

THE CONTRACTUAL FOUNDATION OF JUSTICE AND DEMOCRACY AS AN IMPERATIVE FOR SOCIAL DEVELOPMENT IN AFRICA

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บทความนี้ไม่เพียงแต่พยายามสร้างการเชื่อมโยงที่ขาดเสียมิไ้ระหว่างสัญญาประชาคมกับมโนทัศน์เรื่องความยุติธรรมเท่านั้น แต่ยังเน้นให้เห็นความสำคัญของแนวคิดดังกล่าวที่มีต่อประชาธิปไตยและในฐานะเป็นเครื่องมือให้บรรลุเป้าหมายการพัฒนาในแอฟริกา เพื่อเป็นการตรวจสอบความสัมพันธ์ระหว่างสัญญาประชาคมและความยุติธรรม บทความนี้ยืนยันว่าการที่เราดำเนินชีวิตประจำวันอย่างมีปฏิสัมพันธ์กับคนอื่นในทุกระดับของสังคมย่อมได้รับแรงหนุนจากมโนทัศน์เรื่องสัญญาประชาคม ไม่ว่าจะเปิดเผยหรือไม่เปิดเผยและการมีปฏิสัมพันธ์ดังกล่าวแรกสุดย่อมหมายถึงการอำนวยความสะดวกให้กับมาตรฐานทางความยุติธรรมและส่งเสริมพัฒนาการในสังคมมนุษย์ ในขณะที่เดียวกัน บทความนี้นอกจากยอมรับว่าประชาธิปไตยเป็นเครื่องมือที่ดีที่สุดสำหรับการพัฒนาแล้ว ยังได้ชี้ให้เห็นว่าประเทศในแอฟริกาส่วนมากยังไม่ได้รับการพัฒนาอย่างขนานใหญ่ที่พึงปรารถนาของระบอบประชาธิปไตยก็เพราะว่าผู้นำยังไม่ยอมรับว่าประชาธิปไตยในฐานะเป็นรูปแบบหนึ่งของสัญญาประชาคมนั้นต้องนำมาปฏิบัติควบคู่กันไปกับปัญหาเรื่องความยุติธรรมอย่างจริงจัง

Abstract

In this paper, an attempt is made not only to establish the inextricable link between the social contract and the notion of justice, but also to emphasize their importance to democracy and as a means of achieving the

goals of development in Africa. In examining the relationship between social contract and justice, the paper asserts that our every day dealing with others at various layers of existence is underpinned by the notion of a contract, whether explicit or implicit and that such dealings are meant primarily to facilitate some measure of justice and to foster development in human society. While accepting democracy as the best means for achieving the goals of development, the paper concludes that the reason most African states have not made giant developmental strides, despite their practice of democracy, is because their leaders are yet to accept democracy as a form of contract that carries with it, serious implications bordering on the question of justice.

Introduction

Contractual models have come to inform a vast variety of relations and interaction between persons....[Therefore] contemporary...society is in the grip of contractual thinking”¹ - **Virginia Held**

The idea of contract is as old as man himself. From the creation story in the holy books of most religions, the view that man’s enjoyment of even his natural rights is dependent upon some form of contract or agreement between him and his creator is very prevalent. In most accounts, the idea of a contract, whether explicit or implicit plays a significant role in our every day dealings with others. Fundamental however to all contractual arrangements is the central role occupied by the notion of justice. In fact, it can rightly be asserted that the essence of entering into any form of contract is to facilitate some measure of justice, whether in a social group, a religious organisation, an educational institution, a political association, a business cartel or even the society at large. In this paper, attempt is made not only to establish the central role justice occupies in all contractual arrangements but also to draw the inextricable link between social contract, justice and social development. Our argument is that all our dealings with ‘others’ at various layers of existence amount to an attempt to reconcile various interests guided by some presumption of

a contract, whether implicit or explicit, and since development is always the *raison d'être* of all contractual arrangements, it follows that all our dealings with others not only have contractual underpinnings, such dealings are meant primarily to foster development in human society. While accepting democracy as the best means for achieving the goals of development, the paper concludes that the reason many African states have not made giant developmental strides is because their leaders are yet to accept democracy as a form of contract that carries with it, serious implications bordering on the question of justice, whenever the terms of the contract (represented by the principles of democracy) are not followed to the letter. But, first, let us start with a historical excursion on the relationship between social contract and the notion of justice.¹

Social Contract and the Idea of Justice in the Ancient Period

Although the Social Contract Theory is usually associated with modern moral and political theorists like Thomas Hobbes, John Locke and Jean-Jacques Rousseau, philosophers before and after these, also gave elaborate attention to discussing the idea of a social contract. Central however to all discussions on social contract is the fundamental position occupied by the notion of justice.

In one of the early dialogues of Plato called *Crito*,² Socrates used a social contract argument to explain to Crito why he must remain in prison and accept the death penalty rather than escape and go into exile in another Greek city as Crito and some of his friends had planned. In his argument, Socrates attempted to explain the reason he had an overwhelming obligation to obey the laws of Athens even at the cost of his own life. Starting from the premise that his entire way of life and existence has been made possible by the laws of Athens, Socrates then explains his relationship with the laws of Athens as representing some sort of contract between him as a citizen and Athens as a state. In fact, the terms of this contract are spelt out in the laws of Athens. In some circumstances, a social contract is explicitly consented to by the parties, whereas in some other cases, the consent may be merely implied. In the specific case of Socrates, the contract between him and the city of Athens is an implied

one, since he had enjoyed all the benefits and facilities provided by the state, and has abided by the laws and accepted the punishments they mete out since his youth, even though he was not one of the original contractors. This forms the framework of Socrates' understanding of the notion of justice. Having implicitly consented to the contract that the laws of Athens represent, Socrates is therefore under obligation to keep the terms of the contract, even at the expense of losing his own life. This is Socrates' understanding of justice. So, the notion of justice for Socrates has its foundation in the idea of a social contract.

Also, in another of Plato's dialogues, the *Republic*,³ a social contract explanation is presented for the nature of justice. Here, justice is said to be the conventional result of the laws and covenants that men make in order to avoid two extremes. The first is to avoid a situation where men are able to commit injustice with impunity and the second is to avoid becoming victims of injustice themselves. Men therefore contracted among themselves that in order to avoid the inconveniences of these extremes, it will be in their own best interests to enter into a covenant by enacting laws that will regulate conducts and promote a sense of justice. In another expression from the *Republic*, the concept of justice is explained in terms of three different kinds of interests, virtues and personalities in individuals and the three different kinds of social classes that should reflect these three personalities, interests and virtues. Justice here is seen as consisting in each person falling into the class to which he belongs and each class performing those duties for which it is best fitted.⁴

From the views expressed above in *Crito* and the *Republic*, the notion of justice is intricately tied to the idea of a social contract and justice consists not only in obedience to the state and the laws that sustain it, as explained in *Crito*, but also in the state of a well-regulated soul or a just man who will, among other things, recognize his obligation to the state and fellow humans by performing those duties for which his is best fitted.

Social Contract and the Idea of Justice in the Modern Period

The idea of social contract received the widest attention in the modern period in the history of philosophy through the writings of Thomas

Hobbes (1588-1679), John Locke (1632-1704) and Jean-Jacques Rousseau (1712-1778).

Thomas Hobbes lived during the most crucial period in England's history, which is the period of the English Civil War. The war was occasioned by the clash between the King and his supporters who preferred the traditional authority of a monarch, and the Parliamentarians, who demanded more power for the Parliament. Hobbes tried to mediate in this conflict through reflection on the origin and nature of political authority as well as the obligation of self-interested individual members of society. Hobbes' reflections are detailed out in his seminal work, *Leviathan*.⁵

In the *Leviathan*, Hobbes started his analysis with an assessment of those universal natural qualities of man as a special kind of animal. Man, he explained, is necessarily and exclusively egoistic and self-interested. All men, he argued, pursue only what they perceive to be in their own individually considered best interests - they are drawn to that which they desire and are repelled by that to which they are averse. From there, he extended his analysis to a consideration of what it is like for men with distinct natural qualities to live and interact with one another, and then extrapolated the logical consequences of such interaction.⁶ All of these combined to form his idea of the state of nature; a condition where naturally and exclusively self-interested men jostle for limited resources, and where there is no power to moderate their excesses. Given these conditions, Hobbes concludes that the state of nature would be unbearably brutal; a state of perpetual and unavoidable war. In fact, he describes it as the worst possible situation in which men can find themselves. It is the rather unfortunate consequences arising from this form of co-existence that necessitated the construction of a body polity or state, where such inconveniences are expected to be taken care of.

The construction of such body polity or state is done through a social contract. This contract is constituted by two distinguishable contracts. First, they must agree to establish society by collectively and reciprocally renouncing the rights they had against one another in the state of nature.

It is this mutual renouncing of rights that Hobbes refers to as 'covenant'.⁷ However, if a man merely gives up his right of governing himself, on the promise that others would do likewise, others might just fail to

keep their own part of the agreement. The ‘signing’ of a covenant by men is therefore not enough for achieving the desired goal; for such covenant would still depend on its implementation, on the same self-free, equal and passionate being as we have in the state of nature.

There must therefore be a force behind the agreement that makes the pains of breaking it outweigh the pains of keeping it.⁸ This common force is created in a second contract by the entire people, by conferring all their powers upon one man or assembly of men, to whom they surrender all their basic natural rights to govern themselves. In other words, to ensure their complete escape from the state of nature, they must agree to live together under common laws, and create an *enforcement mechanism* for the social contract and the laws that constitute it. Prior to the establishment of the basic social contract, according to which men agree to live together and the contract to embody a sovereign with absolute authority, nothing is immoral or unjust – anything goes! This means that questions regarding justice or injustice had no place in human existence prior to the contract that created the state or society. In the social contract, says Hobbes, lies the foundation and origin of justice; for without the contract, no right can be said to have been transferred and every man still has the right to everything or whatever he so wishes, but once a contract is made, to break it becomes unjust. Injustice then means the non-performance of a covenant or contract.⁹ In other words, it is the performance of one's covenant that gives room for distinguishing between a just and an unjust act. Since the sovereign is invested with the authority and power to mete out punishments for breaches of the contract, which are worse than not being able to act as one pleases, men have good, albeit self-interested, reason to adjust themselves to the artifice of morality in general, and justice in particular, which are the very essence of the contract.

The social contract is seen by Hobbes as the most fundamental source of all that is good and just. Our choice, according to him, is either to maintain justice by abiding by the terms of the contract, or prescind from our obligations regarding the contract and thereby arrive by abstraction, at another layer of atomic individualism which is rooted in the human passions, where questions of justice and injustice make no meaning.

In his *Two Treatises of Government*,¹⁰ John Locke also postulates a ‘state of nature’, which is however, neither chaotic nor anarchical.

In the Lockean 'state of nature', men lived peacefully and own private properties like cattle, sheep and land. Locke maintains that men by nature are not wholly selfish, for they sometimes co-operate and work for the good of others, even though sometimes, they also act egoistically. Occasionally however, men, he admits, transgress by attempting to kill or steal someone's property. When this occurs, the injured party has right to punish the transgressor, because in the state of nature, there is no civil authority or government to punish people for transgressions against laws. Locke further argues that there would have been no reason for men to covenant to leave the state of nature to form society, except that difficulties arise in applying punishment to the transgressors and ensuring justice. Political society therefore came into being when individual men contracted together in the state of nature to give up the executive power to punish those who transgress the laws of nature. People entered into the contract with the sole aim of developing such institutions as necessary for the purpose of punishing transgressors and administering justice in the society.

Jean-Jacques Rousseau's accounts of the moral and political evolution of human beings from a state of nature to modern society are laid out in his essay titled, *Discourse on the Origin and Foundations of Inequality Among Men*.¹¹ According to Rousseau, the State of Nature was a peaceful and quixotic one where people lived solitary, uncomplicated lives. Their few needs were easily satisfied by nature because of the abundance of nature and the small size of the population and so, they had less reason for conflict. As time passed by and as population started increasing, humanity started facing certain changes, resulting in discoveries, public values and the invention of private properties. All these led to envy, pride, greed, competition and contempt.

In his *The Social Contract*,¹² Rousseau attempted to respond to this sorry state of affairs and to remedy the social and moral ills that have been produced by these developments. The fundamental question that bothered Rousseau concerns how we can live together without succumbing to the force and coercion of others. For Rousseau, we can do this by submitting our individual, particular wills to the collective or general will, created through agreement or contract with other free and equal persons. This act, whereby individual persons come together as a people through contract to choose a sovereign is, according to Rousseau, "the real foun-

ation of society”¹³ Fundamental to this version of the social contract is the idea of reciprocated duties: the sovereign is committed to the good of the individuals who constitute it, and each individual is likewise committed to the good of the whole by fulfilling their duties to the sovereign. The individuals' fulfilment of their duties as well as the sovereign's commitment to the good of the individual amounts to justice in this context. From the views expressed above by the modern theorists, the notion of justice is inextricably tied to that of the social contract. In fact, discussions on the question of justice would not have come up, if men didn't enter into contract in the first instance.

Social Contract and the Idea of Justice in the Contemporary Period

The relationship between the social contract and the notion of justice is more forcefully established in John Rawls' version of the social contract theory.¹⁴ Essentially, John Rawls' theory which is contained in his book, *A Theory of Justice*, is a general theory of social justice, which includes not just principles of justice but a very elaborate edifice supporting these principles. Rawls takes the subject of his principles of justice to be what he calls “the basic structure of society”,¹⁵ whose major function is to distribute the benefits and burdens of social cooperation among members of society.¹⁶ Unfortunately, Rawls observes that the basic structure of most societies favours some starting places over others in the division of the benefits of social cooperation, thereby resulting in some form of inequalities. For Rawls, therefore, the primary problem of justice is to fashion out a set of principles, which would not only provide a way of assigning fundamental rights and duties to the ‘major social institutions’ of society, but would also lay down how the basic structure should distribute the benefits and burdens of social cooperation.¹⁷

The question now concerns how such principles of justice that would regulate the basic structure of society would be chosen. This is where Rawls makes use of the social contract theory. Rawls' social contract is that of a situation in which people come together to draw up principles to regulate their society. He calls this situation, the ‘original po-

sition'. Central to Rawls's idea of social contract, which marks him out from other contractarians before him, is the notion of the 'veil of ignorance'. The veil of ignorance is a hypothetical construct used by Rawls to show how persons in the original position are denied knowledge of their particular abilities, talents and social positions they would occupy in the society. This not only puts all the contractors on equal moral standing, it ensures that none of them has any advantageous bargaining power over others. Rawls' central argument here is that if people are ignorant of those things that prejudiced them directly or indirectly in their favour, as the situation in the original position allows, they would not endorse a principle that favours one party at the expense of another, since, once the veil of ignorance is lifted, they might find themselves on the losing end of such a principle.

Rawls proposes two main principles of social justice that should regulate every well-ordered and just society. These principles, according to Rawls, are that:

- (i) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.
- (ii) Social and economic inequalities are to be arranged so that they are both:
 - a. to the greatest benefit of the least advantaged and
 - b. attached to offices and positions open to all under conditions of fair equality of opportunity.¹⁸

The first principle is called the 'liberty principle'.¹⁹ This principle consists of two claims. First is that all members of society are to have the greatest liberty consistent with a similar liberty for others. The second claim of this principle is that this total system of basic liberties is to be as extensive as possible. What Rawls means here is that these liberties are inalienable and are to be enjoyed by everyone in the society, in a manner that will not prevent some others in the society from enjoying the same liberties. The second principle is also of two parts. The first part, which states that social and economic inequalities are to be arranged to the greatest benefit of the least advantaged or worst-off group in society, is known as the 'difference principles'. What this principle demands is that the basic

structure should be arranged in such a way that any inequality, in terms of prospects of obtaining the primary goods, must work to the advantage of those members of society who are worst-off with respect to these primary goods.

The second part of the second principle is known as the ‘principle of fair equality of opportunity’.²⁰ The principle states that people with identical skills, abilities and talents enjoy equal opportunities. In this respect,

If we have two people ‘X’ and ‘Y’ with similar skills and talents and they both desire to attain a position which requires technical training. X comes from a wealthy family and the family of X is willing to sponsor him for his training. But in the case of Y, he comes from a poor background, so the family cannot pay for his training. The principle of fair equality of opportunity would require that the society should finance the training of Y who comes from a poor background, so that he is not deprived of opportunities available to others with similar skills or talents.²¹

A just society for Rawls, therefore, is one in which the basic social institutions generally satisfy and are generally known to satisfy the principles of justice enumerated above.

In his book, *Morals by Agreement*,²² published in 1986, David Gauthier outlined his own account of social contract. Gauthier agreed with other contractarians that society and morality are founded upon an agreement between exclusively self-interested yet rational persons. But whereas theorists like Hobbes and Locke insisted that an external enforcement mechanism in the form of a sovereign was necessary to enforce justice, Gauthier believed that such external mechanism was not necessary, as rationality alone convinces persons not only to agree to cooperate, but to ensure justice, by sticking to the terms of their agreements. Justice for him therefore consists in acting cooperatively and in being consistent with acting cooperatively by sticking to the terms of one’s agreements at all times.

Gauthier appealed to the *allegory of the prisoner's dilemma* to show that self-interested and rational persons can be consistent with acting cooperatively. This narrative involves two persons who have been brought in separately for questioning by the police, for a crime they are both suspected to have committed. Each prisoner is promised a chance of a lesser jail term if he cooperates and gives information on the other prisoner. Gauthier reasoned that in order to serve his own interests as much as possible, each prisoner is better off cooperating with the police by confessing, no matter what the other prisoner does. The important lesson from the *prisoner's dilemma* is that when one is engaged in interaction such that others' actions can affect one's own interests, and vice versa, one does better if one acts cooperatively. Acting cooperatively and being consistent with doing this, is Gauthier's idea of justice.

Our analysis so far tries to draw the nexus between justice and social contract. It tries to establish that the *raison d'être* behind every contractual arrangement is the establishment of the necessary conditions that can engender development. But such conditions can only be created where justice is given its prime place. This is the reason the analysis of the question of justice is inextricably tied to that of the social contract. Although, the question of what constitute justice has remained a significant one and has bothered philosophers right from the time of Plato, we can, from our analysis so far, identify different criteria that represent the various positions by philosophers down the ages, on what constitute justice. These criteria range from that of need, desert, and right, to equality. The criterion of need states that justice is done to people when their needs are met. This position is well expressed in Karl Marx's *The Gotha Programme*,²³ where he enunciated that the distribution of the social goods in the communist state would be according to need. This is captured by his famous and much quoted aphorism: "from each according to his ability and to each according to his needs".²⁴ The criterion of rights states that justice consists in respecting the rights of people in society. Advocates of this view include J.S. Mill, John Locke and Robert Nozick. Whereas J.S. Mill contends, for instance, that every claim of justice is a claim of individual right and that an individual is justly treated when his rights are respected,²⁵ Robert Nozick argues that people have property rights and that it would be morally infeasible and unjust for such properties to be taken away

through any means. The criterion of desert states that justice is done to a person when he is given what he deserves. Finally, the criterion of equality states that justice consists in treating everyone equally.

Although the view has been expressed that each of the criteria of need, right, desert and equality embodies important aspects of justice, yet, none of them sufficiently explain the meaning of justice. All the criteria cannot be taken together, as this would amount to incorporating into the concept of justice, some other claims not relevant to the determination of what is just at some particular point in time. In view of the variety of circumstances to which matters of justice are applied, however, some have insisted that the criterion relevant to the determination of what is just or unjust should be a function, both of the kind of issue being assessed and of the circumstances in which the assessment is taking place.²⁶ This, we must warn, may make the meaning of justice not only contextual and relative but also situational. Our primary interest here, however, is not with these controversies or how they are resolved but with showing how a consideration of any or all of these criteria can help in our determination of issues of justice from time to time.

Social Contract, Justice and Development in Africa

So far in this paper, attempt has been made to establish the link between social contract and the notion of justice. From our examination, we can rightly assert that our every day dealing with others at various layers of existence is underpinned by the notion of a contract, whether explicit or implicit and that such dealings are meant primarily to facilitate some measure of justice and to foster development in human society. The aim of social contract therefore is to create the enabling conditions for realising the goals of development, but such conditions can only be created where justice is given its prime place. That there is an indispensable link between justice and the establishment of the type of environment that can engender development is attested to, by the preamble to the International Labour Organisation's constitution which states that development is only sustainable where there is "universal and lasting peace" but that these can only be established in an environment where justice is given the prime

place.²⁷ In fact, philosophers, right from the time of Plato, have all emphasised the fact that justice is a prerequisite for peace and stability and that peace and stability are indispensable conditions for development. It is true that as individuals, we pursue our different interests at various levels, but by virtue of the fact that we live in societies where we can serve each other's interests by our actions, it becomes pertinent to regulate at all times our relationship with others, guided by some presupposition of a contract and the notion of justice. This, however, is where leaders of states in Africa miss the point and the very reason they fail to deliver the common good and engender development, even with the most effective instrument. From the views of the contractarians examined so far, the existence of government has been justified solely in terms of its ability to secure the common good of all within the state, and most contemporary scholars have argued in favour of democracy as the form of government that can best help secure the common good. This is because, democracy places power in the hands of the people. It holds that all people have something good to offer in the governance of their shared political space and that through their collective efforts and contributions, the common good is better secured, improved and promoted. Although a few people end up playing active roles in the day to day running of a democracy, the faith in democracy as a principle of governance is that:

Sovereignty ultimately lies with the people and is only exercised on their behalf by a few within a **body of rules, predetermined and agreed upon by both parties** - the ruler and the ruled - for the benefit of the polity, its affairs, the common good and well-being of its citizens and future generations.²⁸

This means that democracy, by its very principle, is a form of contract, in fact, a contract of a more flagitious tang, with serious implications for both the present and future generations. Therefore, it can be said that democracy, if it is to function as a valuable means for enhancing development, must be understood as a form of contract, and should not betray this theoretical basis, as is currently the case in many of the states in Africa. The experiments with democracy in many of the states in Africa

believe a ‘breach of contract’ and a gross neglect of the issue of justice, resulting in the very many tensions, conflicts, violence and other vices that pose as hindrances on our paths to development. Africa can only begin to make giant developmental strides when its leaders accept democracy as a form of contract. This would mean that there would be serious implications whenever the terms of the contract (in matters of justice) are not followed to the letter. The idea of a contract has been and will undoubtedly remain with us for the foreseeable future, but so too is the notion of justice. These are essential concepts that will continue to compel us to always keep the terms of our collective contract, by rethinking as Socrates did in *Crito*, the nature of both ourselves, our laws and of our relations with others, as we travail on our democratic journeys. This is the only way we can together create an enabling environment that can engender development in our various societies and in the world at large.

Endnotes

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¹⁹Rawls, *A Theory of Justice*, p.61.

²⁰Dipo Irele, *op. cit.*, p.16.

²¹*Ibid.*, p.17.

²²David Gauthier, *Morals by Agreements*, Oxford: Oxford University Press, 1986.

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