

Proxy Contractarianism – Draft

Proxy Contractarianism – Parsing the Non-Tuism Requirement

by

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Section 1: Introduction

What rules would rational agents want *those they love* to have to live by? This paper explores this question as part of an exploration of what I will call “Proxy Social Contract Theory.”

Traditionally, Social Contract Theory has been seen to make the motivational assumption that (roughly) we are all motivated by self-interest, or, what is roughly equivalent, that we are mutually disinterested. (In actual fact, most social contract theorists would agree that normal people care about a great range of things, including friends, family, community and so on, but stipulate mutual disinterest as a way of weakening their premises and thus strengthening their conclusions. Rawls, for example, writes that he maintains his postulate of mutual disinterest “to insure that the principles of justice [that result] do not depend upon strong assumptions.” “As the basis of the theory,” he says, “one tries to assume as little as possible.”)¹ Social Contract Theory is intended to be an account of moral motivation that applies *even* to self-interested agents.

But this assumption of self-interest or mutual disinterest has been the target of substantial criticism. It has been accused of being psychologically implausible, and even offensive. Feminist theorists have been particularly vocal on this count. According to Sue Sherwin (p.40), for example, the impartiality (part of mutual disinterest) that traditional moral theories (including Social Contract Theory) demand on the part of agents is found by many to be “psychologically unacceptable and morally repugnant.” More generally, social contract theorists have been seen as examples – possibly paradigm examples – of the more general class of liberal theorists who see human beings through the lens of abstract individualism, and who typically conceive of them as “rationally self-interested utility maximizers.”² This abstract individualism, according to feminist Marilyn Friedman, is rejected by many feminists, who favour instead what she calls the “social self.” This latter view, writes Friedman, “fundamentally acknowledges the role of social relationships and human community in constituting both self-identity and the nature and meaning of the particulars of individual lives.”

The assumption of self-interest or mutual disinterest – whether it is necessary, and if so, what form it should take – has been controversial among Contract Theorists, as well. The December 1991 issue of the *Canadian Journal of Philosophy* featured a paper by Donald Hubin, called simply “Non-Tuism” (“Non-tuism” is the term – borrowed from turn-of-the-century English economist P.H. Wicksteed – that David Gauthier uses for his particular take on mutual disinterest). In his paper, Hubin examines a number of understandings of what Gauthier

¹ Rawls, 129.

² Friedman, 1989, p. 275.

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might have in mind, and what he should have in mind, when he stipulates that agents, in a fair bargaining situation, have only non-tuistic preferences. In the end Hubin argues that non-tuism is unnecessary, and indeed, counterproductive. This latter claim rests upon Hubin’s argument that the counter-factual stipulation of mutual disinterest makes *all the more difficult* Gauthier’s task of proving that it is rational not just to *agree* to mutual constraint, but to *follow through* on that agreement. Hubin writes (p. 468), “[t]o the degree that Gauthier ‘assumes away’ the values, concerns, and preferences that human beings actually have...he undermines his project of establishing that it is rational to dispose oneself to comply with the social contract.” Though I don’t find myself fully convinced either by Hubin’s interpretation of what sort of mutual disinterest the social contract thought experiment should stipulate,³ or by his proposed solution,⁴ his objections are worrisome, none the less.

Eight years later, in the June 1999 issue of the *CJP*, a paper by Susan Dimock, called simply “Defending Non-Tuism,” provides a particularly lucid and stimulating discussion of the concept and its application. Dimock’s argument is grounded in the fact that concern for others can lead to exploitation in the context of bargaining. In fact, Dimock argues (p. 261) that *tuistic* preferences are “not just contingently a source of exploitation for those who have them, both by their objects and others, but necessarily so,” and she provides a complex decision-theoretic defence of this claim. Dimock’s conclusion, then, is that – contrary to what Hubin claims – *we are all better off* (regardless of our preferences) if we stipulate non-tuism on the part of those in the contract theorist’s hypothetical bargain.

Instead of engaging directly in this debate, I propose an alternative approach that I call “Proxy Social Contract Theory,” and that I hope avoids the problem. It is an alternative at which both Hubin and Dimock’s papers hint, but that neither develops in detail. This alternative is to begin with the motivational assumption that each of us cares about *something*, and asks what rules we would agree for all to be bound by in order to maximize benefit to that something. In particular, I suggest imagining that each of us cares about some particular human individual or individuals, such as our families.⁵ In short, I suggest a version of Social Contract Theory based on an assumption of a particular kind of limited altruism. Instead of modeling morals as a contract between individualists, I model morals as a compact between rational altruists.

First, a note about the phrase ‘traditional social contract theory.’ Social contract theory has of course taken a wide range of forms. To begin with, Social Contract Theory comes in at least Kantian and Hobbesian flavours, and perhaps others. But *critics* of Contract Theory tend to gloss over these distinctions, and so I think a defence of Contract Theory is justified in beginning, at least, by glossing them over too. Whether the modified motivational assumption of Proxy Social Contract Theory lends itself better to reinterpretation of the Kantian branch of the

³ Hubin argues that non-tuism sets the baseline for bargaining, in addition to being essential to Gauthier’s foundational project.

⁴ Hubin suggests substituting an assumption of amorality for the assumption of non-tuism.

⁵ I suspect that an interesting extension of my argument would result from broadening this to allow the cared-for to include non-human animals, inanimate objects such as pieces of art, ecosystems, and so on.

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family (epitomized in the present day by John Rawls) or the Hobbesian branch of the family (epitomized in the present day by David Gauthier) is a question about which I will say little, here. My guess is that Proxy SCT fits Hobbesianism better.

If indeed upon further investigation it turns out that the project I propose fits best, or fits only, Hobbesian contract theory, I am happy enough to limit my argument to that, my own favourite branch of the family. But for now I will begin by talking about contract theory “as such,” and draw upon various authors whose comments seem applicable to all sorts of contractarianism.⁶

Section 2: The Role of Self-Interest

The assumption of self-interestedness appears in four main ways in social contract theory. That is, self-interest plays at least four different roles in the social contract argument.⁷ Whether these roles are distinct in some deep way – such that we could modify one without at the same time modifying the others – rather than being different facets of the same fact or supposition, is an interesting question, but one I mostly leave aside for discussion at another time. I differentiate them here simply so that we may see the importance of the assumption of self-interest, and see what aspects of the Social Contract Theory argument must change when the assumption of self-interest is changed to an assumption of limited altruism.

First, self-interestedness appears in the description of the *problem* to which the social contract is seen as a solution. That is, it appears in the description of the State of Nature. Human beings, as they exist in the state of nature, are typically described by Social Contract Theorists as selfish. This is the psychological egoism found, for example, in Hobbes. It is this selfishness that is typically described as being partly, if not wholly, responsible for the *need* for a contract or some other means of ensuring peace.

Secondly, self-interestedness provides the *justification* or *rationale* for seeking to contract their way out of the state of nature. According to contract theorists, selfish reasons are all the reasons an agent needs have in order to see the value of an agreed-upon set of rules. Having and (perhaps) obeying a moral code is justified for each because each is better off, from a purely self-interested point of view, than he or she would be otherwise.

Thirdly, self-interestedness pops up again in the description of the contract solution itself. That is, agents *qua* contractors are described either as selfish, or at least as non-tuistic. They bring only selfish or non-tuistic preferences to the bargaining table, as it were. That is, the preferences of one contractor do not involve or refer to other contractors. And the implication is that the particular contract agreed to would look different if it were not for this assumption. (If my utility function were in any way a function of your utility function, *that* would affect the terms of the contract at which we arrive.)

Finally, there seems to be an assumption, if only an implicit one, that not only are agents *qua* contractors selfish, but so also are agents *qua* persons who will *live* under the terms of the

⁶ Thus for example where Rawls is quoted below, the quotations used are ones that I suppose Hobbesians contract theorists likewise to endorse.

⁷ Peter Vallentyne distinguishes just two such roles. See Vallentine, 1991, p. 72.

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contract. That is, the contract is not just a contract *agreed to by* selfish agents, but a contract *to govern the behaviour of* selfish agents. (That the agents who will live under the contract will have the same characteristics – in particular, self-interestedness – as the agents who agree to the contract would normally be a reasonable, indeed perhaps trivial, assumption, one that would hardly bear mention, except for the fact that the present paper intends to tease apart those two roles.) Peter Vallentyne, in his paper, “Contractarianism and the Assumption of Mutual Unconcern,” (1991, p. 71) suggests that neither Rawls nor Gauthier intends the assumption of mutual unconcern to extend to those governed by the contract. But Vallentyne provides no argument for this conclusion; and indeed, it seems reasonable to think that, *pace* Vallentyne, neither Rawls nor Gauthier would have reached the conclusions they did if the assumption of mutual unconcern on the part of those governed by the contract were eliminated altogether. (For example, it seems neither Rawls nor Gauthier intends his argument to describe the contract that *egoists* would agree to for *altruists* to live under.)

Section 3: The Thought Experiment

Proxy Social Contract Theory involves a thought experiment about what agents in an ideal choice situation would agree to on behalf of others, namely others about whom they care. The idea of deciding on behalf of others is not entirely without precedent within the social contract tradition. In the section of *A Theory of Justice* entitled ‘the Circumstances of Justice’ (s. 22), Rawls makes the motivational assumption that persons in the original position may be thought of as heads of families, and “therefore as having a desire to further the welfare of their nearest descendants.” While presumably intended by Rawls as a way of signalling that contractors in his Original Position would be, in some sense, ‘real people’ with natural sentiments and affections, this assumption has instead been criticized by feminist scholars as implying contract between paternalists. Whether this criticism is fair or not is rather beside the point; the accusation is there, and has tended to stick.

In this paper, I want to take seriously the notion of decision-makers in an original position making decisions, not just that will *affect* others, but that will be made *on behalf of* others. Rawls draws a conceptual line between agents *qua* contractors and agents *qua* persons subject to the contract, in order to ensure that none of the contractors is tempted to insist on terms favourable to his or her own situation. He effects this separation by means of the Veil of Ignorance. Behind the Veil of Ignorance, Rawls’s contractors will not know their conceptions of the good, their eventual place in society, their particular values or their particular talents.⁸ Nor, for that matter, will they know their sex or gender. By means of the Veil of Ignorance, Rawls effectively drives a conceptual wedge between the contractor and the citizen.⁹

In principle, this conceptual wedge driven between the contractor and the citizen should make the assumption of self-interest relatively harmless,¹⁰ since the self-interested contractor –

⁸ Rawls, 12.

⁹ For want of a better word, I will use the word “citizen” throughout to designate someone who will have to live under the terms of the contract agreed to. I do not intend this word to bear any special political significance.

¹⁰ That is, the selfishness of the contractor is harmless to her fellows.

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cut off by the Veil from seeking direct benefit – can only hope to ensure that the contract agreed to will be beneficial no matter who he or she turns out to be. Thus in a sense the self-interest assumed here is *merely formal*. But none the less it is there, and it is controversial, so it may be instructive to see whether we could do without it. Might we find a different mechanism to meet the goals of the non-tuism requirement, one that avoids the stigma attached to that device?

I propose that instead of assuming self-interested contractors operating behind a veil of ignorance, we separate the decision-maker from the individual on whose behalf decisions are made by stipulating, for *our* thought experiment, that the decision-maker will not have to live under the contract agreed to, but that someone she cares about will.

One reason for choosing this method is that it deals effectively with one of the core worries about including other-regarding preferences in the Social Contract Theory thought experiment, namely the possibility of exploitation afforded by such preferences. Dimock (1999) outlines this problem nicely. Simplifying, here: if A and B are engaged in bargaining, and if A cares about B but B does not care about A (or if B simply cares less than A does), then B can use this asymmetry to her advantage in ways that are likely to seem unfair. I seek to avoid this worry by stipulating that while the decision-makers in our thought experiment will have other-regarding interests, they will not have other-regarding interests in regard to those with whom they are engaged in bargaining.

What terms, then, would a rational agent (that is, an agent relatively skilled at matching means to ends) agree to, if she knew that a loved one would have to live by those terms?

We could run this thought experiment in at least two different ways, by imagining ourselves in the two different roles implied by the notion of a proxy contract – namely, the role of the contractor (proxy) and the role of the citizen. Let us look at those two options, in reverse order.

Version 1: We could ask, in our role as citizens, “What rules would someone who cared for me agree to, for me to live by?” What would the terms of the contract be if, for example, my *mother* were to contract on my behalf?

Version 2: Alternatively, we might reverse the roles, and ask, in our role as contractors, “What rules would I agree to for someone about whom I care to live by?” More concretely, “what rules would I agree to if my children (and their contemporaries) were to live by them?”

Version 1 of the thought experiment might provoke the objection: why should I care what my mother would agree to?¹¹ I’m not my mother, so I’m not bound by her agreements. Besides, we value different things. My mother is (or was) risk-averse, and I’m risk-seeking. My mother values (or valued) creature comforts, and I value intellectual pursuits. As Hume noted, one is not bound by the consent of one’s ancestors.¹² So the proposed thought experiment will lead many to the following objection: ‘I’ve lived by my mother’s rules before, and I *don’t* want to live by them again!’ The contract thought experiment, then, seems to have lost its motivational force.

¹¹ This objection is of course akin to the traditional objection to counter-factual appeals to agreement.

¹² Hume, 470-1.

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But keep in mind that we needn't be talking about *your* mother, here. We are speaking, rather, of an idealized parent, one who would presumably want to maximize the satisfaction of whatever preferences her offspring had, and who would therefore likely agree to terms that would allow for such preference satisfaction whatever those preferences were or however they changed over time.

We might further look to Gauthier's reply to the problem of the non-bindingness of the hypothetical agreement: the point of the contract device, says Gauthier, is not to bind the contractors, but to provide a thought experiment about what constitutes *reasonable* constraint. Thus we might find reason to adhere to the agreement made on our behalf by a rational caring contractor because, *per hypothesis*, we ourselves are rational caring beings, and so should find reasonable the terms agreed to by rational caring beings such as those populating our thought-experiment. Traditional Social Contract Theory argues that the motivational force of the hypothetical agreement lies in the reasonableness of its terms. That is, we live by the terms of the agreement, not because we ourselves agreed to them (the contract is, after all, strictly a fiction) but because (or to the extent to which) the conditions are either *rational* or *reasonable* (the terminology varies, here, depending on whether we read Gauthier, Rawls or whoever). Thus the general value alignment between the agent as contractor and the agent as citizen provides a *prima facie* argument, at least, for the citizen's compliance with the terms of the contract. But, of course, many will not find this convincing.

Version 2 of the thought experiment (namely the version that asks, 'What rules would I agree to for someone about whom I care to live by?') might avoid the non-bindingness concern, but might in turn provoke the following objection. Agents asked to carry out such a thought experiment would have particular others (e.g., their own children) in mind, and thus would tend to shape the terms of the contract in ways that would favour those particular others, given their particular interests and talents. We've then lost the fairness-generating qualities of Rawls's Veil of Ignorance. In response I will again invoke the idea of an idealized parent, one who wants to ensure (or at least maximize the likelihood of) the satisfaction of her offspring's preferences, regardless of what those preferences are. Such a parent, if she is to choose wisely, will agree only to terms of contract that allow for the satisfaction of a suitably broad range of preferences. She may *think* she knows her own offspring's talents and preferences, but she could be wrong about this. So simple rationality might be enough to generate agreement on a contract not slanted toward particular interests.¹³

We could also reintroduce, at this point, something like the Rawlsian Veil, and stipulate that although the contractors care about those on whose behalf they contract, they do not know their particular characteristics. Indeed, we could even invoke a *genetic* veil of ignorance, and stipulate that the contractors are bargaining on behalf of future offspring, whose winnings in the genetic lottery are as yet unknown. Indeed, by invoking the genetic veil of ignorance, we are

¹³ It may be that the very notion of caring for others defies abstraction. That is, it might fairly be asked what it means to say that the contractors care about someone of whose characteristics they are ignorant. Note, however, that we do seem to be able to make meaningful claims about the kind of world we desire for our children or grandchildren, even before they exist.

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moving from the hypothetical to the concrete. The rules we choose to live by now are – or at least they affect – the rules our children and grandchildren will have to live by, and we do not (indeed, cannot) know how our children and grandchildren will fare in the genetic lottery.

As stated above, the goal of this paper is to propose an alternative to the much-maligned assumption of self-interest, and thereby to rescue Social Contract Theory from one of the major categories of criticism levelled against the theory. It is beyond the scope of this paper to play out the Social Contract Theory thought experiment in detail, in light of that alternative motivational assumption. I will suggest briefly, however, how I think a Proxy Social Contract Theory argument might run; again, of course, I will be glossing over differences between different flavours of contract theory – Hobbesian, Kantian, etc.

We would begin, in standard form, by characterizing the State of Nature, or the condition in which we live without the benefit of agreed-upon rules. We can plausibly maintain, I think, the standard assumption that such a world would be characterized in fundamental ways by both scarcity and uncertainty.

Next, we need a characterization of the kinds of agents who populate the state of nature. Our assumption will be that those agents are characterized by deep caring, but caring that is restricted to a limited range of particular others.¹⁴ Note that this assumption quickly reminds us that we need not assume general selfishness in order to generate conflict. Any narrow set of motivations will do. The basic description of life in the state of nature remains substantially true to that proposed by Hobbes, even when we stipulate limited (or, indeed, even unlimited) altruism on the part of the contractors. The Hobbesian notes that if each of us tries to maximize satisfaction of our own preferences without regard for others, the results will be bad for all. But life, it seems, would be only marginally less solitary, poor, nasty, brutish, and short, if each of us tried instead to maximize benefit to someone we care about. The conflict between what I want (namely maximal benefit for *my* kin) and what you want (namely maximal benefit for *your* kin) means that we can easily fall into Prisoners' Dilemma type problems, even without the standard assumption of self-interest.

I think it is clear that the general outlines of the Social Contract Theory argument can be run with the modified motivational assumption required for the Proxy version. It seems clear that agents who cared about the welfare of kith and kin would, when the alternative is continual conflict and uncertainty, agree that all should live by rules that constrain the pursuit of individual benefit for, or by, those about whom they care.

Whether we could use such an argument to straightforwardly generate something like Rawls's lexically ordered principles of justice, or Gauthier's 'maximin relative concession,' is an issue I leave for another day.

Section 4: Advantages of Proxy Social Contract Theory

What advantages does Proxy Social Contract Theory promise in comparison to other, more traditional versions of Social Contract Theory? I suggest that while it does not provide

¹⁴ The simplest model would of course limit each contractor to caring for a single "other."

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solutions to all of the objections traditionally launched at Social Contract Theory, *Proxy Social Contract Theory* does offer a number of benefits.

First, Proxy Social Contract Theory as I have described it makes use of a less controversial (and indeed psychologically more plausible) motivational premise than the utter mutual disinterest stipulated by traditional Social Contract Theory. To assume that individuals are mutually disinterested seems to imply both a faulty picture of human psychology, and a falsely atomistic picture of human society.

Proxy Social Contract Theory aims to make use of a less controversial motivational premise. And why pick fights over descriptions of human psychology if we don't need to? Since Proxy Social Contract Theory is psychologically more plausible, it holds the possibility of making Social Contract Theory not just an argument that works in principle, but an argument that applies to real human agents. Thus Proxy SCT allows us to say, "Here's a contract that *someone like you* would have agreed to."

Second, in focusing on the interests of (that is, on a contract for) those who are *cared about*, rather than those who are *capable of contracting*, Proxy Social Contract Theory *may* be able to avoid the criticism (to which traditional Social Contract Theory is subject) that it fails to deal adequately with our obligations to children, animals,¹⁵ and the intellectually disabled. One of the usual assumptions of Social Contract Theory is that, in the original position, we all have something to fear from each other. It is thus rational to include in the contract *only* those who can both benefit and reciprocate. If I cannot benefit (say, if I am omnipotent), what need have I of a contract? Why agree to constrain myself at all? And, importantly, if you cannot reciprocate, why contract with *you* in particular? I'll contract instead with your more powerful neighbours. This focus on reciprocal agreement between powerful agents strikes many as worrisome, not least due to its failure to account for what most of us take to be very pressing obligations to precisely those parties least likely to be party to such a contract.

Proxy Social Contract Theory partly remedies this; for it can reasonably be assumed that within the population of contractors there will typically be individuals who care about particular children, about animals, and about particular intellectually disabled individuals. So long as *someone* (some contracting agent) cares, it could be argued that the terms of the contract will be such as to protect the interests of *all*. (Maybe there are some about whom no one cares, but at least we've reduced the number left out dramatically.)¹⁶

Third, *Proxy Social Contract Theory* is less subject to criticism with regard to the *hypothetical* nature of the agreement implied. Social Contract Theory is often criticized for the hypothetical nature of the agreement reached. The criticism, here, is one that attacks the relevance of the hypothetical agreement to which Social Contract Theory appeals. Why, critics ask, should I (or any real world agent) agree to the rules that (according to the Social Contract

¹⁵ But on this see Tucker C, MacDonald C. "Beastly Contractarianism? A Contractarian Analysis of the Possibility of Animal Rights," *Essays in Philosophy*, Vol. 5 No. 2, June 2004.

¹⁶ This depends, of course, on whether we limit our model to a one-to-one mapping from contractors to citizens. But one-to-many mappings may prove intractable, or otherwise problematic.

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argument) idealized agents would agree to? The fact is, I *didn't* agree, and further, I am too unlike (and arguably *any* real-life agent is too unlike) the idealized agents imagined by traditional Social Contract Theory for the agreement that would (probably) be reached by those idealized agents to be of any motivational or justificatory relevance to me.

Let us deal first with the first arm of this criticism, the arm that criticizes Social Contract Theory for the fact that actual agents have not, in fact, agreed to any contract at all, and asks why real agents *should* feel bound, even if they were to stipulate, counter-factually, that the agreement implied by Social Contract Theory is one that they *would have* agreed to in the original position. I think this argument misses the point of Social Contract Theory, and traditional Social Contract Theory has the tools with which to respond. The rules that rational agents would rationally agree to in idealized conditions should be agreed to by real agents if those latter agents think of themselves as rational (or reasonable) as well.

According to Jean Hampton, Social Contract Theory's reference to hypothetical agreement, to what we *would* agree to, is "a way of appraising how well the present institution serves the powerful self-regarding interests that virtually all of us have."¹⁷ It is a test of reasonableness. The persuasiveness of hypothetical agreement is still debated within the Social Contract tradition, but I think that a plausible defence can be mounted from within the boundaries of traditional Social Contract Theory (particularly if hypothetical agreement is understood as a mechanism for evaluating the *reasonableness* of norms.)

Traditional Social Contract Theory is still subject, however, to the argument that the hypothetical agents who agree to the terms of its hypothetical agreement are too unlike real life agents for the agreement of the idealized agents to have justificatory or motivational import for real life agents. The modified motivational assumption made by Proxy Social Contract Theory goes some way, I think, toward saving it from this criticism. The flaw attributed to traditional Contract Theory, here, is nothing less than irrelevance. The agents hypothesized by traditional Contract Theory, it is argued, are too unlike real agents for the rules agreed to by the former to be relevant to the latter. By assuming a model of human motivation more plausible than that assumed by traditional Social Contract Theory, Proxy Social Contract Theory reduces the force of this argument. For while the contractors imagined by Proxy Social Contract Theory are still to some extent idealized, they are also described as having deep interpersonal commitments.

Fourthly, Proxy Social Contract Theory makes it much more difficult (one would hope!) for reasonable individuals to be cavalier about the rules that they say they would agree to. What we *would* agree to for ourselves is a question open to a broad range of answers, including some answers that drive us to libertarian conclusions that most of us have difficulty accepting. Libertarian contractarians can argue that *they* would accept terms of contract that maximized liberty at the expense of security. Such arguments have, I think, done damage to the reputation of Social Contract Theory in many quarters. Many have wondered how a moral theory that permits such cold conclusions could be left on the table at all. But note that people are often more risk-averse with regard to decisions affecting their children than they are about decisions affecting their own health and well-being. It may be that Proxy Social Contract Theory will

¹⁷ Hampton, 36.

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make more likely contract-based arguments that arrive at conclusions presenting a set of moral norms more in keeping with our understandings of ourselves as members of a caring community.

Finally, Proxy Social Contract Theory has the further virtue of being relevant, if perhaps indirectly, to a range of specific real-life problems in addition to its relevance as a general theory of moral obligation. The Proxy Social Contract Theory thought experiment is analogous to a wide range of real-world institutional settings, in which decision-makers forge deals (or establish conventions) that will have, in at least some cases, more impact on those to whom the decision-makers have fiduciary obligations than they will upon the decision-makers themselves. Exploring the idea of the constraints to which hypothetical altruistic contractors would agree might provide guidance for those real-life domains. In the domain of professional standards and health policy: what rules should physicians rationally agree to for their patients to have to live (or die) by? In the domain of the family: what rules should real-life parents agree to for their children to live by? In the political domain: what rules should political leaders agree to (think international law, here) for their constituents to live by?

Proxy Social Contract Theory may be practical in a further, crucial way. Gauthier argues that rational agents will “dispose themselves” to act in a manner constrained by the rules that would have been agreed to in a fair bargaining situation. A small but vigorous literature exists on the plausibility of this argument.¹⁸ Gauthier provides convincing arguments to the effect that it can be rational for agents to adopt cooperative *dispositions*; i.e., that it can be rational for agents to adopt personality traits that make them trustworthy. Many critics conclude that he fails, however, to make a convincing argument for the rationality of cooperation itself.

Proxy contractors can do better: they can, in some cases, *raise* those on whose behalf they contract (namely their children) so that they *are* disposed to act in a manner constrained by the rules of the contract. For agents raised to have the right dispositions, the question of the rationality of compliance never arises. Duncan MacIntosh has argued that we can (and should) rationally change our own preferences, when doing so will help us to avoid getting caught in Prisoners’ Dilemmas.¹⁹ If it is unclear to what extent it is possible to revise our own preferences, it is much clearer that we have the ability to shape our children’s preferences.

Section 5: Problems that remain

I make no claim that Proxy Social Contract Theory remedies all, or even most, criticisms launched against the Social Contract tradition. Which objections to Social Contract Theory are not remedied? We could begin by citing continuing feminist concerns, including the fact that Proxy Social Contract Theory pays no explicit attention to the status of persons in dominance/subordination relationships²⁰, and no explicit attention to “moral relationships that exist among persons of unequal power.”²¹ What I hope I have done, however, is demonstrated that the core elements of social contract thinking do not, in fact, depend upon the assumption of

¹⁸ See for example (Binmore 1994, p.80), (Heath 1996), (Skyrms 1996) and various essays in (Valleyne 1991).

¹⁹ [insert ref.]

²⁰ For this argument, see Sherwin, 1993, p. 40.

²¹ See Sherwin, 1993, p. 41.

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self-interest on the part of contractors, and that, indeed, modifying that assumption in plausible ways can produce a more satisfying result, and perhaps help us rescue the best elements of the social contract tradition.

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