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## THE CONCEPT OF JUSTICE FROM THE CONTRACTARIAN PERSPECTIVE

### 1. Introductory remarks

The concept of justice occupies a central position in the philosophy of law and in political philosophy. However, owing to its complexity as well as its susceptibility to ideologically tainted interpretations, the concept is seldom clearly understood. Nevertheless, the misunderstandings connected with the concept of justice can be at least partly avoided provided one makes an appeal to contractarian theories, i.e., the theories making use of the idea of the social contract. This article's purpose is to provide an overview of contemporary versions of contractarianism. More specifically, we shall be concerned with the following topics: (1) *The place of contractarianism in practical philosophy*. (2) *The differences between the traditional and the contemporary contractarianism*. (3) *Two opposed approaches (Kantian and Hobbesian) in the contemporary contractarianism*. (4) *The proper model of the social contract*.

In our presentation we shall put a stress on the fundamental controversy between the adherents of the contractarian approach – namely whether justice is to be understood as *mutual advantage* (the Hobbesian approach) or as *impartiality* (the Kantian approach)

### 1. The place of contractarianism in practical philosophy

The principal idea of any contractarian theory might be stated as follows: an action, a social practice, a political institution or a law is permissible provided it, or principles upon which it is based, would be agreed to by the agents under appropriately determined conditions<sup>\*\*</sup>. If the object of agreement are principles, then the contractarian theory is *indirect*, otherwise it is *direct*. Most contemporary contractarians interpret the social contract as a *hypothetical* one, i.e., as the one that *would be made* under suitable circumstances, not as an *actual* one; on the former interpretation, the idea of the social contract is an analyti-

cal device to assess human actions, institutions and practices. The general idea of contractarianism being presented, we can compare it with its main rival among ethical metatheories – namely philosophical utilitarianism.

At the outset, it should be noted that every moral theory is to fulfill two functions<sup>\*\*\*</sup>: (1) *to provide an account of the foundations of moral reasoning*, i.e., to answer the question about the subject matter of morality<sup>\*\*\*\*</sup> and (2) *to offer a plausible theory of human motivation to comply with moral rules*, i.e., to account for the fact that moral considerations are in great measure determinative of human actions. How do both metatheories solve these problems?

The adherents of philosophical utilitarianism claim that (1) the subject matter of morality are facts about individual wellbeing and that (2) our motivation to act in accordance with moral rules is a consequence of our ability to identify with the good of other people. It should be noted that philosophical utilitarianism differs essentially from normative utilitarianism in that while the former is an ethical metatheory, the latter is an ethical theory, i.e., a set of moral rules or simply one fundamental rule of conduct. As is well known, the main demand of normative utilitarianism is that people act in a way that maximizes aggregate social welfare. It is worth noting that a theory of the social contract may serve as a justification of normative utilitarianism<sup>\*\*\*\*\*</sup>.

The defenders of the contractarian approach maintain that (1) the foundations of moral reasoning are determined by the agreement concluded (or which *would be concluded*) by individuals willing to gain the benefits of cooperation and that (2) our sense of obligation to comply with moral rules can be accounted for by our having agreed to these rules. Of

\*\*\* See Scanlon 1983, pp. 104-105.

\*\*\*\* Kymlicka (1998a, p. 226) says that the first task of a moral theory is to point at norms that should be observed; as we see, this view differs slightly from that of Scanlon who writes that a moral theory should define a subject matter of morality.

\*\*\*\*\* A good example is Harsanyi's utilitarian theory (see Harsanyi, 1976, 1977).

\* We use this term in a free manner viz. as embracing moral, legal and political philosophy.

\*\* See Vallentyne 2001, p.3.

course, (2) applies only to those theories that take the social contract to be an actual one. It can, however, be reformulated in such a way that it will embrace hypothetical contracts as well. It suffices to assume two theses – namely that a given theory of the hypothetical social contract generates a principle of justice and that human beings are concerned with being able to justify their actions. Then, it is plausible to argue that the morality's motivational force lies in the fact that people desire to be able to justify their actions to other parties on grounds that could be reasonably accepted by all parties or could not be reasonably rejected by these parties. Given the fact that the contract is a hypothetical one, it should be added that the justification in question is *an ideal one*, which means that an agent should not be concerned with the fact that some people reject the grounds she provides to justify her actions if only she knows that such a justification does exist, i.e., if she knows that *were all people to satisfy the ideal conditions imposed on the agreement they would accept her justification*.

To sum up, it seems that the idea of social contract provides plausible grounds for morality: it implies that “*the justificatory status of moral properties*”<sup>\*</sup> and their motivational appeal are derivative of the idea of the rational agreement.

Now that the general remarks on contractarianism and philosophical utilitarianism have been made, we can examine more closely the notion of the social contract.

## 2. Two types of contractarianism<sup>\*\*</sup>

### *The traditional contractarianism*

It was in the 17th and in the 18th centuries that the social contract became one of the central notions of political philosophy. The rationale of having introduced this concept was that the traditional ways of justifying citizens' obedience to the state authority based on the ideas of the natural or the divine order were no longer acceptable. The concept of the social contract gave an alternative justification of citizens' obedience. It implied that having concluded the agreement to form the political power, individuals assumed a promise to obey it *on condition that the power respected and protected their natural rights*. As we see, the traditional versions of contractarianism were *political*, i.e., *they were to justify the state's existence and to determine citizens' obligations towards the state*. The social contract was frequently inter-

preted as the *actual* agreement, i.e., as the agreement concluded at a historical time by the agents determined to leave the state of nature and to found society.

The traditional interpretation of the social contract has been criticized for multiple reasons. As has been shown, on this interpretation, the social contract rests on the theory of natural rights and duties: the state is obliged to protect the citizens' rights, who – on their part – ought to keep their promises to observe the contract resolutions. Considering, however, that the theory of natural rights and natural duties<sup>\*\*\*</sup> is questionable, one could plausibly argue that the theory of social contract – the response to the decline of the pre-Enlightenment ethics – replaced one doubtful type of duties (i.e., the divine ones) by the other being equally controversial (i.e., the natural duties). Another objection pressed against the traditional contractarianism was that the social contract had never been concluded. The consequences of this fact seemed to be especially troubling: assuming that without the agreement having been made, no authority can be called a legal one, it had to be admitted that there are no obligations binding the citizens and the government. Consequently, all the governmental institutions were to be regarded as deprived of legal validity. One attempted to evade these consequences by inventing the concept of the *hypothetical* contract, i.e., the contract that *would have been concluded* by the agents had they found themselves in some kind of the state of nature<sup>\*\*\*\*</sup>. On this interpretation, the social contract was understood not as a historical explanation of the origins of a political power, but simply as the manner in which one can speak about conditions under which the government may have the authority over citizens.. However, this approach was found out to be useless as a way of justifying political obligations, for the simple reason that contracts can be considered as a source of obligation only if they were really concluded – as Dworkin says: “*a hypothetical contract is not simply a pale form of an actual contract; it is no contract at all*”<sup>\*</sup>. Therefore, a fictitious contract cannot account for real duties.

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<sup>\*\*\*</sup> The natural duty presupposed by the theory of the social contract is the requirement to keep promises.

<sup>\*\*\*\*</sup> In fact, the theorists of the social contract (e.g., Hobbes, Locke, Rousseau) early understood that the contractarian ideas make sense only if one interprets the social contract as the hypothetical agreement. It can be added that one of the most severe critics of the social contract as the actual agreement was Hume.

<sup>\*</sup> Dworkin 1978, p.18.

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<sup>\*</sup> This is Scanlon's expression (see 1982, p.116).

<sup>\*\*</sup> See Kymlicka 1998a, pp.226-237, Hampton 2002, pp. 495-500 and Atger 1906.

To conclude, the traditional versions of the social contract which were *to provide a justification of political obligations* are open to three main objections: first, if one assumes that the only justification of political obligations towards the state derives from the actual contract concluded by citizens, then, given the fact that no such contract was in fact made, one has to admit that these obligations are groundless; second, the social contract interpreted as the hypothetical agreement cannot generate obligations; third, the traditional contractarianism assumes natural rights, which themselves need to be justified.

### The contemporary contractarianism

Contemporarily, the social contract is conceived of as a hypothetical agreement being an analytical device to highlight the essence of morality\*\* and to assess social institution, practices or individual actions. Therefore, *the contemporary contractarianism tackles the problem of grounding personal – moral – duties which were taken for granted by the traditional version; it is, therefore, to realize in some sense a more ambitious task than the one faced by its older counterpart, which was primarily to justify the obedience to and the legitimacy of the state.*

Contemporary theorists of the social contract put a stress on two elements: first, on the fact that obligations are conventional, i.e., that they result from a cooperation of equal human beings; second, on the fact that conventional duties in some satisfy human interests. Therefore, the essence of the social contract in its contemporary version consists in determining conventions which advance human interests. What does it, however, mean that human beings are equal? How is the phrase “*advance human interests*” to be understood? To answer these questions precisely, we shall have to distinguish two main currents of the contemporary contractarianism.

### 3. Justice: impartiality or mutual advantage?

The contemporary theories of the social contract can be neatly divided into two groups depending on which conception of equality of men they presuppose\*\*\*:

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\*\* In particular, the essence of justice (it can be noted that, e.g., Rawls takes the social contract as a method of defining justice, while Scanlon as a method of determining moral obligations).

\*\*\* See Kymlicka 1998a and 1998b, respectively, pp.229-231, pp. 145-153, and Hampton 2002, p.495-498.

(1) the *Kantian* theories of social contract – *justice as impartiality*: based upon the idea of **moral equality** of men.

(2) the *Hobbesian* theories social contract – *justice as mutual advantage*: based upon the idea of **natural equality** of men, i.e., the equality of physical and psychological forces.

Each group offers an entirely different view on the essence of morality, in particular – on the essence of justice. However, before we pass to analyzing these differences, we shall first present the assumptions both approaches share.

Both types of contractarianism assume that society exists for the mutual benefit of its members. They presuppose the idea of the social contract as described in the following passage:

The social contract represents the agreement one would have made in an initial state of nature, in order to enter civil society. It does not represent the agreement one would now make, within civil society, in order to continue in this condition. Nor does it represent the agreement one would in hindsight have made, at the time of entry into civil society, could one have known the consequences. One must eliminate from considerations all information which could have been acquired only subsequently to entry into society, in determining what agreement would have been rational for one to make in the initial state of nature\*\*\*\*.

The underlying ideology of both versions of the social contract is individualistic: society is regarded as a *conventional entity* and as an *instrument for realizing individual ends of its members* rather than determining these ends. The parties to the contract are considered to be *mutually unconcerned*, i.e., without other-regarding desires. Both versions treat the social contract as a *hypothetical* one. The aim of the social contract to determine a principle for cooperative action (interpreted as a principle of justice – Rawls, or as morality *tout court* – Gauthier).

Now we can examine the differences between both approaches.

Ad.1 Kantian theorists of the social contract assume the intrinsic value of each individual, or, as Kant put it, each individual's being ‘an end-in-itself’. (They make, therefore, some assumptions concerning morality prior to using the notion of social contract\*). The role of the social contract is to ascertain how thus characterized people ought to be treated. In this context, the fundamental concept of the social contract proves to be that of impartiality which requires that

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\*\*\*\* Gauthier 1978, p.49.

\* Which reveals a simplifying character of our general description of the contemporary contractarianism.

each individual has the right to equal treatment (to 'equal concern and respect'<sup>\*\*</sup>). *The social contract, therefore, epitomizes the basic principle of the impartial judgment which demands that everyone should take into account needs of others as of free and equal human beings.*

A good illustration of the Kantian approach to the idea of the social contract is Scanlon's contractarian definition of a wrong act:

An act is wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behavior which no one could reasonably reject as a basis for informed, unforced, general agreement<sup>\*\*\*</sup>.

Of course, there are very serious differences between Kant's original moral theory and the theories of, e.g., Scanlon, Rawls or Harsanyi as well as between the latter theories themselves. Nevertheless, the presence in these theories of such notions as moral person, generalisability, the right to equal treatment, freedom, ethical preferences, overcoming one's self interest (or to use Kantian terms, one's empirical motives) entitles one to take those otherwise various theories as belonging to one group. Some more remarks are needful with reference to the Kantian approach.

It is worth noting that the adherents of the Kantian tradition replace the picture of the state of nature as 'the war of all against all' with the *situation of equality* in which every party is to take into account the interests of the other parties. The state of nature<sup>\*\*\*\*</sup>, therefore, represents the equality of human beings as persons in the moral sense. Accordingly, the social contract leads to accepting some version of the equality of rights and resources.

Of course, various principles may fulfill the above general conditions of a 'Kantian' contractarian theory. Therefore, in order that more definite answers to the question about 'the right rules of conduct' be gained, it is necessary to impose some additional conditions on the type of agreement to be made and on the criteria of rationality to be used. Now, the most sophisticated tool that may prove helpful while realizing this task is the theory of rational choice including game theory and decision theory. As will be shown in the next section, it is decision theory that can be particularly useful for Kantian theorists of the social contract.

As has been mentioned, one of the tasks of each moral theory is to provide an account of human moti-

vation to act morally. It turns out that the Kantian theories run into serious difficulties in the face of this task. One of their basic assumptions is that a truly moral action ought to be motivated solely by the agent's *intellectual understanding of the reasons* that stand behind moral rules, not by her subjective preferences. Needless to say, the thesis that understanding alone has a motivational force is very controversial.

Ad.2. The defenders of the Hobbesian approach to the idea of the social contract claim that human beings have only instrumental value. This claim entails the rejection of the crucial notions of Kantian philosophers (e.g., the notion of a man as an 'end-in-itself') as fictions that prevent rational grounding of morality.

The Hobbesian approach to the social contract rests on the supposition that morality can be grounded in instrumental rationality, i.e., that can be derived from non-moral premises. Therefore, while within the Kantian theories morality is *constructed* from the *moral* premises concerning human reason<sup>\*\*\*\*\*</sup>, within the Hobbesian theories morality is interpreted as *invented* to maximize human beings preference satisfaction, or – at best – as inferred from non-moral premises<sup>\*\*\*\*\*</sup>.

The Hobbesian theories assume that the potential parties to the contract will reach it provided they refrain from the direct pursuit of their self-interest. The state in which individuals put no constraints on the maximization of their preferences is the Hobbesian 'war of all against all', or, to use a modern terminology, the state in which only suboptimal equilibria can be reached – the state that rational individuals will be willing to leave by concluding the social contract.

As for the philosophical assumptions of the Hobbesian approach, it should be noted that Hobbesian philosophers deny the existence of objective values. They claim that all one can reasonably speak about as regards morality are subjective preferences of individuals. Accordingly, they affirm that there is no natural distinction between good and evil. They concede, though, that it may be advantageous for the promotion of our interests to establish a convention that condemns certain deeds (e.g., killing, lying) as evil. In this view, therefore, morality is a mode of cooperation which should be accepted voluntarily by all rational people, since it advances their interests.

The defenders of this controversial view claim that in the world in which there are no objective values and natural obligations *morality as mutual advantage*

<sup>\*\*</sup> See Dworkin 1978, p. 50.

<sup>\*\*\*</sup> Scanlon 1983, p.110.

<sup>\*\*\*\*</sup> Rawls avoids this term speaking instead about the original position (see Rawls 1973, pp. 17-22).

<sup>\*\*\*\*\*</sup> The Kantian theories, as has been mentioned, assume some moral notions (e.g., that of moral person etc.).

<sup>\*\*\*\*\*</sup> See Hampton 2001, pp.50-53.

is the best thing that we may have, i.e. we have no alternative but to content ourselves with the existence of a moral code that is the effect of mutually beneficial conventions. The conventions that arise as a result of negotiations among parties will reflect the differences in their bargaining forces (by contrast, Kantian philosophers claim that the aim of the social contract is to negate the existence of differences as regards the bargaining forces of parties). The content of the conventions having arisen in consequence of bargaining will correspond with traditional moral norms provided that parties have equal bargaining forces, i.e., that they are in fact equal; otherwise, i.e., if there is a disproportion in these forces, the outcome is bound to be disadvantageous for the weakest individuals, which violates our moral intuitions. What's more, it may be plausibly argued that given the fact that each individual has the right to make use of all resources at her disposal, moral norms will emerge *only if* these individuals have approximately equal capacities, since otherwise 'stronger' parties will not be motivated to leave the state of nature. Understandably, the notion of inalienable rights to which an individual is entitled independently of her bargaining force is incomprehensible on the ground of the Hobbesian theories.

As for the motivational function of morality, Hobbesian philosophers assume that people are motivated to undertake moral actions only if these actions satisfy some of their desires. Accordingly, they claim that the fact that compliance with moral norms accepted by the parties to the social contract increases in the long run their chance of satisfying their preferences provides a clear account of human motivation to act morally.

As can be easily inferred from the above considerations, the adherents of the Hobbesian approach to the idea of the social contract claim that *the same* criteria of rationality and objectivity should be applied both in the sphere of moral reflection and in other spheres of human knowledge. Such an assumption excludes of course Kantian reflections about moral equality of human beings (or about the natural right to equal concern and respect) from the area of rational discourse. **What is at issue is whether we should require that morality should satisfy the same criteria of objectivity and rationality as those satisfied by 'more exact' disciplines.** Thus, we see that the fundamental philosophical controversy within contractarian theories boils down to the old controversy between naturalism (represented, e.g., by Hobbes) and anti-naturalism (represented, e.g., by Kant).

Summing up, within the Hobbesian tradition, the notion of morality gains an entirely different meaning as compared with a traditional one. What's more, **it**

**may be plausibly argued that the Hobbesian theories of the social contract do not represent an alternative conception of morality, but an alternative to morality\*.**

The last question to be answered in this section is whether the theories of the social contract really base morality on the notion of agreement\*\*. As regards its traditional versions, the answer is positive, though a reservation must be made that an underlying assumption of these theories is the thesis that there exist natural obligations. As regards the contemporary contractarianism, the matter is even more complicated: although *prima facie* the notion of the social contract may seem to be of great moment, as it is believed to provide the foundation of justice, it may be plausibly argued that this notion is no more than an analytical device to explicate impartiality and mutual advantage which are *the real foundations* of morality\*\*\*.

In the next section we will show that the two approaches to the social contract discussed above can be correlated with two different models of the social contract.

#### 4. The social contract: an ideal in individual decision or an ideal social bargain?

One of the sources of controversies connected with the notion of the social contract is that it is by no means clear what conditions should be imposed on the contract as well as on the parties to it; more specifically, one must decide whether the social contract should be modeled as an *ideal individual decision* (IID) or as an *ideal collective bargain* (ICB)\*\*\*\*. As will turn out, this distinction, strictly connected with the distinction analysed in the previous section, can be interpreted as derivative of the amount of information available to parties at the moment of entering the social contract.

We shall compare both models of the social contract in the table.

Points of divergence	The social contract as an ideal collective bargain	The social contract as an ideal individual decision
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\* See Kymlicka 1998b, p. 151.

\*\* See Kymlicka 1998a, p. 236.

\*\*\* This thesis is defended by Kymlicka (see *ibid.*, pp. 236-237).

\*\*\*\* See Gauthier 1978. A bargain is a situation in which two or more agents are able to produce some benefit through cooperating with each other on condition that they agree in advance on a division between them (See Hargreaves Heap, Varoufakis, 1996, p. 111).

1. <i>The parties to the contract</i>	Only those persons whose cooperation may benefit at least some other persons, which means, e.g., that children and the severely disabled cannot be parties to the contract.	Each person as a <i>moral person</i> is a party to the contract. Since all moral persons are identical, the social contract can be thought of as a IID.	7. <i>Philosophical background</i>	The Hobbesian approach	The Kantian (Rawls, Scanlon) or the utilitarian (Harsanyi) approach
2. <i>The required level of the ignorance of the parties</i>	Gauthier: <i>no veil of ignorance</i> – the social contract is a bargain among <i>real persons</i> who are fully informed, determinate and who know their utility functions*.	Rawls: <i>a thick veil of ignorance</i> : a decision-maker lacks the knowledge of her particular self; she knows only that she has certain abilities, certain interests and that she uses the former to maximize the satisfaction of the latter (she has also the knowledge of the laws of nature and of some general features of the world) Therefore, the decision-maker – <i>a moral person</i> – does not know her utility function. Scanlon: parties have full knowledge of their particular features, yet they cannot make use of it – the only motive of their actions is the desire to reach a rational agreement.	8. <i>The main objection</i>	Incompatibility with our moral intuitions: since parties are fully informed about their capacities and particular situations, they can make use of it in a bargain, with the result that the ‘stronger’ parties will acquire a greater share of the benefits than the ‘weaker’ ones.	The lack of motivational force: a real person cannot identify her present self with the chooser in the hypothetical state of nature, since there is <i>no real individual</i> in the state of nature (as regards Harsanyi’s theory) or <i>the real individual is arbitrarily chosen</i> (‘the least advantaged person’ in Rawls’ theory)
3. <i>Notable contemporary representatives.</i>	David Gauthier (“ <i>Morals by Agreement</i> ”), James Buchanan (“ <i>The Limits of Liberty</i> ”)	John Rawls (“ <i>A Theory of Justice</i> ”), John Harsanyi (“ <i>Rational Behavior and Bargaining Equilibrium in Games and Social Situations</i> ”), Thomas Scanlon (“ <i>Contractualism and Utilitarianism</i> ”)			
4. <i>The main tool of analysis</i>	Game theory	Decision theory			
5. <i>The chosen principles of justice</i>	Gauthier: the minimax relative concession principle	Harsanyi: the average utilitarian principle, Rawls: the difference (maximin) principle**			
6. <i>The interpretation of justice</i>	Mutual advantage	Impartiality***			

**Comments on some controversial points.**

**Ad.1.** The adherents the ICB approach defend their claim by pointing out that the rational agreement implies each party’s ability to offer benefits to other parties.

**Ad.2.** The level of ignorance explains why the social contract can be conceived of as an individual decision: since the parties do not know difference between them and each of them is equally rational and similarly situated, the choice in the state of nature can be viewed as made by *one* person randomly selected from the society\*\*\*\*. As we see, the social contract can be interpreted as IID provided the individuals are regarded not as real persons with varied preferences, but as *moral persons* who are identical in respect of their right to equal concern and respect.

**Ad.5.** Given point 2, it should be understandable that if one demonstrates that a randomly selected agent chooses a given principle, one may conclude that all rational agents would choose the same principle. The chosen principle constitutes the content of the social contract as viewed by the adherents of the IID interpretation.

Harsanyi’s principle differs from classical utilitarianism in that while the latter prescribes maximization of total happiness (utility), the former prescribes maximization of average utility\*. As for Rawls, his well known principle is as follows:

fairness contains elements of selfinterest and reciprocity, from which the notion of impartiality is free.

\*\*\*\* See Rawls 1973, p. 139.

\* To give some flesh to this general statement, let us examine more closely Harsanyi’s principle. In the first step, a chooser of principle considers each possible principle for cooperative action. Next, she calculates the expected utility of a given principle’s adoption for each

\* See Vallentyne., p. 4.

\*\* Scanlon does not formulate a principle of justice; he provides instead what he calls “*a contractualist account of moral wrongness*” (1983, p. 110); its full formulation can be found above in the text in the section 3.

\*\*\* Rawls defines justice as fairness. We identify fairness with impartiality, though we must admit that it is a slightly simplifying assumption, since the notion of

Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity\*\*.

According to Gauthier, however, neither Harsanyi nor Rawls succeeded in providing a standpoint from which the principle of justice rational for all parties to the social contract might be chosen\*\*\*. Gauthier claims that such a standpoint is gained if we interpret the social contract as ICB. Gauthier offers a precise definition of the social contract thus understood, which we shall summarize below\*\*\*\*:

Let  $P$  be the set of all basic institutions and practices\*\*\*\*. Let  $N$  be any set of persons. For any  $N$ , there will be a proper subset of  $P$ ,  $P(N)$  including all sets of basic social institutions and practices which are possible for  $N$ .  $P(N)$  is therefore the set of possible bases for societies, for the members of  $N$ . For each person  $i$  in  $N$ , there will be a subset of  $P(N)$ ,  $A_i[P(N)]$  which includes all sets of basic social institutions and practices which it would be rational for her to accept in order to enter society. **The social contract for  $N$ ,  $S(N)$ , will be the intersection of the sets  $A_i[P(N)]$  for all  $i$  in  $N$ .** Therefore, it is a set of sets of basic institutions and practices which all members of  $N$  could rationally accept to enter society (of course  $S(N)$  may be an empty set, which means that social cooperation is not mutually advantageous for all members of  $N$ ).

By definition, a bargain is rational provided it is rational from everyone's standpoint. Of course, in order that the ICB approach to the idea of the social contract be successful, there must exist a unique solu-

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party to the contract. In the third step, she determines the average of these expected utilities for each principle (this step implies the usage of some interpersonally comparable measure of utility). Finally, she selects the principle that maximizes the average of the expected utilities of the parties. We may remark *en passant* that it is doubtful whether Harsanyi's procedure is consistent with the requirement that in the state of nature, no agent can know her utility function. Besides, it is questionable whether one can identify the expected utilities of different persons with the average expected utility of a chooser; as Rawls says, "the average of expected utilities is not, as expectations should be, founded on one system of aims" (Rawls, 1973, p. 175). See also Harsanyi 1976 and Gauthier 1978, p. 51.

\*\* Rawls 1973, p. 302.

\*\*\* See point 8 (column for IID) of our table.

\*\*\*\* See Gauthier 1978, p. 60.

\*\*\*\*\* That is, of "those procedures which allocate social costs and distribute social benefits" - *ibid.*, p. 60.

tion to the bargaining problem. This solution is the content of the social contract. Gauthier's proposal of such a solution, i.e., his theory of justice, is the minimax relative concession principle. This principle requires that each bargainer should receive the same proportion of the difference between her status quo\*\*\*\*\* and the maximum utility compatible with the other obtaining their status quo payoffs, and that this proportion should be maximal.

**Ad.7.** Considering that the IID approach in contrast with the ICB is based on the concept of moral person, it should be clear that the interpretation of the social contract as IID is assumed within the Kantian tradition.

## 5. Final remarks

It was not our intention in this article to attempt to declare either for the Kantian or for the Hobbesian approach to the idea of the social contract. All we wanted to achieve was to present these approaches in a possibly comprehensive way, e.g., by showing their correlation with two different models of the social contract. We wanted to demonstrate that contractarian theories help explicate the notion of justice, i.e., that they reveal that justice can be understood either as mutual advantage or as impartiality. We hope to have demonstrated that this most general distinction underlies and determines the differences between specific principles of justice proposed by different philosophers.

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\*\*\*\*\* Status quo determines payoffs bargainers would receive were they to fail to reach the agreement.

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### **КОНЦЕПЦИЯ СПРАВЕДЛИВОСТИ С ПОЗИЦИИ ТЕОРИЙ ОБЩЕСТВЕННОГО ДОГОВОРА**

Данная статья посвящена анализу научных подходов Канта и Гоббса к идее общественного договора и их влиянию на концепцию справедливости. В статье раскрыто взаимоотношение указанных подходов с двумя разными моделями общественного договора. Показана роль теорий общественного договора в процессе развития понятия справедливости. Автор указал, что относительно теорий общественного договора справедливость может рассматриваться или как взаимная выгода или как беспристрастность.

**W. Zaluski**

### **THE CONCEPT OF JUSTICE FROM THE CONTRACTARIAN PERSPECTIVE**

The present article is dedicated to the analysis of the Kantian and the Hobbesian approaches to the idea of the social contract and their influence on the concept of justice. The correlation of these approaches with two different models of the social contract has been shown. The role of the contractarian theories in the process of explication of the notion of justice has been demonstrated. The author points out that according to the contractarian theories justice can be realized either as the mutual advantage or as the impartiality.