

DECLARATION OF RIGHTS

David Hume made the argument which Locke seemed to refute. Royal subjects cannot be said to give their tacit consent to any contract, claimed Hume. The subjection of men to their ruler (based upon the world in which he lives) is the result of habit or necessity, not tacit consent. Can the democracy of Athens, he asked, be called a government by contract wherein only ten per cent of the people were voting and ruling?

William Paley suggested an alternative to Hume's idea that men are not born free.²⁷ Paley saw the compact theory as twofold:

1. An express compact by primitive founders who are *supposed* to have unanimously consented to be bound by the resolutions of the majority²⁸

2. A tacit or implied consent, by all succeeding members of the state, who, by accepting its protection, consent to be bound by its laws.

In a lecture delivered before the Franklin Lyceum in 1842, John Quincy Adams saw no need to believe in tacit consent in order to believe in an original contract, but he strengthened the case for asserting that tacit consent may exist among the masses *after* an original contract has been drawn up.²⁹ By the laws of nature, he stated, covenants are made by a portion of the people for the whole. That portion is capable of contracting for the whole if it is in possession of the sovereign will delegated by the people. Men must be qualified to contract in such an agreement and are

²⁷ W. PALEY, *MORAL AND POLITICAL PHILOSOPHY*, ch. 3 (1785).

²⁸ (Emphasis supplied.) Note the departure from theoretical contractarianism.

²⁹ The Social Compact Exemplified in the Massachusetts Constitution, Address by John Quincy Adams, Franklin Lyceum, Nov. 25, 1842.

often sponsors of families, not individuals, because it is by nature that the family structure is the substructure within society.³⁰ While citing the fact that only one citizen of Massachusetts in thirty-five ratified by vote the constitution of Massachusetts, Adams maintained that that constitution constitutes a compact.

Mutual consent of a select elite may be the formal recognition of a compact's acceptability to the masses, thought Adams, but it is only by a mutual pledge of faith among the people that any formal compact may become permanent. Similarly, Alfred Fouillée affirmed his belief in a "quasi-contract" which is a tacit but voluntary adhesion to a community which its members signify by their continued presence in it, an adhesion made solemn particularly in republics with universal suffrage where one renews his faith by the voting process.³¹

If one declares the compact theory to be of no current validity, one is either unable, wearing a deerstalker hat, trench coat, and magnifying glass in hand, to find the original compact, or one is simultaneously rejecting the idea that a people may give their tacit consent to an institution of government. This is hastiness, however, and a failure to recognize the course of events since the days of Locke or Rousseau. Hume might have been quite surprised to have lived and seen the effects which the natural law theory and the compact theory had on the actual beginnings of the American and French Revolutions. "The

³⁰ See J. LOCKE, *Of Paternal Power*, in *SECOND TREATISE ON CIVIL GOVERNMENT*, ch. VI, § LII—LXXVI, in *SOCIAL CONTRACT* (1962).

³¹ A. FOUILLÉE, *LA SCIENCE SOCIAL CONTEMPORAINE* 2 (1880).