

## **Introduction: The logic of social cooperation for mutual advantage – The democratic contract.<sup>1</sup>**

Dario Castiglione

Can an attractive view of democratic politics and social justice be systematically derived from the hard-headed premise that social cooperation rests on the interaction of individuals who are rationally prudent and motivated by their own (mutual) advantage? On the evidence of Albert Weale's recent book (2013),<sup>2</sup> this is possible, or at least it is an avenue worth exploring. Weale's vision of such a society is perhaps best captured by the epigrammatic sentence that ends his book: 'in such a society, individuals can be for themselves; but they will never be only for themselves' (p. 244). The point of the book is to uncover the 'logic' and the principles that make such a society both possible and stable. The point of our symposium is to see how successful the book is in general, and occasionally in the detail. In this Introduction, I shall first briefly summarise the argument of the book, then look at how it originated and at its main scope and originality, and finally identify several lines of criticism advanced in the Symposium.

### *The book's argument*

It is possible to think of the argument of the book as implying three main strategic *moves*, and a final qualification. The first of such *moves* (Chapters 1, 2 and 4) consists in a justification of social contract both as the representation of the logic of viable societies in the face of social traps, and as a method for reconstructing and giving sense to our moral intuitions about just cooperation. Weale defends a particular theory of social contract, based on mutual advantage

and an 'empirical' – as opposed to *a priori* or 'hypothetical' – reconstruction of its conditions, logic and operations. According to Weale, this implies what he names a 'deliberative' conception of rationality, and a basic condition of equality, which determines the democratic character of the negotiations between the parties. From this, he derives the idea of a democratic social contract, which arguably represents the skeleton of his theory of democratic justice. I shall discuss such a theory at more length in the next two sections.

Because Weale's emphasis on the 'empirical' social contract, his second *move* (Chapters 2 and 3) consists in identifying particular types of society that exhibit the conditions for the democratic social contract, so to draw from them principles of economic justice and political organization. Weale proposes to take regimes of common pool resources as a stylized *model*. He puts great store on the sense in which we should understand 'model' (pp. 59-63). This is not meant as a 'blueprint' or as an 'ideal' to be either imitated or approximated. His use of 'model' is meant in a more structural and functional sense, as either an 'analogue machine,' displaying some of the key functions of the population of societies for which this is a model; or as a logical model formalising the set of axioms that defines a system. The common pool resources regimes studied in particular by Elinor Ostrom and her associates at the Indiana Workshop provide Weale with a rich social experience of small scale societies addressing social cooperation problems, and approximating Weale's conditions for the democratic social contract. From these regimes, Weale draws several institutional principles, but also some of the principles of economic justice. The latter, he identifies with the producers' entitlement to the full fruits of their labour, provided there is equal access to the essential means of production.<sup>3</sup>

Although the common pool resources regimes offer a stylized model, Weale regards the principles to be derived from such a model to need considerable accommodation to be applied to more complex and industrialized societies. This is his third *move*. Chapter 5 identifies the main aspects of the 'great transformation': increasing economic interdependence, changing function of the household, growth of corporations, greater need for the supply of public goods and social governance. Chapter 6 discusses the forms of political decision making that best meets the criteria of democratic justice, which Weale broadly defines as responsiveness to social pluralism and meeting the requirements of deliberative rationality. Chapter 7 tries to adapt the full-fruit principle to the more socialized conditions of market economy, industrialized production, and the transformation of the household. Weale suggests that holding on to the idea of producers' entitlement to the marginal product (as an extension of the full-fruit principle) is still a demand of justice, even though there are considerable technical problems on how to disentangle individual's contribution from those deriving from socialization and interdependency. The latter should be covered through workers' contribution to common production overheads. As for the economies of needs and social reproduction, Weale believes that these should be thought in terms of a life-cycle redistribution (insurance against personal risk), rather than in the sense of redistribution across society.

The concluding chapter qualifies the previous *moves* by addressing the issue of social stability through a discussion of a sense of justice and the need for governance. Weale identifies the sense of justice with the principle of reciprocity<sup>4</sup>; but also suggests that such a sense requires people to attend to others' claim even when they have no power. The internalization of the sense of

justice makes it possible for citizens to understand themselves as cooperative beings, whose pride and self-esteem partly depends on their feeling of contributing to a *common* enterprise for mutual advantage.

*The scope and context for a social contract theory of justice and democracy*

By presenting the core argument of the book as a theory of 'democratic justice,' Weale places his contribution within two overlapping, and yet rather distinct literatures in contemporary political theory. Not many authors have engaged with the crucial nexus between democracy and justice, treating them as part of a unified theory. Ian Shapiro's *Democratic Justice* is one such example, suggesting that these ideals are 'mutually implicating,' since democracy has both a legitimacy conferring and justice promoting role (Shapiro, 1999, pp. 19-21). Jürgen Habermas's *Between Facts and Norms* (1996) is also an attempt, from both a normative, and a more positive perspective, to explore the internal relationship between private and public autonomy, in the form of the modern projects of *self-realization* and *self-determination*. In spite of a few points of agreement, neither of these authors offers a conceptual vocabulary or a way of problematizing the questions of justice and democracy that is close to Weale's. The story is very different in Rawls's case, who is by far the most cited author in the book. There are obvious elective affinities in view of the common tradition of political theory in which they locate themselves. Moreover, as Josh Cohen has remarked, although Rawls's work does not seem to engage extensively with democracy, in the very Preface to *A Theory of Justice* Rawls says that justice as fairness is the 'moral basis' for a 'democratic society,' thus making a democratic regime a 'requirement of justice – and not simply for instrumental reasons.'

(Cohen, 2010, p. 182, emphasis added).<sup>5</sup> In short, the Rawlsian inspired debate on how a liberal theory of justice can be *internally* linked to democratic politics is the appropriate intellectual context for Weale's project.

Yet, there is a more particular connection that may help us clarifying the scope and method of Weale's democratic justice. There is a sense in which Weale's book is the result of an extended conversation with another recent liberal theorist of justice, the late Brian Barry. The connection with Barry is useful for more than one reason. In point of style and mode of arguing, one is inclined to pay Weale the same compliment he paid to Barry, as his work lies within the best tradition of British political thought, combining 'conceptual abstraction and an engagement with concrete problems' (Weale, 1998, p. 9), focussing on the evaluation of general policies and institutions, through an analytical investigation of the political arguments used in their support. Issues of method and substance are also thrown in sharp relief by taking Barry's work as a catalyst for Weale's preoccupations. Barry's influence is readily acknowledged in the Preface of the book (pp. xvi and xxi), and in particular with respect to Weale's own adoption of the 'empirical' method.

However, more than in agreement, Weale's book is written in critical engagement with Barry. Arguably, Weale's distinctive position has emerged from a reflection over the limits of Barry's theories of justice and contractualism. As we shall see in more detail later on, Weale's is a defence of what he presents as a coherent mutual advantage contractarianism against impartialist critiques of it such as Barry's. But, as the engagement with Barry shows, Weale did not always embrace social contract theory wholeheartedly. Two essays (Weale 1998, 2004), both published in volumes dedicated to Barry's work, give an insight in the

making of *Democratic Justice and the Social Contract*. In the earlier one, Weale (1998) engages primarily with Barry's form of hypothetical contractualism, mainly based on the Scanlonian negative formula, that just principles are those that can be justified in ways that no one could reasonably reject (Barry, 1995, pp. 67-72; Scanlon, 1998, pp. 189-97). Although Barry was not entirely wedded to contractualism, nor to its Scanlonian version, (Barry, 1995, p. 70; 1998, pp. 187-88), something that Weale readily recognises; most of Weale's article is meant to show how Barry's uses of the contract argument to articulate a theory of justice for a society of people with different conceptions of the good, 'introduces an unnecessary theoretical epicycle into what is otherwise a coherent account of social justice in particular and political morality in general' (Weale, 1998, p. 12). For Weale, Barry's, or the contractualist aspirations in general are the right ones: to construct a second-order device like the social contract, through which to solve the plurality, complexities, and conflicting nature of the principles and intuitions to which we appeal at the first-order level of our political arguments over institutional and social arrangements. According to Weale, Barry's justice as impartiality, though attractive in many respects, simply displaces substantive disagreement from the first- to the second-order level – in other words, it is not constructivist enough. 'One possible conclusion – Weale writes in that article – is that some theorist should have a go at reconstructing yet another version of contract theory that will overcome these difficulties.' Only to add, perhaps ironically in retrospect, that 'personally I do not see much future in this' (Weale, 1998, p. 34).

A certain amount of scepticism remains in the later article (Weale, 2004), published, interestingly from our present perspective, in a collection dedicated

to Barry on *Justice and Democracy* (Dowding, Goodin, Pateman 2004). Indeed, both the editors and many of the contributors to that collection incline to highlight the tensions, rather than the internal reconciliation between the two ideals. On his part, Weale's contribution is more sanguine on this. His central concern remains the possibility for a theory of social contract to define the terms and principles of social cooperation (i.e. the content of justice) 'in the light of there being plural intuitions' (Weale, 2004, p. 82). In doing so, Weale pursues a number of lines of argument, many of which return in *Democratic Justice and the Social Contract*, but the most distinctive of which is perhaps the dissection of the pros and contras of two forms of agreement, one based on 'rational', the other on 'reasonable' choice (Weale, 2004, p. 88-95). While the former, at least in certain restrictive conditions, seems to provide determined results, but may lack plausibility when put to the test of reflective equilibrium; the latter yields more plausible results, which Weale, however, thinks it is more difficult to sustain by the test of reasonableness alone, since this is either too indeterminate or too thick. In short, 'the problem of persistent pluralism is an embarrassment for any version of contract theory that quite explicitly is intended to provide a *method of ethics*' (Weale, 2004, p. 93, emphasis added).

I think this takes us to the crux of both the scope and the method of Weale's book. As for the method, there is a strong Sidgwickian undertone to Weale's intellectual enterprise: the need, so to speak, to *methodize*, to give reflective and systematic order to our intuitions on how to act and organize our social relations and institutions (cf. p. 12).<sup>6</sup> In the two essays just discussed, this methodical (and constructivist) aspiration seems to be frustrated. The tentative conclusion is that, however attractive is the attempt to arrive at a 'high-order

constructive criteria' (cf. Rawls, 1971, p. 34; Barry 1990, p. xlii) according to which to organize our principles of justice, the best we can do is a judicious balancing of political arguments and moral intuitions. In 1998 such a negative conclusion is more resolutely stated, favouring 'greater pluralism about principles' as a way of reaching more balanced arguments, and even suggesting a retreat to the pre-Rawlsian political philosophy of *Political Argument* (Barry, 1990) as a welcome 'mapping of the first-order arguments that pervade political and public choice' (Weale, 1998, p. 34). By 2004, the tone is more upbeat, and although Weale seems still convinced that the two families of contract theory (the 'rational' and the 'reasonable')<sup>7</sup> offer a 'reductionist programme' for political reflection and deliberation (Weale, 2004, p. 96), at several points Weale seems to suggest that there is something in the social contract argument that may be rescued (Weale, 2004, pp. 92-93).

The issue of method – the social contract as the 'high order constructive criteria' through which to order our intuitions about justice and social cooperation – sets the scope for democratic justice and for the substantive topics explored in the book. But, having identified the agenda for a theory of democratic justice, what did convince Weale to move from pluralism to contract? Arguably, the key ideas that seem to have made the difference in Weale's mind are that of deliberative rationality, of an 'empirical' version of contract theory, and his re-evaluation of contract as mutual advantage. The latter conversion, so we are told, took place on the road to Toronto.<sup>8</sup> It is to such a conversion and to Weale's democratic social contract that we can now turn.

*The democratic social contract*



As already suggested, the theory of the democratic social contract is the *methodical* core of the book. This has two main aims: to offer a coherent social contract theory, meeting both requirements of determinacy and plausibility; to show how the contractual logic applies to both justice and democracy. But, it may be appropriate to start by clarifying the meaning of 'justice' as Weale seems to understand it. Justice is a notoriously impossible term to define. Within the social contract literature in which Weale's argument is located, justice mainly refers to principles of distributive justice, though as part of a more general view of morality. One of the distinctive elements of this political philosophy tradition is the way in which political arguments are so much part of ethical discourse. Discussions of justice are also about personal morality, right and wrong conduct independently of social institutions. But, my impression is that Weale's use of 'justice' is more narrowly focussed on the justice of social institutions, not necessarily extending to morality at large, and thus allowing a certain autonomy of political argument from more general ethical considerations. What Weale takes to be justice seems to me to approach one of Sidgwick's definition of 'politics', as 'the theory of right social relations' (1981, p. 1, ft. 2). In this sense, the connection between justice and democracy appears in a stronger light.

This takes us neatly to the beginning of the book, where Weale sets up the problem as the 'contest' of justice: the kind of controversies and disagreements over questions of property and entitlements. As he notices, such controversies immediately involve 'how individuals relate to one another in a political association and what should be the powers of the political association in which they are members' (pp. 2-3). The 'contest' about distributive justice is at the same time the 'contest' over political authority. In the first chapters of the

book, Weale explores the ways in which the social contract tradition has dealt with these contests. As we have seen, the main problem that he himself identifies is whether the social contract can provide a second- or higher-order criteria for social agreement. Ideally, the strength of social contract arguments lies in three of their features: their ability to offer a procedural basis on which to reach an agreement between the parts, thus trying to bypass substantive disagreements (the *logic* of the contract); the process through which the parties to the contract may be able to *see* that their interests lie in reaching an agreement (the *rationality* of the contract); and the way in which the outcome of the agreement depends on the assent given by the parties (the *legitimacy* of the contract). These are my own, not Weale's distinctions, but I think they can profitably be used to illustrate his conception of the social contract.

### Contractual logic

On the *logic* of the contract, Weale's main argument develops as a criticism of all forms of *contractualism*, while embracing a form of *contractarianism* based on mutual advantage (close to Gauthier, 1986). From a terminological perspective, this distinction has only stabilized recently, even though there is still no complete agreement on what kind of domain or theories the two terms cover.<sup>9</sup> For our purposes, we may consider contractualist theories as those broadly of Kantian inspiration, which ground the social contract on an appeal to the reasonableness of the contracting parties, formulated in either positive ('reasonably agree') or negative terms ('cannot reasonably reject'). From such a perspective, the idea of an hypothetical contract (particularly behind the veil of ignorance) graphically captures the pre-requisite of reasonableness, but the

crucial issue is how to devise an original position in which the agents choose fairly or impartially. As for contractarian theories, these are more directly influenced by Hobbes's classical framing of the contract as a situation in which rationally prudent agents try to achieve an agreement to their mutual advantage.

Weale's main objection to the contractualist approach is that it introduces a moralized conception of either the agents' motives or of their rationality, or both. In brief, this conception of the social contract 'risks circularity' (p. 13), either by building as one of its premises a particular conception of what the agent considers to be just, in terms of treating people with equal consideration/respect/dignity – hence, a moralized conception of the person; or by starting from 'a desire for reasonable agreement' (Scanlon, 1982, p. 115n; Barry, 1995) – hence, a moralized conception of motives. As a consequence, contractualist conceptions fail to be truly constructivist (p. 13),<sup>10</sup> and therefore displace fundamental disagreements from the first-order level to the original position. Conversely, Weale believes that a contractarian position offers a genuinely non-moralized and constructivist logic for social contract. This is so for several reasons. The conception of the person is that of individuals who advance their own personal (though not necessarily selfish) interests, as they conceive them, in a situation in which they are aware of the externalities posed by interacting with others (p. 9). As to the motive of agreement, as Weale says, this arises 'from the need to secure these personal interests, as distinct from the broader public interest, which is why the cooperation over the baseline point of non-agreement has to be advantageous to all' (p. 10). Finally, in the contractarian version, the parties to the agreement do not need to internalize the interests of

others, apart from being aware of the 'threat-advantage' other people have in the pre-contractual situation (p. 11).

On the basis of this analysis, Weale is satisfied that the contractarian logic, as opposed to the contractualist one, offers a more 'realist' description of the pre-contractual conditions, that it recognizes the plurality and permanence of the personal interests that social cooperation needs to accommodate, and that it is genuinely constructivist. But it will be remembered that a major consideration for Weale's earlier scepticism with 'any version' of social contract theory was the indeterminacy of the agreements reached in the original position. This is partly because of the abstractness of the kind of principles that can be arrived at in such a position, and partly because, as Weale suggests, both main versions of the contract theory rely on a purely hypothetical view of the social contract, which determines a-priori the terms of the contract itself. Weale's innovation, partly borrowed from Barry (but also gesturing to Amartya Sen's comparative method, 2009, pp. 96-105), is that he wishes to adopt an 'empirical approach' (pp. 13-14, and 31-40). Such an approach aims to identify social organizations to which the contractarian *logic* applies, so that we can more surely determine the consequences that follow from the terms of the contract. This also allows Weale to suggest that certain democratic societies can be taken as a model for just social contract arrangements, or at least that one is able to apply the abstract logic of the social contract to them.<sup>11</sup> Overall, Weale believes that the logic of his 'empirical' contractarianism is non-moralized, constructivist, and able to produce relatively determined principles for social cooperation in different contexts.

### Contractual rationality

What about the *rationality* of the contract? By it I mean the kind of reasoning that guides the agents in the process of reaching an agreement. On this, contractualist and contractarian views also divide along lines very similar to their conception of the person and of how she relates to others. As Weale suggests, 'contractarian theories are typically associated with utility-maximizing accounts of rationality', while 'contractualist theories are normally thought in deliberative terms' (pp. 101-102) – reasonableness rather than instrumental rationality. Because reasonableness' inbuilt assumption that choices and actions need to be justified in terms acceptable to others (internalizing others' interests and perspectives), this would seem to be incompatible with Weale's contractarian logic. On the other hand, Weale suggests that contractarian views need not to be tied to a utility theory of rationality. (...) some account of deliberation is needed in theorizing prudent choice ... Minimally moralized notions of prudence can still be deliberative. (p. 102)

According to Weale the contractarian view can rest on what he calls 'deliberative rationality,' a kind of middle way between rational utility and reasonableness, or perhaps more appropriately a cautious and prudent form of rationality, which, as he says, is

consistent with agents' concern for their own prudent self-interest. Yet such self-interest also has to be an enlightened self-interest (...). We are seeking to define a deliberative and enlightened prudence' (pp. 102-103).

Thus choice in deliberative rationality is still the result of prudent, instrumental reasoning, yet it needs to be seen as 'arising from deliberation' (p. xiii). But how does this combination work and what is it intended to achieve?

There are two aspects to Weale's deliberative rationality, which are meant to address two separate problems besetting traditional contractarian views of rationality. One is the issue raised, for instance, by Barry against mutual advantage theories of justice, suggesting that they suffer from deep incoherence: 'the essence of justice as mutual advantage in all its forms is that people do not give-up the single-minded pursuit of their ends, be they self-interested or otherwise' (Barry, 1995, p. 37). For Barry, there is no solution to Hobbes's Foole; the idea of mutual advantage is either too fragile or unfeasible as a basis for morality and justice, because based on the self-defeating logic of rational calculation.<sup>12</sup> Weale's deliberative rationality proposes to introduce a dose of 'minimally moralized' prudence in the reasoning of the agents, so to improve their long-sightedness and offset problems of akrasia. This is achieved through what Weale calls 'reflective distance', the ability of the agents to 're-model' the collective action problem that they are facing:

By definition, prudent individuals will play defect in an orthodox prisoner's dilemma. By contrast, prudent and reflective individuals negotiating an empirical social contract will seek to construct a different game in which it is no longer prudent to play defect but instead play cooperatively as the condition for realizing joint gains. (p. 103)

There is another feature of deliberative rationality<sup>13</sup> – this being the capacity to articulate reasons for action, therefore giving oneself 'normative self-direction' (pp. 107-108) – that also contributes to the kind of 'enlightened prudence' Weale

thinks is needed in place of rational utility calculation. This is an important feature not only to stabilize one's behaviour in relation to both 'present desires' and 'present desires for one's own future' (p. 24), but also to give assurance to others about one's own commitments.

The second aspect of deliberative rationality that is intended to offset the shortcomings of the utility maximising view is its 'defeasibility' (108-110). Whereas reflective and self-directing rationality invites towards *prudence*, defeasible rationality asks for *caution*. To put it bluntly, human rationality is not infallible: agents cannot be certain of the outcome of theirs or other's action, nor can they be sure of the best way of pursuing their ends, nor finally can they fully rely on their own rational capacity to draw correct consequences from given premises (p. 28). At times, Weale seems to suggest that what should make us cautious about rationality is its defeasibility in a technical sense, but I think his analysis of the 'fallibility' of human reason (p. 26) is more intricate and multi-faceted. Weale relies on recent specialized literature on non-monotonic logic, which analyses everyday life inferences based on forms of reasoning that are only tentative, relying on most-likely types of explanations (like abductive reasoning), default kinds of logic, and taxonomic generalizations, all of which are 'vulnerable to new information' (p. 108) and therefore subject to belief revision. Classical logic is *monotonic*, in the sense that its logical conclusions cannot be pre-empted by the addition of new premises. The inferences of non-monotonic logic, on the other hand, are *defeasible* in the double sense that they can be overturned (i.e. defeated) by new evidence and that they are formulated according to a tentative, fallibilist logic (i.e. defeasible in principle), and therefore require 'built-in correction mechanisms' (p. 26; cf. pp. 109-110). Defeasibility

applies to both theoretical and practical rationality; however, it has particular causes and consequences for practical reason, which may need special consideration in setting up the social contract. Although a common reason for defeasibility is the open-textured nature of knowledge, which continuously challenges the closed-world-assumption on which we rely for most of our common inferences; practical reasoning must deal with a more specific sense in which the knowledge of intentional human action is open-textured. This is a function of the 'inventive capacity' and creativity that characterises human agents (pp. 25-26, and pp. 106-107), and such capacities need to be factored in when we try to understand human actions and their consequences. The other two constitutive features of deliberative rationality mentioned by Weale – deliberative competence and the ability to frame and understand specificity (pp. 104-107) – have a particular importance in this context, since the open-textured character of knowledge requires close attention to the logic of *appropriateness*, meaning that agreements about general principles or basic arrangements that are reached at the social contract level need to be 'suited to the specific conditions under which the regime has to operate' (p. 110). This logic of specification and appropriateness is what, if I interpret Weale's argument correctly, should inform practical public reason in a deliberative democracy (pp. 118-27). Weale describes the core of public reason as the search for 'agreed middle premises in a practical syllogism' (p. 119), and therefore a way of specifying public goals mainly through procedural means (p. 122).<sup>14</sup>

Besides its defeasibility and open-texture, there is a third reason for being cautious about our rationality. This is linked to the more internal limits of our reasoning capacities, and to the way in which we *make* rational decisions. Weale



treats this aspect mainly in terms of 'bounded' rationality (pp. 24-26), but one could extend such discussion to other forms of non-canonical theories of the relationship between rationality and behaviour, such as Prospect theory (Kahneman, 2011, pp. 288-78). These theories challenge expected utility conceptions of rationality from a number of important perspectives, like the effect of the asymmetric perception of losses and gains; the effect of framing and understanding on our preferences, thus producing value reversal; the importance of heuristics and related choice biases, and the role of ex-ante expectations and ex-post valuations in assessing choices and states of affairs (cf. Elster, 2007, pp. 214-31). To sum up, Weale's deliberative rationality distinguishes itself from traditional contractarian views in so far as it has a stronger capacity for foresight and commitment (it's more *prudent*) and it takes seriously its fallibility (it's more *cautious*). But crucially, Weale seems to suggest that the resources for such an 'enlightened prudence,' with in-built self-correcting mechanisms, can only come from the practice of deliberation, and cannot be sustained by a solipsistic conception of rationality or indeed reasonableness. This makes the cultivation of such rationality depend on the existence of a functioning democratic society with strong institutions, practices of deliberation, and a particular conceptions of public reasoning, thus supporting his argument for *democratic* justice. In consideration of the reflective and fallible characters of rationality, Weale states that 'there is much room for *collective* deliberative rationality' (p. 28, emphasis added).

### Contractual legitimacy

We come now to the question of *legitimacy*. Arguably, the most compelling aspect of social contract theories in the modern imaginary is that they rest on the idea that legitimate social arrangements should be consensual. In other words, they should be positively accepted, whether actually, tacitly, or hypothetically, by those subject to them. The problem of consent, however, has never been an easy one to solve for contract theories. It is common to think that the main criticism to early modern theories of social contract – which were primarily concerned with political obligation rather than justice – was that they were historically implausible. Particularly in the case of David Hume, this is a crude oversimplification, which does not need to concern us here, also because modern social contract theories present agreement as *hypothetical* and therefore escape that sort of criticism. But do they solve the problem of consent? Theories of the contractualist variety tend to present hypothetical consent in such a way that agreement is not so much a voluntary act between different agents, but the separate recognition that this is a demand of reason, in terms of either fairness, impartiality, or moral duty: it is reason and not volition that makes the real difference. Mutual advantage theories, particularly of the ‘empirical’ variety, such as Weale’s proposes to be, have therefore an important advantage here, because they can suggest that voluntary adhesion, whatever form this may take, does some real work in sanctioning agreement. Nonetheless, claiming that people have consented to the contract may not be enough. In order for these theories to meet the standard requirements of legitimacy, they also need to show that the agents have consented *freely* to it, and that the contract they have agreed to does not put them in a situation of utter disadvantage. The problem for mutual advantage theories is how to deal with the differential of threat advantage, since

overwhelming power unbalance can put people in a situation in which they feel they cannot but consent. In such a case, assent provides no legitimacy. Weale is fully aware of this problem. He admits that, even though one can describe social order and institutions as implicit (and occasionally explicit) forms of social contracts, these can embody unjust social relations (pp. 19-20, and 31-32). These social orders may even meet the conditions of political legitimacy and stability, but fail the test of social justice, because they ‘embody unjustifiable patterns of social and economy relations’ (p. 32). This is typically the result of asymmetric power relations at the pre-contractual stage, or, looked at from the post-contractual perspective, of the inability of the disadvantaged members to see ‘the objective possibilities of advance that were latently present’ (p. 32). But mutual advantage theories take seriously the power asymmetries at the pre-agreement stage, and do not reject in principle the ability of the agents to make good their threat advantage – and so does Weale’s theory. In this case, the solution lies in what Weale describes as one of the inspiring ideas of his theory. He takes his cue from John Stuart Mill:

The ancient republics, being grounded in some kind of mutual compact, or at any rate formed by an union of persons of *not very unequal strength*, afforded, in consequence, the first instance of a portion of human relations fenced around, and placed under the dominion of another law *than that of force* (cited at p. 5, emphases added)

Weale embraces Mill’s historical characterization of ancient republics as being founded on the power of law rather than force, and takes this to be the key feature of his contractarian view of democratic justice. He suggests that the

fundamental distinction between just and unjust social contracts lies in the *condition* of rough equality of power (and therefore of rough threat advantage) at the pre-contractual stage. It is such a condition that makes it possible for the agents to agree *freely* to the terms of the contract, and therefore for consent to have a true legitimating role: 'the common rules that protect the public interests of a society reflect the approximate equality of power of its members' (p. 23). From the (empirical) condition of rough equality – where threat advantage may be asymmetrical but not overwhelmingly so – it follows that democratic justice supports a conception of 'equality of status or standing within the political system, rather than an entitlement to any particular share ... to available goods and services' (p. 23). The latter can indeed be sensitive to the asymmetries of threat advantage, as long as inequality over access and command of resources do not become too 'extreme'; since extreme disparities would undercut the motive for the relatively disadvantaged to agree to the contract. Differences in distribution are therefore subject to a relative limit, but the precise scope of such a limit is not part of the contract (p. 24).

Besides making the social contract just, the condition of rough equality establishes its democratic credentials. Here, or so it seems to me, Weale appeals to two different senses of democratic equality. One is the equality of political status, that is: the equality of citizens in a *constituted* democratic society; and Weale suggests that such equality 'is the power to help shape the social contract *through* the political relations of the institutions of governance in a society' (p. 24, emphasis added). It follows that political democracy is a co-requisite for justice. The other sense of democratic equality derives from the fact that a condition of rough equality is *constitutive* of a society based on a just social

contract: in this sense, democratic is meant in the broad social sense of rough equality of power, and not in the more specific political sense. This may also explain the fact that Weale takes common pool resources regimes as a model for the democratic contract (see below).

The condition of rough equality, finally, helps also to define the fundamental conception of society that underwrites Weale's contractarian democratic justice. Such a society is both competitive and cooperative; its principles and operations need to manage the tension between the individuals' self-defined permanent interests and the common interest, defined as the 'shared interest of individuals taken severally' (p. 28): a middle way between individualism and collectivism (pp. 28- 30).

### *Friendly Fire*

However abridged, I hope that my account of the book and of Weale's theory of the democratic social contract conveys the breath of issues covered by the book, and the theoretical depth and complexity of some of its arguments. The book is worth reading not only for the theory it proposes, but also for the clear and illuminatingly synoptic way in which Weale discusses many issues, some of which I had no space to cover. But, ultimately, Weale's contribution will be judged by his own standards: does his version of the social contract theory overcome the limits he himself had previously recognized in such theories?

The present symposium puts Weale's theory to the test. The contributors to the symposium subject the book to a volley of friendly fire. Most of the criticisms are offered from an amicable perspective – sympathetic to either the overall approach or to the underlying intentions of the book, or to some of its

substantive principles and arguments. However friendly, there is some fire from the contributors (with friends like these ...). One issue that comes under criticism is whether Weale's theory succeeds in its constructivist purposes. In different ways, Matt Matravers, Jeffrey Howard, and Chiara Cordelli question it. Although, each of them tend to push Weale in different directions, all of them hone in on the role that equality plays as either a moral or an empirical condition for his contractual theory. A similar point with relation to the role of equality is raised by Ian O'Flynn, who discusses it in relation to Weale's understanding of deliberation, and whether Weale may need a stronger conception of it, for engendering and stabilising a sense of justice. Finally, Christopher Bertram engages Weale on his principles of economic justice, first on the ground that the common pool resources regimes, is too arbitrary and idiosyncratic as a model on which to base his full-fruits principle; and secondly because there are too many logical and practical difficulties in matching reward to marginal utility in the 'great society.' These are some of the critical points (amid genuine praise) raised by the contributors to this symposium. At the end, Weale offers his considerate reply. The readers will have to make their own mind on the points of contention. But before concluding this introduction, I wish to offer some small ammunition of my own for a critical assessment of Weale's project. I shall limit myself to a point of method and one of substance.

On the issue of method. A distinctive point of Weale's position is his use of the 'empirical' approach. There are several reasons for this, one of which is that, by identifying the logic of the social contract with that of actual societies, it may result easier to link the theory with 'an understanding of democratic practice' (p. 14). But the main reason is to overcome the indeterminacy and circularity that

beset *a priori* approaches to social justice, relying on thought experiments whose pre-conditions are already determined by some background assumption (p. 32). By identifying empirical cases, on the basis of the condition of similar bargaining advantages, one is able to specify, albeit in a stylized form, the characteristic of a just social contract: its main logic. In Barry's version of the 'empirical' method (1998, pp. 99-111; and 195-213), which Weale takes as inspiration, the recourse to actual social arrangements functions as a control device to check both the content of what Barry calls the 'conditions of impartiality' and to ascertain how they can be obtained and sustained. But in Weale's version, the empirical cases stand on their own. In this respect, it is probably more appropriate to assume that Weale's 'empirical' approach is closer to what Amartya Sen has called the 'comparative' approach (2009, pp. 87-113), also mentioned by Weale as having similarities with his own (pp. 33-34). However, if one takes Sen's 'comparative' approach seriously, a number of differences emerge. First, Sen suggests that our judgements in terms of social justice can only be comparative, while the 'transcendental' – i.e. *a priori* – is neither sufficient nor necessary (Sen, 2009, pp. 96-105). Adopting a 'comparative' approach raises questions on Weale's attempt to identify a contractarian logic through the use of a 'model' drawn from empirical cases. The 'model' risks being like a device of representation; while Sen's 'comparative' approach requires that we try to make comparisons between two or more of our empirical cases (and their logic) in order to arrive at our judgements about relative justice or injustice. The second difference is that, whereas Weale's 'empirical' approach is meant to give more specificity to the contractual principles; Sen's 'comparative' method suggests that 'incompleteness' is an inevitable character of our judgements of social justice: 'A

systematic theory of comparative justice does not need, nor does it necessarily yield, an answer to the question “what is a just society?” (Sen, 2009, p. 105). Finally, Sen suggests that there is an important way in which the ‘comparative’ method is linked to impartiality, though he tends to conceive this more as a combination of what he calls ‘closed’ impartiality (‘the man within the breast’) and ‘open’ impartiality (the ‘spectator at a distance’) (Sen, 2009, pp. 124-52). This would seem a socialized, rather than moralized conception of impartiality, which may have strong affinities with Weale’s own conception of deliberative rationality, but may seriously undermine his mutual advantage conception of the social contract (cf. Sen, 2009, pp. 194-207). In all these respects, a ‘comparative’ approach pushes back from contract to the pluralism of our intuitions.

My final point concerns the philosophical anthropology of the social contract argument. I mentioned at the start, that the spirit of the book is best captured by its last sentence, where it is suggested that ‘individuals can be for themselves; but they will never be only for themselves’ (p. 244). The second part of the sentence sounds perhaps odd for a contractarian theory of mutual advantage, where much of the work is done by the prudent rationality of agents whose main incentive for social cooperation is *their own* advantage. So, in what sense are these individuals not only for themselves? It could be argued that this should be seen as the end-result of an internalization process, which Weale describes in the last chapter on the sense of justice. But there are several other moments in Weale’s analysis where he suggests that individuals may *never* be for themselves: the equality condition as a pre-requisite for a just social contract; the suggestion that a contract of mutual advantage implies that agents need to be



aware of their shared interests; or the collective nature of deliberative rationality.

The same point can be put in another way. It may be remembered that for Weale reflective distance allows agents to remodel their social situation in a way to provide different incentives for collective action. In the game-theoretic terms used by Weale, there is a change in the game pay-offs; but, as he notices, this is not a 'move within the game', rather this is playing a 'different game' (p. 103). In *Justice as Impartiality*, Barry makes a similar suggestion, claiming that mutual advantage conceptions are unstable because they have the structure of a prisoner's dilemma, while the stability of justice as impartiality derives from it having an assurance game structure (Barry, 1995, p. 51). Reflecting on the 'difficulties of *acting together*' in the circumstances of politics, Jeremy Waldron suggests that these are captured neither by prisoner's dilemma nor by coordination games, but by 'partial conflict coordination problems' like the battle of the sexes (Waldron, 1999, pp. 103-104). Weale has the same game in mind, when he suggests that agents remodel their decisions in function of their realization that the game they *should* play is one where 'shared action is preferred by each party to separate action' (p. 103). This sounds more like Rousseau than Hobbes.

It seems to me that in order to understand the fragility, but also the resilience of social cooperation, we need to dig deeper in both the idea of mutuality and trust. As Charles Taylor has argued, 'mutual respect and mutual service of the individuals who make up society' (2004, p.12 and passim pp. 3-22) are at the basis of the 'moral order' that in the modern imaginary has supplanted that of the hierarchical complementarity of traditional societies. In this respect,

modern mutuality is egalitarian and mainly directed towards our ordinary goals in life: security and prosperity. But it comes in different shades. We would have a distorted view if we simply read it in individualistic terms, while the new individualism has 'its inevitable flip side a new understanding of sociality, the society of mutual benefit, whose functional differentiation are ultimately contingent and whose members are fundamentally equal' (Taylor, 2004, p. 18). For Taylor too, the problem is to move from Hobbes's prisoner dilemma to the more nuanced social psychology of Tocqueville. An understanding of the working of trust (cf. Hollis, 1998), which both Locke and Hegel – each in his own way – thought to be the 'bond' of society, is no less important for appreciating how we can be for ourselves, but never only for ourselves: how it is, in Weale's view, that 'a strong individualism also requires collective provisions for common interests' (p. 30). Trust and sociality within reason. In this sense, a contract of *mutual* advantage may require some conception of commonality from the start.

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<sup>2</sup> Parenthetical references to page numbers, where there is no other indication, are to this book.

<sup>3</sup> For reasons of space, I cannot deal with this important element of Weale's book in this introduction. Of the contributions to this debate, Chris Bertram's is the one that engages with it more closely, and his and Weale's reply may further clarify the issues involved for the reader of this symposium. But, in brief, Weale's principle of economic justice aims to avoid both an individualist and pre-contractual (Lockean, or Nozikian) right to appropriate the natural world; and a collectivist, post-contractual (in Weale's view Rawlsian) understanding of natural talents and resources as a common asset. For Weale, both property rights and collective control derive from the democratic contract. This is possible by starting from a situation where everyone enjoys Hohfeldian liberty-rights. The logic of mutual advantage, which includes the idea of 'equal threat-advantage' lead to the abridgement of the Hohfeldian liberties for contractually agreed claim-rights, as long as people can maintain the full-fruits entitlement for the product of their labour, once taking account of externalities and the social aspects of production (pp. 65-78). Why to start from the Hohfeldian liberty-rights is, however, a mute point in the theory.

<sup>4</sup> Weale understands reciprocity not as that of a bilateral exchange, but as a more generalized reciprocity, which is conditional to 'enough others' being willing to act cooperatively (p. 235). Weale is indebted to Rawls in his treatment of the sense of justice, and there is some affinity between his discussion of reciprocity, as the core of a democratic sense of justice, and Rawls's description of the motivation of people in the original position, particularly, as Weale himself suggests, in Rawls's early writings about justice as fairness (see, p. 231 and pp. 275-276, ft. 14 and ft. 16).

<sup>5</sup> Rawls discusses constitutional democracy in *A Theory* (1971) in the chapter on 'Equal liberty', particularly at pp. 195-201, and (in relation to the principle of 'participation') at pp. 221-234. *Political Liberalism* (2005) further expands on some these issues.

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<sup>6</sup> Sidgwick's work is explicitly referred to in both Weale (1998) and (2004), though only incidentally in (2013). Sidgwick's method is also an important, and recognized, influence in Rawls (1971).

<sup>7</sup> This distinction will be briefly discussed below, as that between 'contractarian' and 'contractualist' theories, respectively.

<sup>8</sup> Cf. p. xxi, where Weale says that his contractarian turning point came at a conference in Toronto, at York University, on the work of David Gauthier.

<sup>9</sup> Cf. Ashford and Mulgan (2012) and Cudd (2012).

<sup>10</sup> Cf. also Weale, 1998; Hardin, 1998, pp. 148-52; Matravers, 1998, and 2000, p. 100.

<sup>11</sup> Notice, however, that Weale's theory is still operating at the 'ideal theory' level, though his empirical approach is more sensitive to reflective equilibrium.

<sup>12</sup> Barry (1995, pp. 35-37) thinks that a system of moral sanctions based on rational calculation of mutual advantage is 'unfeasible' because, contrary to a system of legal sanctions, cannot rely on enforcement mechanisms to overcome collective action problems; and it is intrinsically 'fragile' because moral sanctions need an appropriate 'internal response' to operate as such (i.e. they need a sense of morality). On a related point, see my conclusions.

<sup>13</sup> Weale lists four in all (pp. 103-108). Two others are mentioned below, where I discuss the second aspect of deliberative rationality.

<sup>14</sup> This is a narrower definition of public reason than Rawls's or Habermas's.