



# The European Legacy

## Toward New Paradigms

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## Serge Kolm on Social Justice and the Social Contract: A Contextual Analysis and a Critique

~ LAURENT DOBUZINSKIS ~

“Social” and economic changes associated with the emergence of the “new Europe” in the wake of the Maastricht Treaty have prompted social theorists, politicians and media pundits to call for the drafting of a “new social contract.” Similar aspirations are also expressed in North America. This is not surprising. At the close of the twentieth century, few things are less in doubt than the rise of individualism and the ideological triumph of liberalism. This still relatively inchoate consensus has been shaped at a time when the postwar consensus legitimizing the Keynesian welfare state is breaking down. State interventionism no longer has any intellectual or political legitimacy in the Western world. Economic liberalism has become the new orthodoxy. The new consensus is far stronger on economic issues than on social issues, however, especially in continental Europe. The crisis of the welfare state does not translate into a rejection of its egalitarian goals, as evidenced by the recent electoral successes of social democratic parties in many countries. The challenge for these parties is to design in social policies that would be more efficient from an economic standpoint, less dependent on implementation by large bureaucracies and more respectful of individual freedoms, but would still protect citizens against the worst social consequences of free markets and accelerated technological change.

The French economist and moral philosopher Serge-Cristophe Kolm offers insightful answers to such questions. Although Kolm is well known in France and by economists worldwide,<sup>1</sup> his work has not yet attracted the attention it deserves in disciplines that overlap with political economy and normative economics, e.g. political science or philosophy. My hope is that this paper will go some way toward rectifying this situation.

In many respects Kolm is an orthodox economist and, philosophically speaking, a liberal. As his *Modern Theories of Justice* clearly demonstrates, Kolm’s conceptual universe shares much ground with the works of leading Anglo-American economists and analytic philosophers. Yet he sometimes diverges from these perspectives. This is in part a reflection of his original, somewhat idiosyncratic, attempt at bridging the gap between Western and Buddhist epistemology and psychology about which I do not intend to comment here.<sup>2</sup> But more often than not, these divergences are best understood as echoes of, or responses to, heterodox currents that continue to play a notable, albeit less and less central, role in the French social sciences. Thus Kolm’s work is pertinent in at least two ways: as a valuable contribution to a debate on justice and the future of the welfare state; and as a focal point for exploring the contrasts between



research traditions in the French-speaking and English-speaking worlds. At the same time, Kolm's work opens up avenues for reconciling these differences.

The first section discusses the renewed interest for the notion of social contract in Western democracies, and singles out issues about which Kolm has much to contribute. The second section explores his views in greater detail. The third section briefly situates Kolm's work within the fledgling new French school of neoclassical normative economics and analytical philosophy whose (re-)emergence deserves a mention, not only because of its intrinsic significance, but also because it creates opportunities for constructive criticisms of Kolm's ideas. The fourth section then examines the parallels and differences between such contributions and more heterodox currents that are firmly entrenched in the French academic and political traditions and with which Kolm has some affinity.

### EVERYONE IS TALKING ABOUT A NEW SOCIAL CONTRACT

"Social contract" is a strongly evocative phrase. For more than two centuries, it has stood as a symbol of a political order founded on agreement among rational individuals who are equal participants in the political process. In recent decades, there has been a resurgent interest in this approach from political theorists, philosophers and economists. But today, when economic rationality and minimalist views about the role of government challenge the ideology that sustained the Keynesian welfare state, it is the social connotation of the term that has gained preeminence. As the social policies founded on the postwar consensus run against the fiscal limits of the state, there is hope that a new social contract could define the rules of a new political game that would achieve social justice through more efficient, more decentralized, and less state-centered means. In Europe, the triggering event for this rethinking has been the move toward more federal structures, the latest manifestation of which is the monetary union. Europe is obviously a political system in the making but throughout the world existing institutions are in the process of being reinvented in the face of momentous economic and technological changes. For many, the time for a "new social contract" has come, and, at least since the EU adopted a "Social Charter" in 1989, contractarian rhetoric has flourished.<sup>3</sup>

"Contract is a word of thousands meanings"<sup>4</sup> notes Ian Macneil. Similarly, David Boucher and Paul Kelly write that "the idea of the social contract when examined carefully is seen to have very few implications, and is used for all sorts of reasons, and generates quite contrary conclusions."<sup>5</sup> Vague talk about a new social contract to deal with the social disruptions caused by globalization often takes place in a theoretical vacuum. This situation cannot last for very long. The conceptual tools needed to draft a new social contract which are available today are ill suited for the task of articulating the communitarian values inherent in many calls for a new social contract heard in Europe today. Advocates of a new social contract may have Rousseau in mind but the very same factors that account for the crisis of the welfare state will compel them to make a detour through Locke. Along the way, they may discover Kolm!

As Brian Barry suggests,<sup>6</sup> social contract theories can be located on a continuum that extends between the two polar opposites of impartiality and mutual advantage. Rousseau and Kant promoted the idea that the ideal contract would be impartial. Many continental Europeans critics of the corrosive effects that globalization and other trends

have on social cohesion long for a return to the impartial commands of Rousseau's general will. For them, the just society is one in which obligations that transcend individual interests, such as the French's belief in "solidarity," dictate certain kinds of policy commitments.<sup>7</sup> However, the complexity of contemporary pluralistic societies where "people participate in a web of overlapping circles"<sup>8</sup> stands in the way of that goal. Locke, on the other hand, argued that justice is best understood as mutual advantage. Kolm, like John Rawls, occupy a somewhat intermediary position between impartiality and mutual advantage. For Rawls (and Kolm), *reciprocity* is the key notion; rational agents are committed to promoting the common good, provided that others are too. This might place them in situations where they would have to act against their interest, but only if others are clearly prepared to do the same. Reciprocity is also central to Kolm's thinking but what he means by that is closer to mutual exchange.

Rawls' reflections on justice are crucial since one can date the contemporary renewal of interest in philosophical circles for the contractarian approach from the publication of his *A Theory of Justice* (1971). Today, one cannot theorize on the social contract without at least indicating whether one intends to confirm, modify, or rebut his two fundamental principles, namely that a) every citizen has an equal right to certain basic liberties; and b) inequalities in the distribution of wealth and income are permissible only if they are attached to offices and positions open to all under conditions of equality of opportunity, and arranged so that they are to the benefit of the least advantaged.<sup>9</sup> Ever since the publication of that seminal work, a number of other major contributions to political philosophy have been written from a contractarian perspective, including works by David Gauthier, James Buchanan, Ken Binmore, and Brian Skyrms,<sup>10</sup> not to mention Rawls' own revisions of his original theory. The Anglo-American theorists pay little attention to the Rousseauian tradition, although some of them (e.g. Binmore, and Rawls) draw heavily from Kant. For continental European philosophers, on the other hand, the paradigm of the social contract has had far less appeal. Recently, Jürgen Habermas has reworked his theory of communicative action in ways that strongly evoke the liberal contractarian tradition.<sup>11</sup>

The fact that liberal approaches to political economy and moral philosophy have already occupied much of the space within which a debate on the social contract can take place in Europe today is symptomatic of the conditions under which the idea of the social contract is being revisited. While there is no reason to believe that *laissez-faire* will necessarily remain the order of the day, it is clear that egalitarian goals must now be pursued through institutions that differ significantly from those of the Keynesian welfare state in being less bureaucratic and more reliant on the voluntary or not-for-profit sector. Individualism and a commitment to individual freedom are values that define the new ideological climate. (In a subsequent section, I allude to the views of French social theorists who sound a somewhat discordant note in that respect.) This is why Kolm's complex but perceptive reflections on freedom, equity, and efficiency, which bring within one overall framework the core concepts of classical liberalism and more radically egalitarian conceptions of distributive justice, together with a critique of narrow conceptions of self-interest, is so obviously relevant to the present situation in Europe.

## KOLM'S "LIBERAL SOCIAL CONTRACT"

Kolm shares with many thinkers, from Aristotle to Michael Walzer, the view that justice does not always mean the same thing under all circumstances.<sup>12</sup> Different circumstances call for different norms, and different type of social contracts account for different aspects of social and economic justice. Moreover, social contracts operate within the broader context of a public philosophy that gives meaning to such arrangements but is not itself contractually negotiated. That public philosophy is liberalism, but liberalism is not monolithic. Kolm is critical of what he calls "total contracts," i.e. schemes that purport to derive all the fundamental values and institutions, including the primacy of freedom itself, from the original agreement. Both Rawls and Gauthier, for example, are "total contractarians" in Kolm's terms.<sup>13</sup> Total contracts, like all supposedly self-contained systems, run into difficulties. To begin with, the expectation that the original contracting parties will decide in favor of the structure of rights and freedoms that modern liberals consider indispensable—Kolm calls these "act-freedoms" (see below)—is not guaranteed by the hypothetical deliberations from which the contract is supposed to emerge. Contemporary total contractarians easily forget that there is no logical reason why a total contract that does not guarantee liberal rights could not be formulated; after all, this is precisely what happened in the case of Hobbes or Rousseau.

To continue with this account of the pitfalls common to several contemporary contractarians which Kolm manages to avoid, he is critical also of subterfuges such as Rawls' "Original Position." In this new version of the mythical state of nature, Rawls supposes that placed behind a very thick "veil of ignorance," the contracting parties will be able to act rationally and impartially since they are unaware of the factors that could induce them to act in a biased manner toward their fellow citizens. Thus they are ignorant of their place in society, social status, intelligence, and so on; they also know nothing about the particular circumstances of their own society. In addition, they "have no information as to which generation they belong."<sup>14</sup> Kolm has written extensively about the risks associated with this hypothesis.<sup>15</sup> His main point is that the only value that matters are the rights and welfare of *actual* individuals; but, precisely because they are ignorant of so many relevant facts, the contracting parties behind the veil of ignorance could make choices that would be harmful to actual individuals. They could decide to sacrifice the interests of some hypothetical individuals if many more hypothetical individuals would benefit from it—the very reason why Rawls condemns utilitarianism in concrete circumstances. But what happens when the veil is lifted? Moreover, Jean-Pierre Dupuy, another contemporary French commentator on Rawls—indeed, one who has played a key role in introducing Anglo-American philosophical ideas to the educated public in France—has singled out a type of situation under which Rawls' first principle would not protect individuals against the risk of a utilitarian sacrifice. It is modeled on the famous "Sophie's choice" from William Styron's novel. Whenever the options are to sacrifice either *all* individuals (more than one) or just one, the way to maximize Rawls' "primary goods" is to sacrifice that single individual. Dupuy suggests that all non-trivial sacrificial situations are of that type.<sup>16</sup>

In criticizing the comprehensiveness and artificiality of influential contract theories, Kolm is in good company. From Hume to Ken Binmore, there is a long line of

skeptical liberals who have insisted, as Kolm does, that the social contract must be thought of as an implicit arrangement between actual individuals who revise it as well from time to time. Rawls himself has modified his stance. He now argues that his conception of justice is “political” and not “metaphysical”;<sup>17</sup> as it stands now, it no longer constitutes a theory of justice in the abstract, but of the best practices of modern liberal democracies, and of the US in particular. That puts Rawls on the proverbial slippery slope toward value relativism, something that Kolm manages to avoid. Kolm does not take issue with the argument that universalism is untenable. As I explain further below, he defends the idea that with respect to *a few crucial dimensions*, the denial of universal values is even more untenable.

Finally, Kolm criticizes Rawls and other contractarians (e.g. Gauthier) for their lack of attention to the problem of implementation. Strictly self-interested individuals would lack the motivation to commit themselves to the moral requirements inherent in the social contract.

It is a sound point of departure to assume that the social contract is only a partial element in the overall structure of a liberal society and, furthermore, that it is a real, albeit implicit, arrangement rather than an ideal one. But then what are the overall characteristics of a well-ordered liberal society for Kolm? Here the similarities with Rawls are more striking than the methodological differences but if Kolm thinks that Rawls was on the right track, he also believes that Rawls made a few egregious errors on the way.<sup>18</sup> Freedom comes first, but not the freedom to maximize freedom under all circumstances. The social contract is one such constraint; but there are others, such as those that are necessary to meet the basic needs of all individuals. These points demand further clarification.

The central theme of Kolm’s analysis of justice is that priority ought to be given to freedom but in such a way that equity is also affirmed.<sup>19</sup> Kolm considers that it is inherent in the very nature of human beings that they should have the freedom to decide for themselves what they want to do, and to act accordingly. That is, no one should be placed in a position where one is unwillingly subjected to the will of another. Because all human beings are endowed with reason and a will to act upon what reason suggests, all individuals are equally entitled to the basic rights enshrined in classical declarations such as the French *Déclaration des droits de l’homme et du citoyen* of 1789. (Actually, only the first sixteen articles since the seventeenth, and last, article about the right of property is not considered by Kolm as basic as the other ones, albeit it is indeed central to the kind of liberal order that Kolm favors but, as I explain below, it is not central to all the forms of social and economic justice that he analyzes.) Although Kolm constantly stresses the primacy of these basic rights, he does not neglect the fact that “formal” liberties do not feed starving people. Thus he posits that the basic needs of all individuals must also be met. (Incidentally, both Milton Friedman and F. A. Hayek have conceded that point; but for them, meeting basic material needs is a pragmatic concession whereas for Kolm it is imperative.)

These basic rights and basic needs are universally valid. Kolm does not deny that the *Déclaration* is the outcome of a specific historical context, but he maintains that even if definitions of fundamental rights vary somewhat, they all point to a universal human nature. As a student of Buddhism, he thinks that it is a mistake to pretend that notions

such as individual freedom, responsibility and the rational choice of the best means of achieving human welfare are exclusively eurocentric and modern. But beyond the level of these basic rights and needs, many variations are possible. To understand how Kolm analyzes these variations, however, it is necessary to briefly go over his terminology.

As Kolm explains, “[a]n action can be seen as a set of acts using means for an end. The acts, the aim and the relation from the former to the latter constitute the process.”<sup>20</sup> Different approaches to liberalism, broadly defined, emphasize different aspects of this process. They value different sorts of freedom. Thus “act-freedom” consists in the relative absence of constraints on the choice of ways of acting; “aim-freedom” consists in the relative absence of constraints on aims; “means-freedom” consists in the relative absence of constraints on the means of achieving one’s aims. “Process-freedom” combines act-freedom and aim-freedom; it is the traditional liberal touchstone. Means-freedom, on the other hand, is definitely a more socialistic value.

In different societies, or in the same society over time, political priorities may produce different combinations of these values. To analyze how these differences influence the allocation of resources, Kolm introduces two further distinctions. He distinguishes between two sorts of capacities to deal with resources: productive and consumptive capacities. Then he identifies two ways of distributing them. When capacities are treated as being “natural,” i.e. inherent in the person who exercises them, individuals are free to use their capacities (e.g. their talents) as they see fit. When, on the contrary, it is thought that capacities are more the result of nurturing and of cultural inheritance than of heredity or character, they must be shared equally. This should logically lead to a typology defined in terms of a two-by-two matrix (productive/consumptive capacities on one side, natural/equalized on the other) yielding four possible cases; but Kolm rules out one of these cases as being very implausible. Social arrangements determined by the “natural” allocation of productive capacities and the equalization of consumptive capacities would indeed be rather odd, resembling in a sense the situation that prevailed during the last decades of the former Soviet Union where some people had acquired a significant buying power ... but there was nothing to buy! The three remaining cases are more interesting:

- Equal and full “process-freedom”: the classical liberal (e.g. Locke) or modern libertarian ideal; in this scenario, individuals are free to use both their productive capacities and their consumptive capacities as they like.
- Equal consumption of, or access to, resources (as a result of the equalization/socialization of productive capacities) but “natural” ownership of the capacity to decide for oneself what specific goods or services one wishes to acquire. In a simplified case, this means equal income for all but the freedom to purchase whatever is available on an open market.
- Equal satisfaction of needs (or equal “means-freedom” for all): the egalitarian ideal. Both the productive and consumptive capacities are equalized/socialized.

Kolm is quick to add that each one of these “polar cases” generates its own kind of unjustifiable Pareto-inefficiencies. In other words, for each one of these pure-type solutions, there exists a situation that would be unanimously preferred to it. Consider, for instance, the libertarian scenario. Its weakness is that it does not take market failures into account. While in most situations people may prefer market solutions, they may

also want certain goods or services that can only be provided through collective action requiring public intervention (e.g. the eradication of contagious diseases). But, even though there may exist unanimity on such goals, they cannot be achieved by guaranteeing equal and full process-freedom. Thus everyone is worse off. The way out of this dilemma is what Kolm calls the “liberal social contract” which binds all individuals in such a way that the means of collective action (e.g. taxes) are secured. The social contract can be more or less extensive, and more or less constraining; but, since it is not unchangeable, it can be adapted to new circumstances through the normal political process. An extensive contract would include some form of implicit insurance against certain anticipated risks, e.g. unemployment; but Kolm’s liberal social contract rules out what he calls “fundamental insurance,” of which the limiting case is the Rawlsian idea that the original contractors could decide to protect themselves against the possibility that they may find out they lack some talents necessary to succeed, and that they would receive compensation from those who have such talents. The main reason for rejecting this idea is that it contradicts the notion of responsibility in which Kolm firmly believes: one can only be responsible for things to which one consents. The obligation to compensate others for talents one has acquired at birth is obviously not freely consented to.

The second polar case, in which productive capacities are equalized (but not consumptive capacities), runs against even greater difficulties. Equality is far from being an unequivocal concept. Rawls’ advocacy of equal access to multidimensional and heterogeneous “primary goods,” for instance, leaves wide open the question of what exactly must be equalized. And even if one focuses only on equality of income, the disincentives that equal incomes create again lead to inefficiency. (The pie to be divided equally has shrunk.) Again, everyone ends up being worse off than they might be under a more pragmatic second-best arrangement. Kolm proposes two versions of it: a multidimensional maximin (“efficient super-equity”) which takes into account the fact that, as the level of affluence rises, and thus as preferences for leisure become more determining, equity does not require an equal distribution of incomes; a more practical version of this scheme would simply require “fixed duration income equity,” i.e. a rule whereby the income generated during a given period of time is equalized but everything produced beyond that point is not which, in practice, would mean taxing individuals “by the excesses of their wage over average wage for this reference duration, or similarly [subsidizing them] if their wage is below average.”<sup>21</sup>

Obviously, the third polar case would be the most difficult to achieve in practice. To equalize welfare or happiness by equalizing what Kolm calls interpersonally comparable “fundamental preferences”<sup>22</sup> in such a way that “no individual [would prefer] any other’s situation ... to her own,”<sup>23</sup> i.e. a state of absolute freedom from envy, would be completely utopian. Kolm’s solution is what he calls “practical justice,” i.e. the satisfaction of the needs of the least satisfied, and then, if possible, of the next-least satisfied, and so on. The relevant maxim here would be: “first take care of the most miserable.” Social policy can at least eliminate the cause of envy that would threaten social peace and create obstacles to the practice of democracy.

Kolm does not address that issue, but it seems reasonable to suggest that the degree of political mobilization necessary to bring about these results increases as one moves from the libertarian to the egalitarian pole.<sup>24</sup> The bonds of citizenship that would sustain



a generous welfare state predicated on the achievement of Kolm's second polar case and its second-best solutions do not yet exist at the European level.<sup>25</sup> (The help that the most disadvantaged regions in Europe receive, however, already constitutes a very rough approximation of his "practical justice" even if that help does not directly benefit actual individuals.) A sort of European citizenship may yet emerge, but it would seem prudent to start along that path by drafting a minimalist social contract compatible with the maximum degree of economic liberalism and to build upon that basis through incremental changes. People whose sense of intercultural, pan-European solidarity is still weak are probably not ready for more. Health and environmental goals would be an obvious starting point. Beyond that, some form of pan-European educational initiative, as already exists, would be also desirable. In a sense, all of Kolm's efficient second-best solutions constitute different forms of social contracts; thus his "liberal social contract" is indeed a social contract of a special kind that may not satisfy the aspirations of progressive European federalists. For the time being, however, Kolm's "liberal social contract" matches the present level of European integration.

Kolm's notion of "moral polyarchy" is compatible with the notion of subsidiarity. Thus one can look forward to the implementation of a liberal social contract at the level of the EU, while more egalitarian approaches to social policy continue to be pursued at the national or regional levels. It should be noted, however, that as the Keynesian welfare state becomes everywhere more costly and inefficient, both in the narrow sense of being wasteful, and in the broader sense of Pareto-efficiency, the second-best solutions identified by Kolm will probably move even further away from the hypothetical pure types.

So far, I have outlined Kolm's analytical framework in an uncritical manner, but I would not want to suggest that it is entirely convincing in all respects. Two objections come to mind. First, if Kolm is right to insist that the social contract must be the outcome of interactions occurring in real life and not in a mythical state of nature, the question of how one determines whether unanimous agreement has in effect been achieved is a thorny one. To posit that such agreement is implicit, as Kolm does, opens the door to all sorts of sophisms. Roderick Long suggests a somewhat extreme but telling analogy: "The citizen's situation [after giving implicit consent to the constraints included in the social contract] is eerily analogous to that of the rape victim whose protests are dismissed on the grounds that 'she really wanted it'."<sup>26</sup>

Secondly, even if Europeans are willing to accept many constraints in order to obtain public goods that they value more highly than Americans do, it remains that the provision of public goods by the state is occasionally very inefficient. This is the problem of "government failures": in trying to rectify market failures, bureaucracies often bring about even worse problems. This is an objection that Kolm does not address. In light of the severe criticisms that were directed at the European Commission in 1999, the concept of government failure appears to be quite germane. Kolm indirectly alludes to such concerns in his defense of politicians against the charge that they are solely motivated by self-interest. But this is probably the weakest part of *Modern Theories of Justice*; all he offers there in lieu of arguments are his own commonsensical opinions on the dogmatic excesses of Public Choice.<sup>27</sup>

## CONVERGENT PERSPECTIVES

The familiarity with the methodology of Anglo-American philosophy and normative political economy which Kolm displays in his reflections on justice and the social contract also characterizes the works of a new generation of French-speaking economists and moral philosophers.<sup>28</sup> It is worth underlining because for many years Kolm's travail appeared to be rather solitary. This is not to say that this new generation of researchers are content to follow in Kolm's footsteps, nor that they are deliberately trying to situate themselves in relation to his theoretical insights. Nevertheless, significant parallels exist between Kolm and the works of authors like Marc Fleurbaey, Louis Gevers, Nicolas Gravel, Jean-François Laslier, Alain Trannoy, Jean Mercier-Ythier, etc. (Frequent references to Kolm's numerous books and articles can be found in their works.) In other words, if the new social contract, or a network of redrafted contracts extending from the local to the international levels, which may emerge in the future as a quasi-federal Europe takes shape, resemble in some crucial aspects Kolm's synthesis of liberalism and egalitarianism, that new policy development will find strong support among a growing number of French-speaking social theorists. They regard themselves as progressives but would probably have been denounced by the French left as "reactionaries" some twenty years ago.<sup>29</sup> (In the next section, however, I deal with currents that are more typical of an older progressive tradition among French intellectuals.)

Space is lacking here to examine in detail all the contributions to political economy made by these theorists. A few remarks on some aspects of the research carried out by Marc Fleurbaey and Philippe Van Parijs are in order, however, because their works throw additional light on the issues discussed above. Their style is original in the French-speaking academic world because it is rigorously analytical—indeed even more so than in Kolm's case. (Van Parijs, in particular, has done much to bridge the gap between analytical philosophy and the continental tradition.) More in keeping with the ideological preferences of French intellectuals, they also betray an unmistakable sympathy for left-leaning critiques of existing capitalist institutions. (Philippe Van Parijs, in particular, is often lumped with authors like G. A. Cohen, Jon Elster or John Roemer under the label of "analytical Marxism.") They want to move away from traditional collectivism without subscribing to the practical implications of capitalism, namely, that the existing allocation of resources and privileges must remain unchanged.

One of Fleurbaey's preferred research topics is the notion of responsibility and its relationship to equality. Fleurbaey is not alone in paying attention to this problem; Kolm (see above)<sup>30</sup> and Amartya Sen, among others, also have dealt with it. But Fleurbaey's approach deserves attention because it is very thorough and sophisticated. As could be expected from a progressive *individualist*, he shows that the principle of responsibility cannot be sidestepped; however, as a *progressive individualist*, he insists that it can be retained without ruling out policies designed to achieve a greater degree of equality. Fleurbaey declares his preference for an "ethics of responsibility" that rests on a "natural reward" scheme "according to which agents must bear the direct consequences of their responsible behaviour."<sup>31</sup> But, applying a finely tuned typology that enables him to distinguish among many non-obvious opportunities, he shows that one can formulate allocative rules that neutralize the influence on final outcomes of

differences among individuals originating in circumstances for which they ought not be held responsible, and yet let differences in characteristics for which individuals can be held responsible fully operate.

The same concern for reconciling freedom with egalitarian concerns which runs through the works of both Kolm and Fleurbaey is also clearly evident in Philippe Van Parijs' defense of what he calls "real libertarianism" or "real-freedom-for-all." Van Parijs is far less concerned with responsibility than either Kolm or Fleurbaey. This is because his diverse theoretical interests are harnessed to the defense of a practical scheme that does not primarily seek to hold people responsible for their acts but rather to maximize opportunities to pursue their own life projects, whatever they may be. To that end, Van Parijs proposes the establishment of a generous ("the highest sustainable") basic income<sup>32</sup> that would be available to all members of society "without means test or work requirement."<sup>33</sup>

As with Rawls or Kolm, Van Parijs' "opportunity dimension" (i.e. the Basic Income) is conditional on the existence of a structure of rights. These rights or formal freedoms have priority over the opportunity dimension, and they are meant to be "well enforced."<sup>34</sup> But in contrast with Rawls or Kolm, Van Parijs devotes proportionally more space to the defense of the opportunity dimension than to the structure of rights within which they are supposed to function. He provides several justifications for granting a Basic Income to all the members of a given political community. At the most general level, he offers a Millian argument about the merits of a scheme that gives to all the freedom to realize their potentials, with the important libertarian proviso that no single conception of the good is entailed by such a scheme. (Thus if one intends to devote the best part of one's life to surfing, while relying on the Basic Income to accomplish that goal, it is perfectly acceptable to Van Parijs.) The merit of a cash grant is that it maximizes what Kolm (see above) calls the natural allocation of consumptive capacities; this differentiates both Van Parijs' Basic Income and Kolm's "Efficient Super-Equity" from more strictly egalitarian approaches (including Kolm's "Practical Justice").

More debatable is Van Parijs' assertion that jobs have become so scarce that it is necessary to take steps toward equalizing job assets.<sup>35</sup> This results in what Van Parijs describes as "job exploitation"; because those who hold jobs capture a disproportionate amount of the resources available to a society, those without jobs, and willing to work, would be better off in a society where jobs are more equally distributed. The Basic Income is meant to compensate for this situation.

I have suggested above that if a new European social contract is to see the light of day, it would be best to start with measures that do not presuppose a strong sense of solidarity. Van Parijs, however, claims that his Basic Income could be implemented on a pan-European scale. He calls it a "Eurogrant." Van Parijs recognizes that not all cultural and political conditions are present for the implementation of such a scheme, but he suggests that the Eurogrant would be an instrument that could itself facilitate the development of a European "discussion space" on issues pertaining to social justice.<sup>36</sup>

#### ROUSSEAU'S HEIRS: PARALLELS AND DIFFERENCES

Hope for a new social contract has also served to buttress the arguments of a different group of social theorists and activists. Their approach is more one-dimensional.

It is focused on solidarity. In fact, their understanding of freedom owes more to Rousseau than to the liberal canon. While liberalism has found many ways to accommodate, work around or creatively redefine the notion of self-interest, this current is characterized in large measure by its more uncompromising critique of individualism, or, in any event, of the kind of utilitarian individualism that Emile Durkheim<sup>37</sup> had already denounced and which is still arguably inherent in the methodology of contemporary mainstream economics. French socialism and the left-of-center republican tradition have typically been the vehicles for these ideas. However, at the end of the twentieth century, the French left has become far less ideologically homogeneous than it used to be. It is also more pragmatic and subtle in its criticism of capitalism. Thus the new French generation of progressive sociologists and heterodox economists is not all that far apart from some of the authors discussed earlier. The parallels and differences with Kolm, however, are complex but also explain some of the intriguing aspects of his philosophy.

*Vers un nouveau contrat social* reads almost like the manifesto of a movement that aims at reinserting the economy into its societal matrix. Its theorists are drawn primarily from the ranks of sociologists, e.g. Jean-Louis Laville, Guy Roustang, Bernard Perret, Bernard Eme; it also receives the active support of a web of new voluntary organizations, many of which have adopted the term *réseau* (network) to describe themselves.<sup>38</sup> Its main concern is the emergence of a new reality, a reality it also seeks to foster. Namely, *l'économie solidaire* which translates roughly as the solidarity-based economy but also entails a new theoretical approach, i.e. the economics of solidarity. Its future development would indeed amount to a new social contract. In a sense, this current harks back to the writings of Karl Polanyi; this is particularly evident in the theses defended by Perret and Roustang in their book *L'Economie contre la société*.<sup>39</sup> The great transformation they have in mind consists in an opening of the economic sphere on non-salaried activities that would permit the social integration of millions of unemployed individuals who cannot find their place in the mainstream economy. What theorists like Roustang or Laville advocate is the articulation into a coherent whole of (what they describe as) three different domains: the newly reinvigorated market; non-market institutions (and the state in particular) that redistribute wealth and/or income; and a more nebulous set of non-market, non-monetary activities centered on neighborhoods and small-scale communities within which goods and services are informally exchanged (i.e. bartered). The analysis proposed by this movement of this third domain, and of the "relations of proximity" that define it, is what contributes most to its originality. The non-market, non-monetary sector is where relations of solidarity are the most evident. Because it is more decentralized and more democratic than the bureaucratic welfare state, this sector could, and indeed should, become a central element of an institutional reform designed to do away with the degradation and loss of identity associated with unemployment and poverty. State-dispensed benefits like Van Parijs' Basic Income could be a catalyst in the transformation of hitherto marginal activities into a recognized and vibrant part of the social fabric of European nations. (Individuals whose basic needs are met could play their part as active citizens in their neighborhoods and communities.) But the solidarity-based economy is not reducible to this program alone. On the other hand, while Van Parijs' approach is libertarian and, therefore, is predicated on the neutrality of the state with respect to competing

conceptions of the good, the authors in question here defend a more decidedly communitarian vision of social progress. (The idea that the social contract must be redrafted by strengthening local associations and democratic participation is not confined to French reflections on solidarity; Robert Putnam's celebrated work on this very issue has attracted widespread attention in America<sup>40</sup> and Tony Blair's New Labour is committed to the promotion of "social entrepreneurship," i.e. locally based initiatives that offers alternatives to the heavy hand of the bureaucratic welfare state.)

While this current has moved to the forefront in recent policy debates and can count on the support of some tendencies within the *majorité plurielle* led by Lionel Jospin, other influential heterodox approaches have preceded it and continue to evolve. Such is the case of, for instance, the *Mouvement anti-utilitariste en sciences sociales* (MAUSS) created in 1980 by the economist Alain Caillé.<sup>41</sup> Its acronym is a clever pun referring to its intellectual patron saint: the anthropologist Marcel Mauss, Emile Durkheim's nephew and one of his most famous students, whose scholarly interests were centered on practices involving the offer and acceptance of gifts.<sup>42</sup> (While Durkheim's approach was primarily theoretical, Mauss followed a more empirical path, but both emphasized that even modern societies in which market economies play a central role cannot exist and function as integrated systems solely on the basis of patently instrumental values.) Thus Caillé and others reaffirm the continuing importance of gift-giving in the production and reproduction of social bonds in modern societies. (The fact that gifts are often best described as a form of deferred exchanges does not negate the essential difference that separates gifts from commercial transactions.) Here again we find a markedly French tendency to stress the need to reintegrate economic relations within a broader societal context and to underline the normative implications of political economy by calling for a renewed commitment to values and practices that sustain a certain sense of solidarity.

Heterodox currents in contemporary French political economy are not limited to these two tendencies. If I were concerned primarily with heterodox economics, a discussion of *l'économie des conventions* (imperfectly translated as "the economics of conventions") would also be imperative. The roots of this approach lie in the regulation school associated with names like Robert Boyer and Michel Aglietta but it differs from it in several respects.<sup>43</sup> However, *l'économie de conventions* has relatively little in common with the dominant themes in Kolm's work; one interesting aspects of this approach, however, is that it offers an understanding of economic and social interactions as a web of microsocial contracts, thereby confirming my earlier remarks on the centrality of contractual models in contemporary social theory.

Kolm does not belong to any of these movements and his firm commitment to the tenets of liberalism distances him from some of their goals. Nevertheless, their existence reveals certain cultural predisposition shared by a many, if not most, French social and political theorists; interestingly, they can also be found in Kolm's writings. I only have space here to zero in on two of these: anti-utilitarianism, and the reluctance to see in self-interest more than a very partial account of human nature.

Kolm's repeated attacks on utilitarianism, which he derides as a "meaningless" philosophical movement that has never had any influence beyond English-speaking philosophers and academic economics,<sup>44</sup> is anything but idiosyncratic. It reflects a rather widespread attitude among French social theorists toward utilitarianism of which the

MAUSS is only a symptom. The roots of this attitude can be traced back to Durkheim but even further back to Rousseau whose quarrel with Hume perhaps symbolized a more profound cultural divide than the incompatibility of their characters. Indeed, Jean-Pierre Dupuy has argued that even Elie Halévy (1870–1935), who was the best intellectual ally utilitarian thinkers ever had in France, ironically misunderstood and misrepresented the moral implications of their theories.<sup>45</sup> Halévy confused the “principle of utility” with extreme egoism, ignoring the fact that to maximize overall welfare, one may have to sacrifice one’s own benefits. Kolm’s critique, however, turns out to be essentially technical; he simply dismisses the notion of cardinal (i.e. addible) utilities, while conceding that it can be useful at the level of micro-analysis.

In fact—and here we come to Kolm’s role as a bridge across the cultural divide to which I alluded above—his work provides evidence that one does not have to choose between rational choice and political ethics, nor to believe that methodological individualism and the continental sociological tradition are completely incommensurable paradigms. Echoing some of the themes developed by the critics of capitalism we have just encountered, Kolm refuses to accept the idea that *homo economicus* fully accounts for the complexity of economic life. Rational agents may learn to act altruistically, as game theorists are fond of pointing out. Kolm insists that it is rational to wish to minimize suffering for oneself as well as for others; his ethical model is St. Martin who gave half of his coat, but only half, to the shivering stranger. This view leads to a robust altruism that, because it is free of pietist sentimentality about virtuous self-sacrifice, is more defensible, as well as potentially more universal in its reach than more utopian versions. Like those who appeal to Marcel Mauss, but through a different route, Kolm reaches the conclusion that gift-giving must find its place in social and economic analysis. In particular, Kolm shows that an economy where altruistic impulses to offer gifts are not satisfied remains Pareto-inefficient: there exists equilibria (resulting from the exercise of unhindered philanthropy) that are preferred by many and yet do not negatively affect anybody’s welfare. However, mainstream economists only take markets exchange into account when determining whether a distribution is Pareto-efficient. There might be practical or legal obstacles to the exchange of gifts. Thus he argues that a debate must take place on how to develop an economic system that would supplement the market economy with reciprocal arrangements for exchanging gifts: the “lack of reciprocity may be the foremost social cost of modernity.”<sup>46</sup> (Gifts, of course, need not be exchanged simultaneously nor even exchanged at all; but again, if one wants to avoid the naive view of altruism as a purely disinterested predisposition to self-sacrifice, it is more realistic to speak of generalized reciprocity than of asymmetrical giving.) By definition, one cannot be forced to make a gift. There are, however, situations in which mildly egoist altruists confronted to a prisoner’s dilemma would be reluctant to give if no one else does. Creating conditions for the transfer of resources from well-off individuals to the least advantaged through implicitly voluntary taxation is precisely one of the functions of a liberal social contract. Altruism also provides the motivational impetus required to implement that contract.

While Kolm expresses a deep concern for what makes a person whole, above and beyond the thin self posited in some liberal models of politics, there is room in his “moral polyarchy” for a compromise among the many different cultural and ideological groups that seek a new social contract for Europe. It seems rather unlikely, at this stage,

that all the elements of an economic system based on reciprocity and solidarity can be put in place beyond the national level. Indeed, it is probably the case that such models are best thought of as tools for decentralizing the nation-states themselves.

## CONCLUSION

In an age of flux, social engineering is a strong temptation. Social reformers and advocates of radically democratic European institutions see in ongoing changes opportunities for enshrining their hopes and values in a new social contract. However, the sociological complexity of the emerging European polity, the rise of ideological individualism, and unavoidable economic realities create serious obstacles to that project. Moreover, as recent philosophical reflections on this question demonstrate, a social contract today must rest on the primacy of individual rights. Does this mean that only a strictly libertarian conception of contractual justice can prevail? Kolm has proposed a few ways out of this dilemma that reaffirm the continued relevance of a form of liberalism that does not preclude egalitarianism. But the conditions for the synthesis of these principles are difficult to realize and must be analyzed rigorously. Kolm's analytical framework is only a first step in that direction, but it is an important one.

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## NOTES

1. Kolm has published many of his articles and one recent book directly in English (*Modern Theories of Justice*, Cambridge, MA: MIT Press, 1996); and one of his early books has finally been translated into English: *Justice and Equity*, trans. H.F. See (Cambridge, MA: MIT Press, 1997).
2. See his *Le bonheur-liberté*, 2nd ed. (Paris: Presses Universitaires de France, 1994).
3. The following is only a sample: Karlheinz Neunreither, "Citizens and the Exercise of Power in the European Union: Toward a New Social Contract?," in *A Citizens' Europe* (London: Sage, 1995); Martin Rodes and Yves Mény, eds., *The Future of European Welfare: Toward a New Social Contract?* (New York: Saint Martin's Press, 1998); Jean-Louis Lavile et al., *Vers un nouveau contrat social* (Paris: Desclée de Brouwer, 1996); Ricardo Petrella, "Europe Between Competitive Innovation and a New Social Contract," *International Social Science Journal* 47 (1995): 11–23. See also the series of occasional papers on a new social contract by C. Closa, B. Jordan, S. Paugam, G. Procacci, F. Scharpf, etc., published in 1996 by the European Institute–Robert Schumann Centre.
4. Ian Macneil, *The New Social Contract: An Inquiry into Modern Contractual Relations* (New Haven: Yale University Press, 1980), 4.
5. David Boucher and Paul Kelly, "The Social Contract and Its Critics: An Overview," in *The Social Contract from Hobbes to Rawls*, ed. D. Boucher and P. Kelly (London: Routledge, 1994), 2.
6. See Brian Barry, *Theories of Justice* (Berkeley: University of California Press, 1989); see also Daniel M. Hausman and Michael S. Macpherson, *Economic Analysis and Moral Philosophy* (Cambridge: Cambridge University Press, 1996), 152–3.

7. Martin Rhodes and Yves Mény, "Introduction: Europe's Social Contract Under Stress," in *The Future of European Welfare*, ed. Rhodes and Mény, 4–5.
8. Judith R. Blau, *Social Contracts and Economic Markets* (New York: Plenum Press, 1993), 193; but I differ from Blau in that I would argue that the situation is further complicated by the fact that some—but only some—of these circles overlap less and less with each other. Some radical forms of multiculturalism and gender-based politics come to mind in that respect.
9. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 302.
10. David Gauthier, *Morals by Agreement* (Oxford: Oxford University Press, 1986); James Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan* (Chicago: Chicago University Press, 1975); Ken Binmore, *Game Theory and the Social Contract*, vol. 1 *Playing Fair*, and vol. 2 *Just Playing* (Cambridge, MA: MIT Press, 1994, 1998). Brian Skyrms, *Evolution of the Social Contract* (Cambridge University Press, 1996). John Harsanyi provides the interesting and arguably unique example of a synthetic perspective that merges utilitarianism and contractualism—unique in that most social contract theorists (e.g. Rawls) demarcate their approach from utilitarianism; see J. Harsanyi, *Rational Behavior and Bargaining Equilibrium in Games and Social Situations* (Cambridge: Cambridge University Press, 1977).
11. See his *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. W. Rehg (Cambridge, MA: MIT Press, 1996).
12. Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983).
13. *Modern Theories of Justice*, 96.
14. *A Theory of Justice*, 137.
15. See, for example, S.-C. Kolm, *Le contrat social libéral: Philosophie et pratique du libéralisme* (Paris: Presses Universitaires de France, 1985), 353–405; and *Modern Theories of Justice*, 103–7.
16. Jean-Pierre Dupuy, *Le sacrifice et l'envie* (Paris: Calmann-Lévy, 1992), 145–60.
17. J. Rawls, "Justice as Fairness: Political Not Metaphysical," *Philosophy & Public Affairs* 14, no. 3 (1985): 223–51. See also his *Political Liberalism* (New York: Columbia University Press, 1993).
18. *Le contrat social libéral*, 355–60. (Inversely, Rawls alludes to what he regards as Kolm's intriguing assumption concerning interpersonal comparisons between individual preferences (see note 22 below); in his "Social Unity and Primary goods," in *Utilitarianism and Beyond*, ed. A. Sen and B. Williams [Cambridge: Cambridge University Press, 1982], 173ff.) Binmore also argues that there are technical errors in Rawls' analyses, such as the fact that there is no justification for using a minimax, as Rawls does, in situations that are not "zero-sum" games; Binmore, *Just Playing*, 25.
19. What follows is based primarily on Kolm, *Modern Theories of Justice*; S.-C. Kolm, "The Theory of Justice," *Social Choice and Welfare* 13 (1996): 151–82; and S.-C. Kolm, "The Values of Freedom," in *Freedom in Economics*, eds. J.-F. Laslier et al. (London: Routledge, 1998).
20. "The Value of Freedom," 31.
21. *Modern Theories*, 128.
22. In principle, at least, Kolm suggests that in concrete situations actual preferences can become interpersonally comparable if "what differentiates the individuals has been incorporated into the object of preferences." S. Kolm, "Distributive Justice," in *A Companion to Contemporary Political Philosophy*, ed. R. Goodin and P. Pettit (Oxford: Blackwell, 1993), 447.
23. *Justice and Equity*, 5.
24. The hypothetical transition from the second-best social contract solution to a Nozick-style minimal government would, paradoxically, require a great deal of political coercion or, to put it another way, the effort to mobilize support for such a shift would be truly Herculean in countries like France or Germany.
25. See Bill Jordan, "European Social Citizenship: Why a New Social Contract (Probably) Will not Happen"; and Carlos Cosa, "Some Skeptical Reflection on EU Citizenship as the Basis of a New Social Contract," in *The Future of European Welfare*.



26. R. T. Long, "Immanent Liberalism: The Politics of Mutual Consent," in *The Just Society*, ed. Ellen Frankel Paul et al. (Cambridge: Cambridge University Press, 1995), 16.
27. *Modern Theories*, section 13.4 and esp. 398–9.
28. I have in mind here authors who can be found not only in France but also in other parts of the "francophonie" (e.g. Belgium).
29. That the works of left-of-center liberals or even "analytical Marxists" would have been perceived not so long ago as "bourgeois" or "reactionary" is, of course, a reflection of the intellectual climate that prevailed in French academic and literary circles until relatively recently. The reaction against that peculiar mix of utopian Marxism and psychoanalysis, later rendered even murkier by the addition of structuralist, and then poststructuralist components has been chronicled by many authors, including François Dosse, *L'Empire du sens: L'Humanisation des sciences humaines* (Paris: La Découverte, 1995); Laurent Dobuzinskis, "The End of French Exceptionalism: Lessons for/from Canada," *Inroads* 6 (1997): 114–29; Mark Lila, "The Legitimacy of the Liberal Age," in *New French Thought: Political Philosophy*, ed. M. Lilla (Princeton: Princeton University Press, 1994); Thomas Pangle, "Political Theory in Contemporary France: Toward a Renaissance of Liberal Political Philosophy?," *PS* xx, no. 4 (1987): 999–1003.
30. *Modern Theories of Justice*, 232–6.
31. Marc Fleurbaey, "Equality Among Responsible Individuals," in *Freedom in Economics*, 206.
32. Philippe Van Parijs, "Competing Justifications of Basic Income," in *Arguing for Basic Income*, ed. P. Van Parijs (London: Verso, 1992); and *Real Freedom for All: What (if Anything) Can Justify Capitalism?* (Oxford: Oxford University Press, 1995), chap. 2.
33. "Competing Justifications," 3.
34. *Real Freedom*, 25.
35. See *ibid.*, chap. 4. Employment scarcity, however, is no longer a major problem in the US or Canada. At the tail end of the 1990s, it would seem that even in Europe, at least in the EU, job scarcity is beginning to look less like the insuperable problem it was said to be by Van Parijs and many others at the beginning of the decade.
36. P. Van Parijs, "Basic Income and the Political Economy of the New Europe," in *Citizenship, Democracy and Justice in the New Europe*, ed. P. Lehning and A. Weale (London: Routledge, 1997).
37. See E. Durkheim, "L'individualisme et les intellectuels," *Revue Bleue* 10 (1898) and reprinted in Emile Durkheim, *Selected Writings* (Cambridge: Cambridge University Press, 1972), 147–50.
38. E.g. Agence pour le développement de l'économie locale (ADEL), Agence pour le développement des services de proximité (ADSP), Mouvement des réseaux d'échanges réciproques de savoir (MRESRS), Réseau d'économie alternative et solidaire (REAS), Réseau Européen pour l'emploi, etc.
39. Bernard Perret and Guy Roustang, *L'Economie contre la société* (Paris: Seuil, 1993).
40. Robert Putnam, "Bowling Alone: America's Declining Social Capital," *Journal of Democracy* 6, no. 1 (1996): 65–78.
41. It publishes *La revue trimestrielle du MAUSS*, formerly entitled *La revue du MAUSS*.
42. M. Mauss, *The Gift*, trans. I. Cunnison (New York: Norton, 1967; originally published 1925).
43. For a more detailed account of this new approach, see *Analyse économique des conventions*, ed. A. Orléan (Paris: Presses Universitaires de France, 1994).
44. *Modern Theories*, 16–19, and chap. 14. See also S.-C. Kolm "Moral Public Choice" *Public Choice* 87 (1996): 117–41.
45. Jean-Pierre Dupuy, "Preface," in Elie Halévy, *La formation du radicalisme philosophique* (Paris: Presses Universitaires de France, 1995). See also Francisco Vergara, "A Critique of Elie Halévy," *Philosophy* 73 (1998): 97–111.
46. S.-C. Kolm, "Reciprocity," *The Newsletter of PEGS* 2, no.2 (Summer 1992): 5.