

Social Contract and Property Rights *

A comparison between John Rawls and James M. Buchanan

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Recently there has been a revival of social contract theories. Three authors who immediately come to mind when speaking about such a revival are John Rawls, Robert Nozick and James M. Buchanan. At first sight it seems no problem to label these authors as "The New Contractarians" (1). A closer look will show, however, that apart from the central core of the social contract idea - voluntarily unanimous agreement - all three use the social contract in essential different ways (2).

In this paper my aim is to compare John Rawls' *A Theory of Justice* with James M. Buchanan's book *The Limits of Liberty* and his article "A Hobbesian Interpretation of the Rawlsian Difference Principle" (3) and especially the use they both make of the idea of a social contract**.

Therefore only those aspects of Rawls' theory of justice are mentioned that seem relevant to understand his use of the social contract, and it is taken for granted that he has been successful in deriving his specific principles of justice from his theoretical framework.

Although Rawls' theory is by now well-known we shall, nevertheless, memorize in a few pages those aspects of it that are concerned with his use of the social contract in order to show where this use differs and where it is similar to Buchanan's contractarian approach.

I Rawls and the Social Contract

Rawls conceives society as an arrangement for cooperation between rational individuals. Social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. At the same time there is a conflict as to how the greater benefits, produced by collaboration, are

* This article will appear in the volume, *Democracy, Consensus and Social Contract*, edited by P. Birnbaum, J. Lively and G. Parry (SAGE Modern Politics Series, volume 2, March 1978) and is published here by kind permission of SAGE Publications, London and Beverly Hills.

** Citations: (R, ...) refers to John Rawls, *A Theory of Justice*, Oxford, 1972; (B, ...) refers to James M. Buchanan, *The Limits of Liberty; Between Anarchy and Leviathan*, Chicago/London, 1975.

to be distributed. Therefore the cooperation has to be regulated by certain principles: the principles of justice;

"they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation" (R, 4).

A central role in Rawls' conception is played by the notion of treating men as ends in themselves and never as means only. In Rawls' theory this means that everyone should be able to fulfil his plan of life. The necessary attributes for each individual to achieve this are primary goods (rights and liberties, powers and opportunities, income and wealth) which are distributed through the basic structure of society. The main question that Rawls wants to answer is: what are the principles that should regulate this distribution. For the derivation of these principles Rawls introduces the idea of a social contract.

My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant" (R, 11).

In this argumentation the idea of an original social contract gives the answer to the question how principles of justice and a basic structure of society might be formulated in such a way that it justifies the willing compliance of all members of that society. The original contract is not to be seen as one to enter a specific society; the object of the original agreement are the principles of justice that are to regulate the basic structure of society.

This leads to a contractarian theory of justification. Substantive principles of justice are justified by showing that these principles are, in the described initial situation, precisely those that are selected by all rational persons.

In Rawls' initial situation there is a hypothetical position of equality. He suggests that this original position of equality corresponds to the state of nature in the traditional theory of social contract. This does not mean, however, that this initial situation is to be seen as a state of nature. It is a situation of general egoism in which the basic structure is to be designed from scratch. Essential in this method of justification is, of course, the description of the initial situation. Rawls' by now well-known initial situation - the original position - is characterized by the veil of ignorance:

"(...) no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism" (R, 137).

All characteristics in the situation of the original position that are irrelevant from a moral point of view are omitted. In the original position it is assumed that the parties are roughly similar in physical and mental powers so that no one can dominate the others. The contractors are also assumed to be non-envious, they are not interested in the welfare of their fellow contractors. At the same time they know that society is characterized by moderate scarcity and that they themselves wish to have at their disposal more rather than less primary goods. The choice of the contractors is an a-moral choice; the principles that are chosen are means for the fulfilment of their self-interest. However, once these principles are chosen as "the public conception of justice" they have become the yard-stick for right and wrong. To assure that the choice of the contractors - being itself an a-moral choice - will get an ethical status it is not only necessary that the initial situation is constructed in such a way that *unanimous* agreement will be an *impartial* one. The choice of principles, on which a moral judgement is to be based, should itself be based on an impartial judgement of the interests of all persons that have to live with these principles. Now it is, of course, exactly this that is guaranteed by the veil of ignorance. Because "no one knows his situation in society nor his natural assets, (...) no one is in a position to tailor principles to his advantage" (R, 139). There is no basis for bargaining in the usual sense or the threat of sanctions during the negotiations. In this situation each chooses for everyone. To agree with Rawls that he has succeeded in deriving his principles of justice from a hypothetical social contract it is necessary to distinguish two stages in his method. First we must agree that the veil of ignorance as Rawls describes it, is an adequate description of an initial situation in which to choose ethical principles. If we do agree, the second question that has to be answered is: does the deduction by rational choice from this specific initial situation lead to the principles specified by Rawls?

Granting that we agree on both points the following familiar principles are chosen:

- First principle: Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others;
- Second principle: Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.

The principles are to be arranged in a serial order with the first principle prior to the second. Rawls' idea is that these two principles of justice achieve the aim of treating men as ends and not as means.

In his theory Rawls makes a distinction between "liberty" and "the worth of liberty"; liberty is represented by the complete

system of the liberties of equal citizenship, while the worth of liberty to persons is proportional to their capacity to advance their ends. The worth of liberty is not the same for all, but this lesser worth is compensated for, in Rawls' conception, by the difference principle.

Rawls' theory of justice is a pure procedural theory. The fairness of the circumstances under which agreement is reached transfers this fairness to the principles agreed to. And any outcome that has been arrived at by applying the principles in the correct way are, whatever the outcome may be, just.

II Buchanan and the Social Contract

At the end of *The Limits of Liberty* Buchanan makes a few remarks on the differences between his book and Rawls' *A Theory of Justice*. His main disagreement with Rawls lies there, where Rawls wants to - and does - identify precepts of justice. As Buchanan remarks: "My efforts in *The Limits of Liberty* are simultaneously more and less ambitious than those of Rawls" (B, 175). He is more ambitious in that he wants to examine the prospects for genuine contractual renegotiations among persons, here and now, who are not placed in some artificial situation of equality. He is less ambitious in that he doesn't want to identify a set of principles that should define the "good society".

The only "normative foundation" for the analysis is "that each person counts for one, and for as much as any other" (B, 11). Nevertheless, he is against the idea of postulating a basic equality among men in some initial situation in order to derive the structure of a free society from rational, self-interested behaviour. Society is not a society of equals, but of individuals and individuals "differ, one from another, in important and meaningful respects. They differ in physical strength, in courage, in imagination, in artistic skills and appreciation, in basic intelligence, in preferences, in attitudes toward others, in personal life-styles, in ability to deal socially with others, in *Weltanschauung*, in power to control others, and in command over nonhuman resources" (B, 11). Now Buchanan wants to demonstrate "that, even among men who are unequal, a structure of legal rights can be predicted to emerge" (B, 54). His aim is to give a conceptual explanation of how social order might have emerged contractually from the rational utility-maximization of individuals. Social order embodies a definition of assignments of individual rights and the establishment of a political structure that is charged with enforcing rules of personal behaviour with respect to these assigned rights.

For the purpose of this explanation he introduces the idea of a natural equilibrium in a Hobbesian state of nature as an analytical starting point for social order (4). In this initial

conceptual setting individual differences manifest themselves by varying success in the continuous struggle for survival. In this situation there are no laws "and there is no need for a definition of individuals' rights, either property rights or human rights. There is no society as such" (B, 55). The absence of authority presents the individual with a choice of using his labour to produce goods or to take by force those goods produced by others. The well-being of a person depends on his relative ability to produce, to take from others, and to protect his own. There emerges a natural distribution which can be seen as a conceptual equilibrium "in which each person extends his own behavior in securing (defending) shares in x to the limit where marginal benefits from further effort are equal to the marginal costs that such effort requires" (B, 24). The idea is that this natural equilibrium serves as the starting point in which individual persons are identified and from which contractual agreement becomes possible, according to Buchanan. This social contracting is concerned to reach *unanimous* agreement on an assignment of individual rights. Now, in the natural equilibrium, one will recognize on rational observation, that a lot of efforts are expended in securing and defending one's stock, and that these efforts are wasteful. Therefore one should reach contractual agreement on some disarmament. This constitutes in Buchanan's analysis the initial leap from the Hobbesian jungle and represents in itself a Paretian shift. Everyone will be made better off if this disarmament agreement can be reached.

"Whatever might be the characteristics of this distribution, whether rough symmetry prevails or whether one participant becomes a consumption giant and the other a pygmy, and even if all of x is secured by one party" (B, 24-5).

In this conception it is even possible that one arrives at a contract of slavery.

Now the guiding idea is that the natural distribution is the basis for the emergence of property rights. The distribution of rights that are laid down in the contract is directly linked to the relative commands over goods and the relative freedom of behaviour that separate persons in the Hobbesian state of nature had enjoyed. The considerable differences that exist between persons in the precontract setting have as a result that "postcontract inequality in property and in human rights must be predicted" (B, 25). This is, as remarked over and over again by Buchanan, the result of the fact that

"(t)here is nothing to suggest that men must enter the initial negotiating process as equals. Men enter as they are in some natural state, and this may embody significant differences" (B, 26).

This means, however, that the measure of differences between persons will find its way into the unequal distribution of rights that are contractually secured.

Buchanan makes a distinction between two stages of social contracting: the constitutional stage and the postconstitutional stage. This makes it possible to distinguish the state in two separate roles.

At the constitutional stage, the state emerges as the enforcing agency or institution, conceptually external to the contracting parties and charged with the single responsibility of enforcing agreed-on rights and claims. This is the legal or protective state; it is not to be seen as a decision-making body but only as a referee and has no legislative function (5).

That function is fulfilled by the productive state, the agency through which individuals provide themselves with "public goods".

In the postconstitutional stage (a part of the basic contract) the rules are defined with which the collectivity must operate when making and implementing decisions concerning the provision of "public goods". Although unanimity is required for the constitution itself, this does not imply that decision rules that govern the provision of public goods should themselves satisfy the unanimity requirement. For individuals will trade-off the costs of decision-making against the benefits of the veto when negotiating over the allowable departures from unanimity in reaching collective decisions, and these departures will be specified in the constitutional contract.

But that doesn't mean that the collective action under non-unanimity decision-making is unrestrained. The constitutional contract indicates the allowable range over which collective action may take place and specifies the restrictions on the goods to be provided and financed. The purpose of defining individual rights (or, as Buchanan calls them "property rights") in constitutional contract is to provide the basis upon which individuals can initiate and implement trades and exchanges. To the extent that collective action would be allowed to break beyond the boundaries imposed by the mutuality of gains from exchange the whole idea of Buchanan's analysis would fall apart; it would mean that the community had made a step backward into the jungle or wouldn't have stepped out of it at all. So the productive state is not allowed to cross the boundaries of the protective state and to intrude or change property rights. The only possibility in this analysis to change these rights is by a new constitutional contract in which *unanimous* agreement has been reached.

III Discussion

After these two summaries of the social contract idea as used by Rawls and Buchanan the similarities and differences between both can be seen more clearly. Buchanan develops the contractual metaphor to analyse the emergence of property rights in the hope that it offers assistance in finding criteria for social change. The analysis of the emergence of property rights is

done in what he calls a "positive" way. Right from the start Buchanan makes clear that he does not want to give a description of principles that would regulate a "good" society. That does not mean, however, that he hasn't an opinion on what is to be labeled "good": good is that what "tends to emerge" from the free choices of individuals. "It is impossible for an external observer to lay down criteria for the "goodness" independently of the *process* through which results or outcomes are attained. The evaluation is applied to the means of attaining outcomes, not to outcomes as such" (B, 6).

Now it may be suggested that we have seen the same attitude in Rawls' theory, where it was stated that an outcome could not be analysed independently of the procedure by which it has been reached. The important difference to note, however, is that Rawls' aim is to guarantee that the principles that are chosen are fair principles and these guarantee on their turn that any outcome can be called just as long as the principles are applied in the correct way.

Buchanan, also, emphasizes the procedure, but in his case the starting point is not agreement on fair principles but the struggle between unequals and he defines as "good" the agreement on the outcome of that struggle. He places

"ultimate value on process or procedure, and by implication (...) define(s) as "good" that which emerges from agreement among free men, independently of intrinsic evaluation of the outcome itself" (B, 167).

The outcome can only be evaluated through the means by which it has been attained and in this case that is unanimous agreement. Any unanimous agreement is classified as "good". The reason for this argumentation lies in the - ethical - choice of Buchanan's starting point for his analysis: the Hobbesian state of nature. (The choice of the Hobbesian state of nature as a starting point and not, for instance, a Rousseauian state of nature, is evidently based on the idea that individuals are self-interested utility-maximizers.) The "base line" for comparison is the situation where people's lives are "nasty, brutish, and short". A society in which one can expect people to act predictably by abiding to rules and, foremost, a situation in which there is no coercion is the best one can strive for, and it is the protective state that guarantees this order in which individual rights are secured.

Now it will be clear that essential to this analysis is how freedom is defined. Individual liberty has to become, in Buchanan's view, the overriding objective of social policy, due to his idea that every individual counts for one, and for as much as any other. Unfortunately, however, a more specific elaboration on what we have to understand under "individual liberty" is lacking in Buchanan's analysis; but essentially it means "freedom of contract". The role the contract idea plays in his analysis is that it guarantees that people will freely - unanimously - come to agreement, even in a situation in which one of the parties is a "consumption giant" and the other a

"pygmy". But what kind of freedom is this? It is certainly not the possibility to be free to fulfil one's plan of life that plays such a central role in Rawls' theory.

In Buchanan's opinion the time has come for a renegotiation of the basic structural arrangement of society, with which he has in mind a change in the legal order and especially a consensual redefinition of individual rights and claims. The existing order (the outcome of some prior contracting process) has shown lately features of instability. A symptom of this instability is, according to Buchanan, that the productive state (for which we can read the welfare state) is making intrusions into the domain of the protective state. The result is that changes are made in the basic arrangement of society *without* the unanimous agreement of all concerned. How should these symptoms of instability be evaluated?

The use of any conception of justice for this evaluative purpose is out of the question. Such a conception can't give direction to an eventual change of the existing legal structure (and in the distribution of property rights) because Buchanan wants

"to the maximum extent that is possible to derive the logical structure of social interaction from the self-interested utility-maximization of individuals and without resort to external norms" (B, 80).

The reason the existing order has lost its stability is that people believe that if they would be back in the state of nature right now, there would emerge *another* natural equilibrium and, consequently, another distribution of property rights. Individual holders of a right or a claim defined in the status quo, come

"to predict that this claim will be eroded or undermined unless the structure is modified (...) Such predictions may be based on imagined shifts in the natural distribution in anarchistic equilibrium which always exists 'underneath' the observed social realities" (B, 78-9).

Now especially the instability and disruptions in the sixties may have been the signal that there was a shift in the natural distribution; that the existing power structure was no longer a mirror of this natural equilibrium and that there was, therefore, reason to renegotiate the existing legal structure. (As an example of instability Buchanan repeatedly mentions the student rebellion. This unrest, however, is not seen by him as an example of a signal of change in the existing power structure.)

The problem remains to be answered how we are to imagine that one should arrive at a "consensual redefinition of individual rights and claims", once we know that the holders of rights (rights that are distributed unequal) should agree to make a new social contract in which these property rights will be redistributed in another way (presumably more equally). From Buchanan's point of view such an unanimous redistribution is

not as preposterous as it might seem. In this analysis, *not* choosing unanimously for a revised contract may have as a consequence that the existing order may be disrupted completely. Anyone who is in favor of renegotiating, in view of the imagined shift in the natural distribution, can make a threat not to cooperate any longer and disrupt the existing order by bringing back the state of nature in which everybody will be worse off. In this analysis, inspired by the shotgun behind the door, the best thing one can do is to choose for a consensual redefinition of individual rights and claims.

As Goodin has remarked, the appeal of this kind of analysis is especially strong for the cautious, the paranoid or those that have a lot to lose (6).

IV A "positive" derivation of Rawls' principles?

The main point in which Buchanan disagrees with Rawls is that Rawls derives specific principles of justice. In a recently published article by Buchanan ("A Hobbesian interpretation of the Rawlsian difference principle") he tries to show that it is possible to derive the Rawlsian difference principle *from the analysis of Hobbesian anarchy* as developed in *The Limits of Liberty* without any resort to a conception of justice. The interpretation given in this article "places Rawls, construction in a somewhat more positivistic setting" (7).

We shall make a short digression into the analysis of this article because it makes especially clear where the difference lies between Buchanan's and Rawls' use of the social contract. We have already mentioned that Buchanan shares with Rawls a set of quasi-Kantian contractarian presumptions. The original position provides for both the basis from which the arrangements for the basic structure must be derived. The essential difference, however, lies in the fact that in Rawls' case, once the social contract has been reached, ethical principles are chosen *once and for all*. In Buchanan's case, however, the social contract can be renegotiated at a later point in time. This is due to the fact that the original position, that is the effective alternative in the absence of agreement, is defined as the equilibrium in Hobbesian anarchy and - as we have seen at the end of section III - after the constitutional contract has been reached one or more persons or groups may say: "let's do it again". In Buchanan's analyses one can go back to the original position and try to reach a new contract.

For Rawls the social contract is a heuristic device and the Rawlsian *Gedankenexperiment* for the choice of ethical principles that would regulate a well-ordered society. The original position is *not* supposed to be a situation which one can threaten to shift the system back to.

In the article Buchanan shares Rawls' idea of a "veil of

ignorance":

"In the original position, in Hobbesian anarchy, the persons do not know their respective abilities within the cooperative technology, nor do they know how each will respond to income incentives in participating in joint production. They know only that each of them can, by unilateral action, shift the whole system back into anarchy by the simple expedient of withdrawing cooperation" (8).

Now in this analysis the difference principle can only be identified as emerging from contractual agreement in the initial position

"if the participants make the positive prediction that the least-advantaged persons and/or groups will, in fact, withdraw their cooperation in certain situations and that the threats of this withdrawal will be effective" (9).

That is the reason, according to Buchanan, that individuals, acting behind a veil of ignorance, will agree on the difference principle of income distribution because

"they mutually recognize the threat potential possessed by the relatively disadvantaged in any sharing outcome that fails to meet the requirement of Pareto-superiority over the equal sharing solution" (10).

(The equal sharing position is seen here as a way-station between Hobbesian anarchy and the final position.)

In this way the analysis tries to show that (with the presumption of the absence of envy, as in Rawls' analysis) contractual unanimity can be reached on a shift from Hobbesian anarchy to a set of social arrangements that will maximize the income of everyone, *including* that of the least-advantaged.

For Rawls, the difference principle removes the indeterminateness of the Pareto-efficiency concept by singling out a particular point from which the social and economic inequalities are to be assessed: the position of the least-advantaged. As Rawls formulates it:

"the difference principle is compatible with the principle of efficiency. For when the former is fully satisfied, it is indeed impossible to make any one representative man better off without making another worse off, namely, the least advantaged representative man whose expectations we are to maximize. Thus justice is defined so that it is consistent with efficiency, at least when the two principles are perfectly fulfilled" (R, 79).

In Buchanan's article the close link that exists between his contract approach and Pareto-efficiency culminates in the derivation from an original position, defined as Hobbesian anarchy, of the difference principle not because its moral content - which is seen by him as a favourable side-effect - and not because it is equivalent with the Pareto-principle, but because its application is a way to reach Pareto-optimality (11).

We may summarize this section by saying that in Rawls' case efficiency is a byproduct of justice, while in Buchanan's case justice is a byproduct of efficiency when using Hobbesian anarchy as the starting-point of analysis.

V The Problem of Property Rights

We now return to Buchanan's analysis in *The Limits of Liberty*. Since he claims that there should be a renegotiating of individual rights, let's have a closer look at his conception of "property rights".

The assignment of property rights is a consequence of the way in which capacities are distributed over different persons: feud, violence and force are the source of the natural distribution. The logical foundation of property rights lies in the need for boundaries between "mine" and "thine". Being unequal in a variety of aspects some people will acquire more "property" than others. Some may get a lot, some hardly anything at all, but in this analysis there is no place to criticize the resulting distribution from a moral point of view.

In Rawls' view the starting point should be exactly the opposite: men should be considered as moral equals. He, as Buchanan, recognizes that people differ in their talents and capacities, but for Rawls these initial endowments of natural assets are arbitrary from a moral point of view. There is no moral sense in which talented people deserve their more favourable starting place in society. His two principles are a fair way of meeting the arbitrariness of fortune and can be seen as principles of redress. A distribution of property rights that is the result of force, and the use of one's ability to grab what one can, can't create an order that will be stable. And what is more:

"To each according to his threat advantage is not a principle of justice at all".

We already mentioned that Buchanan's normative foundation for his analysis is that everyone counts for one, and for as much as any other. He remarks that this

"must be reconciled with the positive statement that men will necessarily differ among themselves *and in any assignment of rights*" (B, 11; emphasis added).

He also states:

"there is really no categorical distinction to be made between that set of rights normally referred to as 'human' and those referred to as 'property'" (B, 10).

Now, with this sort of approach it is impossible to derive any set of "universal" or "inalienable" rights independently from the analysis of the emergence of property rights in the natural distribution. That means, independent from the distribution of

power among individual persons.

In Buchanan's view "there has been relatively too much emphasis on the normative function of property" (B, 9). One may wonder, however, if this "positive" theory about property rights makes sure that "everyone counts for one, and for as much as any other". If persons are defined by the rights they possess and one can get only rights by force, or, after the constitutional contract has been made, by gains from trade, some will account for much less than one!

Buchanan's approach of property rights corresponds with the ideas developed in the literature on "the economics of property rights". In a recent book, edited by Furubotn and Pejovich, all relevant articles that paved the way for this approach are reproduced. In it

"property rights are understood as the *sanctioned behavioral relations* among men that arise from the existence of goods and pertain to their use (...) The term 'good' is used here for anything that yields utility or satisfaction to a person. Thus, and this point is important, the concept of property rights in the context of the new approach applies to *all* scarce goods. The concept encompasses both the rights over material things (to sell my typewriter) as well as 'human' rights (the right to vote, to publish, etc.). The prevailing system of property rights in the community is, then, the sum of economic and social relations with respect to scarce resources in which individual members stand to each other" (12).

This properly summarizes, we think, how Buchanan sees property rights. In his economic analysis, contractual agreement is important because it represents the means by which bundles of property rights are exchanged. Now, in the real world that Buchanan wants to analyse, the regulations pertaining to property rights are important in delimiting the welfare of the individual members of the system.

This brings us back to Buchanan's notion that everyone should count for one, and for as much as any other. How are we to assess this "counting" in view of the origin and distribution of property rights? By conceiving rights only as rights in the market-place it is difficult to see how his idea that free men should have free relations among each other can be realized. We think Buchanan's analysis would have gained a lot if he had made a distinction between different kinds of rights. In the first place a distinction should have been made between, on the one hand, rights that are not to obtained on a *quid pro quo* base and that recognize the equal worth of every citizen and, on the other hand, property rights. In the second place he should have recognized the complexity of property rights itself. For instance, the right of ownership may be an exclusive right, but is it also an unrestricted right? Buchanan does not elaborate on such problems as to what one is allowed to do or not to do with one's property rights except, of course, trading them.

It is clear from his whole analysis that his dilemma in the provision of public goods (and therefore of the role played by the productive state) is an efficient provision of these goods while avoiding a build-up of the central government. . He is more afraid of Leviathan than of private power based on exclusive property rights. Especially, he is afraid of methods of redistribution that place too much power in the hands of the productive state. That would make expropriation of owners possible *without* their consent, because unanimous agreement is not necessary for the activities the productive state undertakes. Redistribution activities are an example of unallowable coercion and therefore these activities are conceptually not possible, within Buchanan's strict contractarian framework, in the realm of the productive state. To avoid intrusions of property rights by the productive state bargaining (that should eventually result in unanimous agreement) is the only way by which the affluent can agree to a reduction of their property rights in return for a limit on state redistribution activities.

However, by defining rights only as economic assets, in which Buchanan follows the tradition of the New Political Economy and which is the conventional way to forestall an activist government, he leaves many problems unanswered (13). What is especially lacking in his analysis is a political theory of property rights.

Another foundation for rights than the one given by Buchanan is the view that some "goods" are especially important to individuals because these enable them to fulfil their own plan of life and to reach self-fulfilment, and should for that reason, be recognized as rights. Rawls' theory can be seen as a good example of this sort of justification of rights. In our opinion, his approach leads to a more fruitful starting-point than the one given by Buchanan if one wants to analyse the range of activities a productive state should undertake to give everyone the possibility to fulfil his own plan of life.

Notes

1. See for instance the review of all three authors by Scott Gordon, The New Contractarians, *The Journal of Political Economy*, vol. 84, pp. 573-590.
2. In this paper we shall not go into Nozick's *Anarchy, State, and Utopia* (New York, 1974). We are not sure that his theory can be classified as a social contract theory at all, due to his hypothetical invisible hand explanation of the origin of the state, as opposed to a contractarian explanation. See also: Percy B. Lehning, "Een filosoof van de vrijheid protesteert tegen gelijkheid" (A philosopher in favour of liberty protests against equality), *De Gids*, jrg. 139, 1976, pp. 73-95.
3. James M. Buchanan, "A Hobbesian Interpretation of the Rawlsian Difference

- Principle", *Kyklos*, vol. 29, 1976, pp. 5-25.
4. This analytical starting point for social order was originally developed by Winston C. Bush in his "Individual Welfare in Anarchy"; in Gordon Tullock (ed.), *Explorations in the Theory of Anarchy*, Blacksburg, Virginia, 1972, pp. 5-18.
 5. The protective state is similar, according to Buchanan himself, to the minimal state as conceived by Nozick. But: "My contractarian model does not, however, allow the state to be closed off at these limits. If contractual agreements emerge for the provision of jointly-consumed public goods, there may be a role for a productive as well as for a protective state".
James M. Buchanan, "Utopia, the Minimal State, and Entitlement (A review of Nozick's *Anarchy, State, and Utopia*)", *Public Choice*, vol. XXIII, 1975, pp. 121-126; p. 125.
 6. Robert E. Goodin, "Possessive Individualism Again", *Political Studies*, vol. XXIV, 1976, pp. 488-501; p. 491.
 7. Buchanan, Hobbesian interpretation, *op. cit.*, p. 6.
 8. Buchanan, Hobbesian interpretation, *op. cit.*, p. 9.
 9. Buchanan, Hobbesian interpretation, *op. cit.*, p. 23.
 10. Buchanan, Hobbesian interpretation, *op. cit.*, p. 10.
 11. For the difficulties (and differences) that arise from interpreting Rawls' difference principle, see:
Percy B. Lehning and R.J. van der Veen, "De Rechtvaardigheidstheorie van John Rawls", II, *Acta Politica*, jrg. XII, 1977, pp. 25-76; esp. pp. 26-49.
The relation between Rawls' difference principle and the conventional Paretian approach (like Buchanan's) is analysed in: Charles K. Rowley and Alan T. Peacock, *Welfare Economics; A Liberal Restatement*, London, 1975; esp. chapter 7.
 12. Erik G. Furubotn and Svetozar Pejovich, (eds.), *The Economics of Property Rights*, Cambridge, Mass., 1974, p. 3.
 13. See Goodin, *op. cit.*, p. 490.