Perspectives in Social Contract Theory

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The Council for Research in Values and Philosophy
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The chapters in this volume entitled *Perspectives in Social Contract Theory* enter a wide range of discussions designed to promote the process of articulating various philosophical traditions, especially African, in a new and applicable context. African contributions made by such African scholars as Oritsegbubemi Anthony Oyowe, Edwin Etieyibo, Emmanuel Ifeanyi Ani and Sirkku Hellsten contextualize the general social contract tradition and address issues of social contract theory from an African perspective. As an exceptional example this volume weaves the strains of the intellectual tradition of social contract theories into not only an intersection of international scholars who are engaged with political philosophy but also texts that bring attention to the specific intellectual and lived-local cultures. This can be seen from the set of contributors from such countries as South Africa, Ireland, The United Kingdom, Ghana, Italy, Spain, Nigeria, Japan, Tanzania, and Sweden. The work of these fourteen papers is a remarkable fit for the publication series entitled “Cultural Heritage and Contemporary Change” of The Council for Research in Values and Philosophy (RVP).

The RVP has published 300 scholarly books, which include vetted treatments of topics and subjects that are either originally presented at international scientific conferences across the world or the annual seminars held in Washington DC, co-sponsored by the RVP and the McLean Center for the Study of Culture and Values (MCSCV) at the Catholic University of America.

Research in political theory and its relationship to culture and values affirms a commonplace, that is, the existence of social realities is prior to both social theorists and social theories. Societies do not wait for social theorists to explain their existential reality nor their self-articulated relationships among persons. Philosophical efforts are activities of critical clarification and are better done when rooted in specific cultures and values.

The RVP endorses international efforts and cross-cultural approaches which integrate the broader understanding of humanities, socio-economic and philosophical sciences. The hope is that this
collaborative effort can guide the reinterpretation of choices and options for human development. On the other hand, the RVP also promotes the intersection of the historical discourse of philosophical texts and the giveness of specific cultural contexts as a norm for the growing interaction of intellectual cultures in our time as well as the attendant interrelationships driven by globalization in its various forms.

The RVP mission is to facilitate research that can sustain the understanding of particular cultural origins, foundations of values and specific social realities which constitute an interdependent complex network of global forces and local circumstances. On the one hand, the volumes in the RVP publication series are not only accounts or discussions of current issues and the crises of the moment, but more importantly, the search for what is essential and particular to cultural changes. Thus, it addresses the urgently pressing issues in this complex and globalized world. On the other hand, the RVP publication series assesses fundamental values embedded in traditions. It explore choices and activities that drive cultural developments and shapes the meaning as well as the consequence of human development in these intensive global times. In this light, the findings in this volume on social contract theory engage the search for a proper understanding of problems that may well be at the root of some of our current crises.

Research teams and cross-cultural conferences can be rich resources for scholars in clarifying their findings. Publishing their research results can bring scholars and readers together in the ongoing process of critical clarifications and articulations of remedies for the challenges of today. These activities are designed to inform and guide choices which can advance understandings from which trust, justice and honest dedication to the search of convergence can occur. The hope is that mutual concerns can emerge from the relationships of various cultures and civilizations in order to recover wisdom and insight as well as our common personhood and shared humanity.
Discussions on having this volume started a number of years ago. It began as a collection of papers presented at an international conference on social contract theory that took place in Lisbon (Social Contract Theory: Past, Present, and Future) from the 15th to 17th of May, 2014. It was Peter Stone who initially floated the idea of the importance of having the papers published. Following his suggestion, which a number of the conference presenters saw as a good idea, we decided to explore the possibility of getting the essays to press and the best way of doing so. I volunteered to take on the project, the task of contacting publishers, and seeing to it that we find an appropriate outlet to publish the papers. A volume rather than having the articles in a special issue of a journal was eventually settled for and the Council for Research and Values in Philosophy (RVP), as the publisher.

In this regard, many appreciations are due. First, the conference from which most of the contributions in this volume come from (of this I will say more shortly). This volume would not have seen the light of day were it not for the conference and for this we are grateful to the conference organizers. Second, Peter Stone for starting the idea and a number of the conference presenters and contributors to this volume regarding how to take this idea further; I thank all of you both for your suggestions, contributions to the volume and for working with me on it. Third, I owe much gratitude to the reviewers for painstakingly reading through the drafts of the essays and for the useful feedback that they provided, which I believe have improved the volume. Finally (and very importantly), I thank the RVP for agreeing to take this volume to press.

I said that most of the contributions or chapters in this volume come from the conference. Initially, the idea was to publish only papers from the conference. But given that part of the publishing and editorial focus of the RVP is on issues of cultural heritage and contemporary change it was decided that a number of contributions that contextualize the social contract tradition and address issues of social contract theory from an African perspective be added. We will see
these additions in the contributions by Oritsegbubemi Anthony Oyowe, Emmanuel Ifeanyi Ani, Sirkku Hellsten and myself.
Introduction

EDWIN ETIEYIBO

The title of this book “Perspectives in Social Contract Theory” is appropriate because it is a collection of different approaches to the social contract tradition. This is a rich and long tradition that stretches as far back as Thomas Hobbes, which he developed in a number of his works in political philosophy.¹

The chapters in this book – fourteen of them – engage with, develop and advance various ideas of this tradition. The fourteen chapters are divided into five parts: PART I: What is Contractualism and Contractarianism?; PART II: Contract, Consent and Equality; PART III: Contractualism of Rawls and Jean-Jacques Rousseau; PART IV: Contractarianism – Moral and Dynamic; and PART V: Social Contract Theory and African Tradition. While some of the papers raise and discuss issues in connection with specific aspects of contractarianism and contractualism, namely, Hegel’s and Rawls’ contractualism, the contractarianism of Jean-Jacques Rousseau and David Gauthier, others discuss general issues concerning social contract theory, such as contractualism as dynamic, the status of consent, equality, and obligations in the social contract tradition. In addition, some papers extend social contract theory to include an African perspective, for example, African social contract in the context of human rights, Ubuntu and social contract theory, social contract and traditional African consensual democracy.

¹ Hobbes major work in political philosophy, Leviathan was published in 1651 (with revised Latin edition in 1668). Although the Leviathan is his magnum opus he has other works that deal with political philosophy. This include: The Elements of Law, Natural and Politic (or Human Nature and De Corpore Politico), which was published in 1650, De Cive, which was published in 1642 (but published in 1651 in English under the title, Philosophical Rudiments Concerning Government and Society). Beside these works in political philosophy there are other writings of Hobbes that shed light on his political philosophy, among which are: Behemoth, which was published in 1679, De Corpore (published in 1655), De Homine (published in 1658), Dialogue Between a Philosopher and a Student of the Common Laws of England (published in 1681), and The Questions Concerning Liberty, Necessity, and Chance (published in 1656).
The first chapter by Edwin Etieyibo, “Between Contractarianism and Contractualism” aims to contextualize social contract by picking out two of its strand: contractarianism and contractualism. His primary focus is to answer a number of questions that can be raised in connection with both strands – questions such as: What are the differences and connections between them? How do they attempt to justify the emergence of moral and political norms? “What are some of the problems that confront either.”

Regarding the general issues, Peter Stone in “Consent, Contract, and Autonomy” in the second chapter examines at least three distinct ways that the term “consent,” has been employed by social contract theorists, namely, actual consent, nonideal consent, and hypothetical consent. In his view, the term is often used by social contract theorists in highly ambiguous ways. Using the question of autonomy, as an example, to tease out this ambiguity he argues that it “is difficult to specify the terms of a social contract that are both defensible and rely upon a single distinct understanding of “consent.”

The issue of consent emerges again in the fourth chapter, Carl Fox’s “Hypothetical Consent and the Bindingness of Obligations,” where he discusses (a) why actual consent cannot ground a social contract argument for the obligation to obey the state and (b) the problems for a theory that relies on hypothetical consent. After dismissing the idea that actual consent can ground the social contract, Fox turns to hypothetical consent to see if it can play a useful role. He cites Roland Dworkin as arguing that it is not consent at all. As Dworkin puts it, hypothetical consent “is not worth the paper it is written on.” Fox’s motivation in this chapter is to confront Dworkin’s challenge by engaging with the question as to whether a concern for voluntariness is really central to the social contract tradition. He goes on to show how hypothetical consent could perform a substantive function in a contract approach without sacrificing the aim of making everyone party to an agreement. The nub of the rehabilitation strategy he proposes is the idea that establishing the hypothetical consent of representative parties who model our commitments deploys the characteristic binding force of obligation. To reject the outcome of a sound hypothetical contract is to weaken and undermine one’s own identity, which can be voluntarily constructed or endorsed. Hypothe-
tical consent could thus generate a weighty sanction through which we tie ourselves in a tangible way to the conclusions of a contract argument.

Still on the general issues of social contract theory we have the issues of equality that are discussed by Nikolas Kirby. In the third chapter, “Basic Equality and Social Contract Theory,” Kirby argues that while the idea that all humans are one another’s equals is popular and features prominently in political theories, and may well be taken by many philosophers to mean “equal worth” this notion “is not what social contract theorists – past and present – usually have in mind when they say that all humans are one another’s equals.” According to Kirby, social contract theorists have always taken basic equality to mean “equal authority.” This, Kirby argues, does not mean that social contract theorists necessarily reject the concept of equal worth. Rather, they “take equal authority to be more ‘basic’ than equal worth, in the sense that the former, and not the latter, is treated as the ultimate ground for our political rights and obligations.”

I noted above that some of the chapters raise and discuss issues in connection with specific aspects of contractarianism and contractualism. One of such chapter – the ninth one and with regard to contractarianism – is “Moral Contractarianism, Moral Skepticism, and Agreement” by Edwin Etieyibo, which examines reasons for engaging with the moral skeptic regarding what Gauthier calls the foundational crisis of morality and why we should take contractarianism seriously, in particular moral contractarianism. The crux of the argument for taking contractarianism seriously is that the problem of the foundational crisis of morality is a grave one and when compared to the dominant moral theories, i.e. Utilitarianism, Kantianism it alone gives us a way of resolving it. In addition to examining this issue, Etieyibo also examines some worries for Gauthier’s moral contractarian account, which, he argues, appear to put Gauthier in the camp of liberal egalitarianism rather than that of libertarianism.

Still on contractarianism, Vangelis Chiotis (in the tenth chapter), “Dynamic Contractarianism” argues that the social contract is a fluid and “dynamic process, which follows from the Humean rationale of contract by convention.” In Chiotis’ view, the dynamic approach to contractarianism is a constructivist approach, which considers social
structures as well as individual agency. By defending the position that the social contract is a dynamic process, Chiotis distances himself from conventional social contract theory, which holds that “once the contract terms are agreed upon, it is assumed that the contract is a stable construct, provided its terms are met.” This view, Chiotis, claims “ignores changing preferences, information availability and the social environment.” One important aspect in the paper is the argument put forward by Chiotis that construing contractarianism as dynamic has at least three distinct advantages: non-dependence on compliance; dispensing with the need for a third party enforcer; and avoiding criticisms related to hypothetical consent and the bargaining process.

On contractualism, there are four chapters that discuss specific aspects of it or issues relating to it. These are Anna Romani’s, “Jean-Jacques Rousseau’s Civil Education and the Formation of the Political Subject;” “On The (Historical) Grounds of Rawls’s Original Position” by Michele Bocchiola; “Rawlsian Contractualism and the Cognitive Disabilities” (Akira Inoue); and “Beyond Rawls’s Basic Structure of Society” by Juan Antonio Fernández Manzano. While Romani discusses the contractualist account of Rousseau, the discussions of Bocchiola, Inoue and Manzano focus on the social contract account of John Rawls.

In the eight chapter, “Jean-Jacques Rousseau’s Civil Education and the Formation of the Political Subject,” Romani engages with the problem of the construction of the political subject in Rousseau’s social contract theory. The problem, as she puts it, is the distance between one’s own will and the general will, which according to Romani, arises because Rousseau seeks to present the general will as a true promotion of the individual’s freedom. The general will is a true promotion of the individual’s freedom when the expression of the general will is unequivocally direct, without the mediation of any delegate. The problem, according to Romani, is that humans as they seem are not fit for the role of citizen as Rousseau understands it, because they value their personal interests more than the common good. And it is because Rousseau recognizes this problem that he seeks to create through civic education a particular kind of political subject, namely, “a particular
will which will adjust itself to the general one without conflicts or residuals.”

Is Rawls’s social contract theory the same as its later constructivist reinterpretation? Michele Bocchiola in the fifth chapter, “On the (Historical) Grounds of Rawls’s Original Position,” notes that there is a general consensus in the social contract literature that they are not completely different and irreconcilable. He however, disagrees. In this chapter, he argues that contractualism and constructivism are two different methods of justification, and are therefore hardly reconcilable. Stated differently, his claim is that while it is the case that contractualists and constructivists share the same notion of procedural test for the validity of principles of justice, they substantially differ in the claims they make. Two of the most important differences that Bocchiola examines are as follows: (a) whereas constructivist theories address metaethical questions about what count as moral facts, reasons and principles of justice, social contract accounts generally address normative questions about the content of political morality and the motivations to endorse normative principles; (b) constructivist approaches typically make stronger claims about the justification of principles of justice, while the original position (as a contractualist device) makes weaker claims about the justification of principles of justice.

In the seventh chapter, “Rawlsian Contractualism and the Cognitive Disabilities” Inoue tries to meet one of the challenges often posed for Rawlsian contractualism, namely, that because the account idealizes moral agents or citizens as being capable of engaging in a scheme of social cooperation for reciprocal advantage it inevitably excludes those with severe disabilities “especially people with cognitive impairments.” Inoue argues that the criticism that Rawls’s arguments for reciprocity preclude those with cognitive disabilities and so cannot guarantee special care for them could be met if one employs the idea of domain division, anchored both on reciprocity and morality. On his view, the ideal of justice as reciprocity obtains when in a fair scheme of social cooperation citizens are willing to share burdens as well as benefits, and the principle of basic needs plays a salient role in the domain of morality. The principle of basic needs plays this role insofar as we treat it as an “independent moral
principle, which provides a morally compelling reason for satisfying the specific needs” of those with cognitive impairment.

Inoue’s idea of extending Rawls’ contractualism to those that are taken to be excluded from the account of justice (namely, persons with cognitive disabilities) re-emerges in the sixth chapter, “Beyond Rawls’s Basic Structure of Society” by Juan Manzano. In this paper, Manzano presents a set of reasons that he thinks Rawls employs in respect of the role that the concept of “basic structure of society” plays in his social contract account. These reasons, he notes, help us to understand the reasons as to why the notion of basic structure of society cannot be confined to the boundaries of nation states. Along this line, Manzano analyses and defends the theoretical possibility and the practical need to expand Rawls’s domestic institutional framework to the international arena or global space.

The diversity of the chapters in the book can be seen from the four chapters that try to extend social contract theory to include an African perspective. The first chapter attempt to make the case for the possibility of a contextualized African social contract is that of Christopher Allsobrook. In “Universal Human Rights from an African Social Contract” (the twelfth chapter) Allsobrook argues that a contextualized social contract is important if we are to properly respond “to the paradox of interdependent consent and authority in social contract theory” and if we are to avoid “naturalising political conditions under which consent and authority are derived.” The main point of Allsobrook’s argument is that given that “classical social contract theory of the Enlightenment was often abused to justify the extension of imperial dominion by European powers, to derive supposedly universal rights, which are in fact expressive of European culture and by which other cultures are bound to fall short” it will be important for social contract theory not to “deny the particular political culture, which informs” it. One way of doing this is to show “how members of different communities may arrive, independently, at some fundamental conception of just interaction, by reflecting on the normative principles, to which anyone would consent, which belong to their traditional beliefs and practices.” And that is part of the task he sets for himself in the chapter, which is to show and argue for how to think of and how a normative basis for human rights regime that better
accords with an African political culture or uniquely African heritage and which may be said to follow from a distinctively African social contract will look like.

The two other chapter that extend social contract theory to include an African perspective are the ones by Emmanuel Ifeanyi Ani and Oritsegbubemi Anthony Oyowe and Etieyibo. In “Ubuntu and Social Contract Theory” (fourteenth chapter) and “Traditional African Consensual Democracy and the Three Notions of Consent in Social Contract Theory” (eleventh chapter) Oyowe, Etieyibo and Ani pursue further the thought proposed by Allsobrook, namely, the idea of thinking about how members of different communities can consent to normative principles that are embedded in their traditional beliefs and practices.

In “Ubuntu and Social Contract Theory,” Oyowe and Etieyibo examine Ubuntu and social contract theory within the features of mutual advantage, consent, agreement and negotiation. The novelty of their approach is the attempt to show the connection that exists between social contract theory and Ubuntu in these areas. Their approach relies on the twin claim that Ubuntu and social contract theory are “two important normative theories in ethics and political philosophy,” and that as “normative accounts, they prescribe obligations and certain norms of actions as well as attempt to justify them.”

In “Traditional African Consensual Democracy and the Three Notions of Consent in Social Contract Theory,” Ani argues that the notion of consent is implicated in traditional African consensual practices and that the form of consent required is fulfilled by the descriptive requirements of democratic tacit consent. Ani does not only attempt to show that democratic tacit consent is implicated in traditional African consensual practices. He goes as far as to argue that this form of consent does not suffer from the objection of partisan limitation, which in general states that one cannot consent to a government that one did not vote for or simply that “a democratic government is illegitimate for a large number of citizens who did not vote it into power.” The nub of Ani’s riposte to this objection is that the criticism can be avoided if one distinguishes between political and contractual consent, and show that “it is only political consent in a majoritarian democracy that merits” the criticism.
The last chapter that brings an African perspective to bear on social contract theory is that of Sirkku Hellsten, “Afro-Libertarianism and the Social Contract Framework in Post-Colonial Africa: The Case of Post-2007 Elections Kenya” (thirteenth paper). This chapter, which was first published in 2009 in Thought and Practice: A Journal of the Philosophical Association of Kenya (June 1(1):127-146), “examines the shortcomings and possibilities of the social contract approach in relation to the Kenyan post 2007 elections political crisis.” In focusing on an Afro-libertarian politico-economic framework, the author looks at the mixture of communitarian and communal traditions, egoistic and profit-making individualist libertarian market rationality, fragile and patrimonial state, and strong sub-national loyalties in Kenya and highlight how these undermine the “building of a united nation and a strong state.” The central claim that Hellsten advances is that in order to achieve and realize “sustainable peace, social reconstruction and national unity” an adequate grasp and “understanding of the moral dimensions of the concept of ‘social justice’” is important.