

Tacit Submission

Written by Michael Rozeff.

Do you and I willingly give up our freedom and property for the benefits of living in these United States? Do we tacitly consent to oppression by not moving to another country? Do we tacitly consent to the authority of our governments by not rebelling, by not throwing the tea into Boston harbor?

John Locke and many today say “yes”; we tacitly accept the State by paying our taxes, by receiving its benefits (such as property protection!), and by not emigrating. They say we acquiesce in an implicit contract in which we give up freedom or accept compulsion in exchange for other things that we value.

This view is dead wrong. Why is it wrong? We are born into a system, we are chained from the start. The deck is stacked against us. The State has powers that it accumulated many decades ago, before you and I were born, and has accumulated since. We can change our position only at great cost. If we calculate whether to consent or not, we seemingly consent because we expect that to fight will cost us dearly without our securing a gain. We are not making a social contract freely entered into. There are guns to all our heads, one of which is PAY YOUR TAXES. Protest that and you go to jail. Call this consent?

People love their country — their area, their people, their culture, their place. To move is a wrenching experience. Why should we have to move anyway? So we stay on despite the State’s impositions. Call this consent?

The State controls education. The State passes out favors to garner support from intellectuals and the press. The State manufactures propaganda. The State ties as many people up in the knots of social programs and subsidies as it can. The State deifies itself. Basically, the slaves are indoctrinated to love their masters and fear any other situation. How can anyone enter a contract with open eyes and freely when the other side has educated you from day one to pledge allegiance to it, to accept that the State is the source of your prosperity, and to threaten you with loss of what you have if you resist? If your education is so poor that you do not know where prosperity and happiness come from — and they are not from the State — then you are a sitting duck for all sorts of misinformation and propaganda. Call this consent?

Tacit consent is myth. What we really have is tacit submission. After reaching that conclusion, I read Étienne de la Boétie who practically originated the idea that governments were upheld by consent. I discovered that he uses the word “submit” five times and the word “consent” twice: “It is therefore the inhabitants themselves who

permit, or, rather, bring about, their own subjection, since by ceasing to submit they would put an end to their servitude. A people enslaves itself...gives consent to its own misery..." Moreover, he speaks of consent to misery, not consent to legitimacy of authority, which is Locke's idea.

The only reason that tacit consent has survived in our political thought is as a convenient, albeit incorrect, explanation of how unpopular and illegitimate States remain in power.

Libertarians disagree on tacit consent. This is not a terribly serious matter. The libertarian political philosophy in no way hinges on the concept of tacit consent. Still, we should clear up our thinking about it. We do not want to be led into related errors of thought.

On the one hand, the *Voluntaryist's Statement of Purpose* prominently mentions tacit consent, stating: "Voluntaryists seek instead to delegitimize the State through education, and we advocate withdrawal of the cooperation and tacit consent on which State power ultimately depends."

In the same vein, Lew Rockwell has written: "Along with David Hume and Étienne de la Boétie, Mises saw that the state always rules with the tacit consent of the governed. That doesn't mean that at every step, everyone in society must approve of what the state does. Instead, it means that a sizeable majority have invested the state with a sufficient degree of institutional legitimacy to keep the political system running. Otherwise, the state and its programs would fall."

The U.S. Constitution was supposedly justified by the (explicit not tacit) consent of the governed, a liberating idea with long historical roots. However, the idea that governments exist only at the behest and sufferance of those governed is so radical a political idea that it implies anarchy. After all, if each individual can withdraw consent and secede, anarchy results.

Other libertarians think that to accept tacit consent as a reality is to accept the legitimacy of the State. John Locke and the Founding Fathers, horrified at the notion of anarchy being implied by consent of the governed, grasped the lifeline of *tacit* consent. George H. Smith writes that: "To trace the history of the tacit consent doctrine is to trace a tortuous route whereby political theorists have attempted to avoid the anarchistic implications of the natural rights/social contract position." Both Smith and Carl Watner mention that Robert Filmer and Josiah Tucker understood this, and Watner notes that Lincoln's First Inaugural referred to secession as "the essence of anarchy." Smith notes that Adam Smith, David Hume and John Madison all realized this clearly. He quotes Madison as finding "no relief from such embarrassments [of anarchy] but in the received doctrine that a *tacit* assent may be given to established Government and laws, and that this assent is to be inferred from the omission of an express revocation."

If we eliminate the ill-conceived doctrine of tacit consent from our thought, then we'll want alternative explanations of how illegitimate States retain power. That's important. Understanding how rulers control their subjects helps guide us in actions designed to undermine their power.

To sum up so far, the idea that a government is legitimate only if it has the consent of the governed is a valid libertarian idea, because government under this doctrine is a compact freely arrived at by all participating individuals who are also free to exit the agreement at will if their consent changes to non-consent. The idea is very important historically because of its liberating motivation. In this respect, Lysander Spooner, in *No Treason*, finds that "nations and governments, if they can rightfully exist at all, can exist only by consent." This portrait of consent of the governed actually is one of anarchism or self-government.

In contrast, the idea of tacit consent is an ad hoc doctrine with no basis in libertarian thought that says that people being coerced by a State assent to that State by living in that State, paying taxes, receiving benefits, and not moving elsewhere.

Does the consent of the governed actually exist in any State? Obviously not, because every State on earth coerces its people. Jim Davies writes that consent of the governed is "nonsense on its face; if I consent to your removing my property or damaging my person, then you aren't governing me at all — and vice versa." Spooner launches a devastating attack on the notion that the United States rests on consent. Here is a sample of some of Spooner's arguments that the government of the U.S. does not in fact rest on consent of the governed:

1. The war waged by the North showed definitively that the U.S. government does not rest on the consent of the governed, as theory might have it, but on compulsion and force.
2. The Constitution at its inception was consented to by only a small number of people living in the country.
3. The consent of that small number could not extend to future persons.
4. When persons voted subsequently, that cannot be construed as consent. Voters, being forced to pay taxes and being ruled in other ways, being "under peril of weighty punishments" if they rebel, will vote in order to try to relieve their condition. This in no way indicates that they consent to it.
5. In the century after the U.S.A. began, only a small fraction of the people were allowed to vote and still fewer actually voted, thereby limiting greatly any consent to the Constitution, the government, or the laws promulgated by that government and limiting the legitimacy of all of these with respect to the nonvoters.
6. The payment of taxes can't be construed as consent because taxes are compulsory.
7. There is nothing for a voter to consent to anyway, since the Constitution is not and never was a valid agreement or contract.
8. The voters cannot possibly be providing consent when the Constitution's powers are so

vast that the lives, properties, and liberties of the people are delivered up to the State by this document.

9. Government power can't be legitimated or justified by consent of the strongest party or by consent of the majority.
10. Voting amounts to a situation in which a fraction of the population appoints agents who will administer the government under the Constitution's name. This however cannot legally bind those others who do not so vote. And even that authority is undermined by the fact that the principals (the voters) are unknown and unnamed, their ballots are cast in secret, and they can have no responsibility for the acts of their agents. The agents (elected officials) do not know who their principals are either.

David Hume, with whom Spooner was probably familiar, notes that consent of the governed is "surely the best and most sacred" of any foundation of government. But he scornfully and skillfully skewers the notion that consent of the governed founds or has founded governments. These, he says, arise from force, fraud, fear of punishment, violence, political craft, conquest and usurpation. Voting he views as either controlled directly by a select few or, if the multitudes are involved, led by an elite few.

Does tacit consent actually exist in a State? Spooner's view is that "It is not improbable that many or most of the worst governments — although established by force, and by a few, in the first place — come, in time, to be supported by a majority. But if they do, this majority is composed, in large part, of the most ignorant, superstitious, timid, dependent, servile, and corrupt portions of the people; of those who have been over-awed by the power, intelligence, wealth, and arrogance; of those who have been deceived by the frauds; and of those who have been corrupted by the inducements, of the few who really constitute the government. Such majorities, very likely, could be found in half, perhaps nine-tenths, of all the countries on the globe. What do they prove? Nothing but the tyranny and corruption of the very governments that have reduced so large portions of the people to their present ignorance, servility, degradation, and corruption; an ignorance, servility, degradation, and corruption that are best illustrated in the simple fact that they *do* sustain governments that have so oppressed, degraded, and corrupted them."

For Spooner, support or tacit consent exists, but it is meaningless because the consent arises from a coalition of people that includes those who are deceived by the State, those who benefit from the State, those who are blinded by the State, those who depend on it, those who fear it, and those who do not know any better. Tacit consent is heavily influenced consent and means little.

Rockwell's theory of tacit consent modernizes Spooner and adds several new and important elements:

"What makes it possible for the largest government in human history — I'm speaking of the

U.S. government — to continue to rule in our own country? The answer is complex. But it involves an enormous apparatus of propaganda and legitimization by the media, the academic elite, bureaucrats on the payroll, and special interests anxious to provide a cover for their graft.

“It also involves buying off potential critics and radical dissenters from the regime. And it involves the misuse of religion, whereby we are taught to treat national symbols as sacred, worship the presidency, and regard the political and bureaucratic class as some sort of exalted ecclesiocracy.”

Under this theory, the State’s frauds and deceptions are put across with the help of dedicated servants in the media and academia, as well as government and special interest spokesmen who provide an overwhelming flow of rhetoric based on false and self-serving ideas that include State-worship. Enough of the people are fooled enough of the time to provide support for the State.

David Hume suggests that established governments meet with the acquiescence of the subjects, not their choice. They view support as a matter of obligation or duty. As for tacit consent:

“Should it be said, that, by living under the dominion of a prince which one might leave, every individual has given a *tacit* consent to his authority, and promised him obedience; it may be answered, that such an implied consent can only have place where a man imagines that the matter depends on his choice. But where he thinks (as all mankind do who are born under established governments) that, by his birth, he owes allegiance to a certain prince or certain form of government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims.”

Tacit consent exists if men think they are choosing their rulers. However, when men support a State out of duty or allegiance, tacit consent doesn’t exist. Hume believes that allegiance underlies the State, not consent, tacit or otherwise, to an imaginary contract.

Allegiance exists, he says, because the subjects view it as necessary for the continuity and existence of the State. And they believe this, in his view, because they are Hobbesians. They (and Hume) believe laws, magistrates, judges and authority are necessary to maintain a social order so that the strong do not devour the weak and the violent do not invade the just. Cooperation and civil society are out of the question without a ruling authority whom everyone obeys.

Anarchist libertarians understand and agree that laws and judgments are essential for social order. They do not agree that a *monopoly* provider of these services is needed. Such a single provider, a State, makes no sense according to Hume’s own goal, because it, being strong and attracting the violent men to its powers, devours freedom, property, justice, the

family, and weakens civil society.

If Hume's theory of allegiance is correct, then weaning people away from the State should focus on breaking down the notion that we must have a single authority in order to maintain social order and breaking down the idea that the State actually maintains social order when it does the very opposite! It should focus on the alternative ideas that freedom of choice and movement among several providers are better and encourage cooperation, social order, reduced conflict, and a healthier and more robust civil society.

Hume goes on to point out that many men have no "free choice," I would say no opportunity, to leave a country because they lack the means and face the barriers of language and custom.

Inferring tacit consent from the payment of taxes is a faulty way of judging a State's legitimacy.

We do not accept taxes out of a tacit consent of the State. We view taxes as better to pay than not to pay or to leave the country. The costs of moving are very high, and many other countries impose taxes that are just as high. We have a choice among many bad alternatives.

Because we do not move does not imply that we would not be far better off without the taxes. We would be better off without taxes. If we do not move, does that imply we accept these taxes, that we consent to them? Yes. Does that mean we believe ourselves better off with the taxes than without? No. We'd like to see the taxes lifted.

For us to avoid taxes, we must incur a host of other costs. The State tries to set the taxes so that it does not pay us to avoid them. They may be low enough to accomplish that end; yet I'd still be better off without them. As Jean Baptiste Colbert wrote: "The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the smallest possible amount of hissing."

The State says to us: You can't go to the prom unless you wash all the floors and do all the ironing for the next two weeks. We do these chores because the dance is worth more to us. However, the chores (taxes) reduce our happiness. Whenever we buy anything, our personal valuation exceeds the price we pay. Taxes remove some of that excess of personal valuation over the price. This is what a monopolist tries to do. Tacit consent only means that we still find it worthwhile to live in a country. It says nothing about the legitimacy or acceptance of the ruling authorities. Nevertheless, the State reduces our happiness. We make a choice to remain, but it's a choice that is based on a reduced set of opportunities.

To stay in the country does not signify consent to the government's authority as much as it

signifies that our happiness at living here is great enough that we can bear the State's robberies and impositions; and that the costs of moving elsewhere do not justify the prospective gains. Hence, with respect to authorizing the State we live under, tacit submission better describes our remaining in the country than tacit consent.

Here is an elegant and more general argument. Even if the State were not here, we would stay where we are, so that tacit consent can't legitimize a State. If a State moves in and we remain, it's not because we consent. It's because we submit.

Barnett makes the further argument that tacit consent only is a possible justification of a State's authority if we assume that the government initially has the authority to command obedience, but that is what tacit consent is supposed to indicate.

Two final economic arguments. (1) The tacit consent doctrine seeks to infer legitimacy of the State from the fact that we remain in the country. This assumes that all the benefits and costs of living in the country are mostly linked to the existence of the State, which is of course false. The enjoyment of Niagara Falls, a steak dinner, or a baseball game have something to do with the State, but not much. (2) If the previous sentence is disputable, which it is, that is because we do not know the benefits and costs of the State in these instances. We can't know them because there is no market for the State's services. It follows again that there is no way to infer that anyone would be willing to buy into the State merely because they remain in a country in which that State rules.

Next time you are tempted to say that States rest upon tacit consent, say instead that they rest upon tacit submission. That conveys the notion that threat is involved, that we go along despite the costs imposed upon us by the State.

Let us move away from the issue of tacit consent by observing that both Spooner and Rockwell in their discussions of tacit consent actually strike off in a far more important direction: a "theory of rule." They mention a variety of means by which rulers control their subjects. Understanding the multiple methods, devices, ruses, and stratagems by which rulers build and maintain power is critical in combating them.

Equally important is a realistic and nuanced view of how States fail. Although we can say that withdrawal of consent occurs when a State fails, it is an empty statement. The critical issues are how and why this happens, and what roles are played by errors made by rulers, by accumulated problems of the State, and by parties anxious to seize control over a new State.

Both the Voluntaryist and Rockwell believe that if the governed withdraw consent, then the government will fall. While this may be so, what happens thereafter is exceedingly important. In case after case, another State replaces the previous one. In other words, a small coterie of people seizes power and imposes it on the vast majority, leaving the basic

situation the same albeit with a State of a different stripe. There are two policies that can avoid this outcome. The first is gradualism, whereby the existing State does not collapse but is instead reduced and restructured piecemeal. The second is a widespread understanding of the direction and ultimate goal being pursued, namely, reduction of State power and size to zero.

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