the parties in the deliberative model is hypothetical in the two-fold sense of a hypothetical agreement among hypothetical parties. But the point of the deliberative model is to help "us" (i.e., "you and me") solve the problem of deciding on what social arrangements we can all accept as co-equal persons. In other words, it urges us to provide *reasonable* and *morally* sound grounds for our convictions about the principles of justice underlying the social arrangements we decide on. Thus, according to Rawls, 'the reasoning of the hypothetical parties matters to *us* because "the conditions embodied in the description of this situation are ones that we do in fact accept."' Unless the hypothetical models the actual, the upshot of the hypothetical could not provide *us* with reasons.<sup>45</sup>

The third perspective, namely that of persons in a well-ordered society, underscores the element of 'full publicity' as a requirement for the social contract. In this sense, Rawls distinguishes three levels of publicity: (i) the publicity of principles of justice; (ii) the publicity of the general beliefs in light of which first principles of justice can be accepted ("that is, the theory of human nature and of social institutions generally"); and, (iii) the publicity of the complete justification of the public conception of justice as it would be on its own terms. All three levels of publicity, Rawls contends, are exemplified in a well-ordered society. For a contract to be justified, it must satisfy the full publicity condition, which implies that its complete justification should be acceptable to members of a well-ordered society. Thus, the hypothetical agreement itself provides only what Rawls calls a 'pro tanto' or 'so far as it goes' justification of the principles of justice. In Samuel Freeman's analysis of Rawls, these principles become fully justified if and when actual 'people endorse and will liberal justice for the particular (and often conflicting) reasons implicit in the reasonable comprehensive doctrines they hold.'<sup>46</sup> Freeman highlights the significance of publicity in the following words:

Publicity has two significant consequences when satisfied by a moral conception. First, moral agents can know the real reasons for moral constraints and expectations and can apply these reasons to plan their actions and pursuits. Moral grounds for action need not be occluded in individual deliberations. This is crucial to a person being a fully responsible moral agent. It is also essential to self-knowledge, knowing significant social influences on the kind of person one is. For Kantian and Marxian views, full publicity is a precondition of moral and rational autonomy. Second, their publicity gives moral principles a social function: a community of agents can rely on moral principles as a shared basis for discussion, argument, and agreement. They can then assess and criticize actions and institutions using shared criteria, and justify them to one another, when they are justifiable, on the basis of reasons all accept. This connects with the idea of mutual respect in the relations of fully responsible agents.<sup>46</sup>

As noted above, publicity of ultimate principles is very important. Without publicity of its moral principles, the intuitive attractiveness of the contractarian ideal seems diminished. For it means that moral principles cannot serve as principles of practical reasoning and justification among free and equal persons. Consequently, public discussion will be 'susceptible to manipulation by emotionally persuasive rhetoric and appeals to biases and interests.... Even worse, agents may be prone to general illusions about their social life, with no one in a position to discern why moral relations are as they are.'<sup>47</sup>

As a theory explaining the origin of the state, social contract theory is no doubt defective. Notwithstanding its short-comings in that regard, the theory has a strong appeal as an alternative to the divine right theory (which has become very unpopular since after the era of medieval scholasticism), force theory, patriarchal and matriarchal theories of the origin of the state. Also, the Social Contract Theory emphasizes, at least implicitly, the idea of the pursuit and realization of the *Common Good* as a fundamental purpose or goal of the state. This idea fits in finely with that of consent and agreement as the basis of political obligation, thus providing philosophical parameters for evaluating political actions and decisions. In this way, the theory offers more space for the advancement of democratic values and gives room for adaptation on the basis of changing social realities. Interestingly, this process of adaptation is regarded as a matter for deliberation rather than being confined to the arbitrariness of the rulers.

It becomes obvious, therefore, that in regarding the state as the product of a covenant, as we are urged by this theory, certain fundamental issues touching on the very existence of Nigeria and her putative nationhood need to be addressed. One is the issue of convening a sovereign national conference, which has been widely canvassed. In discussing this issue, it is important to mention some of its crucial implications and attendant challenges. First, a *sovereign* national conference would logically require that the various nationalities constituting the country be recognised as sovereign and autonomous units, each with a *right* to secede. This would strip the existing Nigerian state of her sovereignty, since sovereignty is comprehensive and indivisible. The units would also have the right to choose their representatives at the conference. Furthermore, it would require suspension of the constitution, at least for a moment during which the units assert their sovereignty and would decide whether to adopt the constitution, amend or replace it totally. Such a situation can breed anarchy and, thus, cause the state to plunge into a nihilistic backlash tantamount to conditions in the state of nature.

However, the ultimate goal behind the convening of a sovereign national conference can be achieved with less risk by adopting the alternative of a framework that recognises the units as semi-autonomous entities within a federal republic. Such an arrangement should be anchored on the notion of the federating units as parties to a covenant, and of every citizen as a 'stakeholder' in the commonwealth. It is in the context of this logic that true fiscal federalism stands out as a veritable governmental structure. All this can be worked out through a co-ordinated programme of constitutional review or amendment and political restructuring. Federalism involves decentralization of power and authority; it is imperative in multi-ethnic state. In Nigeria, the idea of the state as product of a social contract, when combined with federalism, would also offer the benefit of diffusing the locus of power, promote democracy, and smoothen the process of political bargaining. National conferences could be convened to discuss issues of national importance. However, such a conference becomes increasingly less necessary if the people are allowed to freely choose their representatives, and those representatives in turn truly represent their constituencies competently.

There is also the need for commitment and a sense of obligation among citizens. By acting like parties to a contract, citizens should be committed to the advancement of the goals and purposes of the state; they should feel a sense of obligation to protect and obey the laws of the land, which are the basic rules of human conduct and social engagement.

In the final analysis, the idea of the state contained in the social contract theory entails, at least implicitly, that the state be regarded not merely as a community but, more than anything else, as an *association*. The importance of this distinction comes out in Ferdinand Tönnies' distinction between *Gemeinschaft* (community) and *Gesellschaft* (society or association). D. D. Raphael approvingly explains this distinction by Tönnies as follows:

*Gemeinschaft* is the earlier form of social group; it involves an attitude of natural friendship and is not deliberately organized; it is based on 'natural will'. *Gesellschaft* comes at a later stage of development; it involves an attitude of deliberate planning or calculation; it is based on 'rational will'. To say that *Gesellschaft* occurs later does not imply that *Gemeinschaft* then ceases to exist; when we have come to make plans and form deliberate associations, we do not on that account cease to form friendships.<sup>48</sup>

Ideally, therefore, the state is both a *community* and an *association*. The latter implies that the existence of the state is rooted in and justified by its purposes, or a rational will to promote the general well-being of her citizens. This will, like Rousseau's *general will*, ought not to be arbitrarily determined. Rather, it should be the crystallization of the rational calculations and will of a community whose members are united by a sense of purpose. This rational or general will constitutes an important psychological recipe for the shaping of a national consciousness and the building of a truly united nation-state based on shared ideologies.

A frequently asked question, usually posed as a challenge to the practical application of the ideas of consent, deliberation, and/or agreement as contained in the social contract theory, has been whether it is ever possible in practice to secure the consent and deliberative participation of *all* the adult citizens at every point in time in order to justify the exercise of governmental authority over them. The basic problems relating to this question can be resolved in two main ways. One is that the fundamental rights and liberties of citizens, which are guaranteed in any modern form of a *good* constitution, offer them avenues to express their opinions regarding the principles of justice and governance. Secondly, the application of the concept of *hypothetical agreement*, as postulated in Rawls' version of the social contract theory, would ensure that laws and public policies are made on the basis of the crucial hypotheses that the citizens are parties to the contract (and so each has a stake in the state as well as a right to participate in her affairs, directly or representatively), that they are rational, that they are members of a well-ordered society, etc.

### **Conclusion**

As shown in our study, the Social Contract Theory of the state, despite some criticisms levelled against it, is a satisfactory framework for balancing the authority of the government and the obligations of the citizens based on the supposition that they are parties to a pact. From the stand-point, our study goes further to show that the unity and stability of the Nigerian state hang in the balance. This is due largely to the weak foundation on which she thrives, the erroneous assumptions upon which she is governed, and the faulty structure into which the various groups that form the state have been forcibly herded. Much of the crises of the state are located in these anomalies. The Nigerian state lacks a general will; it does not adequately portray the element of *Gesellschaft*, which is necessary for the proper shaping of the fundamental objectives and directive principles of state policy as well as for the emergence of a nation in the ideal sense of the term.

The social contract theory of the state provides a useful way of conceptualising the state in order to articulate, harmonise and aggregate the interests of the citizens into a rational and general will. The position of this paper is that no single version of the social contract theory (neither Locke's nor Rawls', nor any other), is exclusively adequate as a model for the reconstruction of the Nigerian state. It rather suggests that, because of the dynamic nature of social circumstances and human will, different societies at different periods could adapt the basic assumptions of the Social Contract Theory in the re-ordering of the state to fulfil its ultimate goals. This thinking is thus nonnegotiable in the re-engineering of the Nigerian state.

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