

**CONTRIBUTIONS TO A CONSTRUCTIONIST INTERPRETATION OF SOCIAL
CONTRACT THEORIES:
A SEMIOTICAL APPROACH**

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Abstract

Constructivism and social constructionism both refer to how individuals operate with constructs, understood as operational definitions on reality clippings. Social constructionism places the formation of constructs at the level of interactions in the social environment, individuals assigning and redesigning them towards social environment. It is mainly a sociological approach but we consider suitable for social philosophy itself. We understand the social contract as an interpretative (semiotic) pact resulting from a process generating meanings. Social constructs arising from the interpretative process are: social order, law, or, in general, normativity and power status. The process of alienation of the power from its transcendent roots, and its reinstatement on the grounds of public interest is the context of the social construction of the idea of state and justice.

Keywords: Social contract, contractualism, social construction of reality, social constructionism.

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Introduction

Contractualist theories propose a model of social reality resulting from any waiver to individual own's liberty in order to obtain sociability. This article takes into consideration the understanding of the social contract as interpretative practice, in a constructionist manner. We understand the social contract as an interpretative (semiotic) pact resulting from a process generating meanings. Social constructs arising from the interpretative process are: social order, law, or, in general, normativity and power status.

Methodological assumptions

Constructivism and social constructionism both refer to how individuals operate with constructs, understood as operational definitions on reality clippings. Constructivism places the formation of constructs at the level of the individual who designs them on social environment. It is mainly a psychological approach². Social constructionism places the formation of constructs at the level of interactions in the social environment, individuals assigning and redesigning them towards social environment. It is mainly a sociological approach³ but we consider suitable for social philosophy itself. Social constructionism abandons the idea according to which the individual mind is the mirror of reality. Constructionism is based on relationships and supports the role of the individual in the construction of significant realities⁴. Concepts such as plausibility become more appropriate to describe the nature of new laws formulated within science that is increasingly away from what can be actually experienced or observed directly⁵.

Constructionism is a semiotic paradigm that is based on "interpretive axiom" according to which the map through which the reality is read is nothing but a continuous negotiation of interpretation. Any type of speech is interpreted as a "social reconstruction of reality" starting from a cultural consensus. Cultural derive of meaning of concepts underlies the semantic convergence of any socio-cultural paradigm. At the level of mentality occurs the deepest restructuring through the transition from understanding an objective, single and knowable world to a model of a plurality of worlds, whose indetermination is predicted theoretically. Constructionism can be used methodological, based on the importance of the epistemic subject in the social construction of truth. The concept of truth has therefore significance in relation to a socially accepted fact or experience.

Constructionism is concerned mainly with explaining the processes by which people come to describe, explain and take note of the world they live in and it includes them⁶. Reality is created within the process of communication and with the instruments of language, each individual influencing and shaping the responses of others. Van der Haar⁷ commenting the philosophical significance of constructionism indicates the adherence of this trend to an alternative epistemology because knowledge and reality analysis can only be contingent to human relations being the result of continuous practice of reification, sedimentation and habitualization⁸. The central premises of constructionism proposed by Van der Haar⁹ are:

- Social constructionism assumes that the world can not be known as it is, but rather as a series of multiple socially constructed realities;
- Social constructionism sees language, communication and discourse as having the central role of the interactive process by which we understand the world and ourselves;

² Alexa, E., Sandu, A., „New Directions in Epistemology of Social Science”, International Conference Knowledge and Action 9-12 dec. 2010, Baia-Mare

³ Sandu, A., „A Constructionist Understanding of Social Contract Theory”, *Jurnalul de Studii Juridice*, Year VII, vol. 1-2, special issue 3, 2012, pp. 315-346

⁴ Cojocaru, S., *Metode apreciative în asistența socială. Ancheta, supervizarea și managementul de caz*, Editura Polirom, Iași, 2005, pp. 48-50.

⁵ Sandu, A., op. cit.

⁶ Gergen, K., *Social Construction in Context*, Sage Publications, London, 2005.

⁷ van der Haar, D., *A Positive Change. A Social Constructionist Inquiry into the Possibilities to Evaluate Appreciative Inquiry*, Master Thesis, Tilburg University, USA, 2002.

⁸ Sandu, A., *Appreciative ethics. A constructionist version of ethics*, Lap, Lambert, Germany, 2012.

⁹ van der Haar, D., op. cit.

- Social constructionism sees language and communication as a process of coordination of actors;
- Social constructionism deals with relational process through which social actors construct social realities;
- Social constructionism requires an exclusive distinction between subject and object; it is not a happy or necessary construction and therefore it proposes the overcome of the restrictive dualism that sees the two as existing independently of each other;
- Social constructionism adepts consider important the reflection on the social, cultural and historical fund of our assumptions and constructs and maintain our openness to other possible realities constructed¹⁰.

Social constructionism is placing itself in the post-kantian tradition by considering reality in itself as unknowable. What may appear to the consciousness are no more than social constructs. Those are nothing else than conventions from which individuals are willing to give meaning to the world. Social constructs however once established becomes „reality” with constraining power over social life. Vivien Burr¹¹ draws attention to the subjectiv nature of knowledge and impossibility of claiming absolute objective knowledge. Cartesian evil genius is nothing else than inherent limitations of consciousness. Understanding reality depends on the cultural context in which the interpretation takes place. The reality is actually a construct relative to factors of social and cultural and historical interpretive context.

Beliefs about knowledge, then, inform, justify and sustain our social practices¹². From the methodological point of view to analyze the social reality in its social construction issues should be highlighted the context / contexts in which interpretive meaning of the terms in which social reality is further defined is forged in that language (both in the Community and in the scientific language).

The model is a deconstruction of the concept of reality to the level of social construction of „narrative”, a discursive practice generating consensus. Gergen¹³ moves the interpretive focus from reality to the context of reality and the social network that generate for the individual the experience of reality. The social development, being essentially an integrative process, is prone to transdisciplinarity, and that is why we chose this dimension of social practice to illustrate the interpretative drift of some social techniques caused by changes in a paradigm offered by the shift from transmodern epistemology centered on interconnection.

Constructionist elements in Plato’s social contract theory?

Constructionism, through its anti-essentialist nature, would seem not to belong in the interpretation of Plato's work. Even the most „social” of ideas of Plato, such as laws, have a transcendent origin, and the truth is unique. Aristotle will shape the idea of corresponding truth appropriate to essentialist paradigm¹⁴. Essentialist approach was the dominant paradigm in gnoseology from Platonic period to contemporary. It had a religious nature in Middle Ages, and realistic and objectivist in modernity. The first challenges of essentialism were correlated with transformational models including Darwin’s theory on the evolution of species. The species transform one into each other through an evolutionary process that interrupts conservation of essence at a certain time. According to Plato, constructionism has, besides „a feared opponent”, a methodological precursor. Establishing the truth is achieved to Plato, as to contemporary constructionists, through dialogue. Dialectic accession to the truth without being a proper negotiation of interpretations allows Socrates and his interlocutors to reach interpretative consensus.

John Searl¹⁵ identifies a debate: Platonism versus constructivism that he examines from social construction perspective of mathematics and its teaching. Plato proposes an essentialist version of the

¹⁰ Sandu, A., *Appreciative ethics...*, op. cit.

¹¹ Burr, V., *Social Constructionism*, Routledge, London, 2003.

¹² Gergen, K., op. cit.

¹³ Idem.

¹⁴ Sandu, A., *Appreciative ethics...*, op. cit; Sandu, A., „A Constructionist Understanding...”, op. cit.

¹⁵ Searl, J., „Platonism Versus Constructivism”, *Mathematics Support Newsletter*, Issue 9, Autumn 1999, pp. 5-6.

idea of social contract, personifying the Athenian laws as entities that would require Socrates to choose exile instead of death conviction. Plato makes apology obligation of citizen to obey the law. He has the possibility to give up the obedience to law through the act of emigration, but once accepted they must be defended even at the cost of life¹⁶. In the second book of *The Republic*, Plato clarifies his ideas regarding the social contract showing that although to commit unjust acts can be considered pleasant, and to suffer injustice is definitely unpleasant, when the risk of suffering exceeds the pleasure of creating suffering, individuals decide to agree to give up committing unjust acts in exchange for exemption than to suffer injustice¹⁷.

In the Platonic dialogue, Socrates refuses Glaucon's arguments about the social contract. According to Glaucon, justice is an agreement, a social contract through which individuals refrain from committing injustice in order to not receive an unpleasant retribution. In this vision, the good is a combination of power, pleasure and welfare for which individuals are in competition¹⁸.

For Socrates, justice is equivalent to the health of the soul, thus injustice as sickness is treated through education. The two Platonic visions, from *Crito* and *The Republic*, seem one to defend the social contract and the other to repudiate it. Platonic theory on social contract although rejected by its author as inconsistent with his essentialist theory on the soul, originates social contract theory in a constructionist understanding as an interpretative agreement on justice¹⁹. Natural state in which the individual commits injustice and which is abandoned to avoid retributive suffering will be the basis of Hobbes's vision regarding the „war of all against all”.

Social construction of social contract theory inside the modern realism

The Enlightenment is an intense period of conceptual clarification regarding the state and law, a period during which social contract theory is refined, and with it, also the modern theories about forms of government, freedom, civil rights, etc. The „mission” which Enlightenment philosophers have suggested was to remove the theological-philosophical models on society, and replace it with rationalistic and humanistic models. Enlightenment reproached to theocratic systems that they deprive people of sovereignty, and places it in the hands of individuals (monarchs), on behalf of so-called divine rights. Genoveva Vrabie shows that „the social contract doctrine breaks sovereignty of its transcendental roots and leaves it to the people. The notion of public interest is automatically developed by connecting state power with the people”²⁰. Exactly this process of alienation of the power from its transcendent roots, and its reinstatement on the grounds of public interest is the context of the social construction of the idea of state and justice.

The social contract as a semiotic pact

Hobbes understands the human body and social organization in a mechanistic way. Follower of mechanistic materialism aims the explanation of social phenomena through the same laws of matter and motion that explain the movement of bodies in various physical systems. Hobbesian psychology placed individual interests at its heart in response to mechanical stimuli of pleasure and pain²¹.

The intention of the philosopher is to identify rational principles of government. Monarchical absolutism is the best form of government that prevents dissolution of statehood in civil wars²². In the absence of government, individuals would regress to wildlife, lacking authority within any social or political institution. Each person has a natural right to self-preservation, meaning the right to do

¹⁶ Friend, C., „Social Contract Theory” in Fieser, James and Dowden, Bradley, *Internet Encyclopedia of Philosophy*, 2004, available online at: <http://www.iep.utm.edu/>

¹⁷ Drefcinski, S., *Why Socrates Rejects Glaucon's version of the Social Contract*, University of Wisconsin, Platteville, 1998.

¹⁸ Idem.

¹⁹ Sandu, A., „A Constructionist Understanding of Social Contract Theory”, op. cit.

²⁰ Vrabie, G., *Drept Constituțional și instituții politice*, vol. I, Ed. Cugetarea, Iași, p. 91.

²¹ Friend, C., op. cit.

²² Williams, Michael C., *The Realist Tradition and the Limits of International Relations*, Cambridge University Press, Cambridge, 2005; Lloyd, S.A., Sreedhar, S., „Hobbes's Moral and Political Philosophy”, *The Stanford Encyclopedia of Philosophy* (Spring 2011 Edition) edited by Edward N. Zalta, 2011.

whatever it takes for its own existence. In the absence of moderating authority, this right may virtually extend as much as possible²³.

The natural condition defined by the particular perfect judgement is abstractive. Individualistic rational choice characteristic to natural state is also a fiction. For Hobbes there is no natural source of authority other than investing monarchs with such authority through a form of social contract²⁴. Obedience to the sovereign and obedience to secular laws are the result of giving up natural rights for people or groups of persons exercising sovereign power²⁵. The sovereign is the only one to maintain all rights of nature, the other members of society only retaining the right to defend their own life in case of imminent danger. The sovereign is called to judge and interpret the law that he also issues and enforces it. Concept (construct) called sovereignty is the result of an interpretative agreement, a pact semiotic, which may be understood as a social contract. Context of interpretation of the social contract as semiotic pact is the need for the law to be instituted on the principle of reason.

The social contract proposed by Hobbes is unequal, placing on privileged positions a class of individuals who assume sovereign power. Voluntary obedience is a utopia built by Hobbes. Selfish individuals acting in their own interest will not accept the sovereignty but compensated by other motivational system that Hobbes sees as ideological consisting of religious practices, public doctrines, trust in institutions²⁶.

The reason for which individuals assume the social contract is fear. Being in their natural state, selfish, but rational individuals pursue their self-interest until annihilation of others. To escape from this natural state, individuals voluntarily give up some of their natural rights in favor of a sovereign invested to implement the social contract. This contract is the source of social welfare, morals and law. Hobbes discusses a pre-social condition in which rational individuals pursue their self-interest. Understanding the need for a social contract in order to exit the natural state is a product of negotiations on natural state on one hand and on the essence of sovereignty on the other hand²⁷.

« Fiction » – in the sense of social construct, cultural artifact – called the social contract is not an effective, historical, objective in time contract, but differs from one age to another, as the background of social contract differs from country to country and government to government. Natural state is not prehistoric, but pre-semiotic in which hypothetically, the state does not operate²⁸.

Therefore we can understand the social contract starting with the perspective on how to create meaning to the idea of state and power in relation to uncertainty. „War of all against all” is the context that creates the sense of political power legitimized by social contract. Christine Korsgaard²⁹ places Hobbes’ realism in opposition to Rawls’ constructivism. Korsgaard³⁰ shows that the obligation itself to obey the social contract can not come from the contract itself. This comes from the internalization of sovereignty as moral sense thus giving legitimacy to the government and laws. According to Korsgaard constructivism aims to show how reason can be used to solve practical problems, such as those of ethics and social and political philosophy³¹.

Constructs are realities specific to humans that shape interpretation of reality. All visions of normative, prescriptive nature are based on such constructs: justice, freedom, ideal state. A normative constructed object will be then used in other future construction³².

In our vision, the social contract is such a construct model that is rebuilt within every theory that interprets it. The idea of the Constitution for example, is a legal artifact that puts into practice the construct of social contract, being its precise legal expression. Therefore, the role of the Constitution is to establish membership, exercise and delegation of sovereignty.

²³ Lloyd, S.A., Sreedhar, S., op. cit.

²⁴ Williams, Michael C., op. cit.

²⁵ Idem.

²⁶ Williams, Michael C., op. cit.

²⁷ Sandu, A., *Appreciative ethics...*, op. cit.

²⁸ Idem.

²⁹ Korsgaard, C. M., *The Sources of Normativity*, Cambridge University Press, New York, 1996.

³⁰ Idem.

³¹ Idem.

³² Korsgaard, C. M., op. cit.

The social contract as a pact between individuals for a civil government occurs with the decay from natural state and endless struggles resulting from this situation³³. The property is the one underlying the need for social contract as defending it requires civil government. In natural state, ethics is one of care, therefore community members voluntarily take care of children as a common task.

In our opinion, Locke actually speaks of two social contracts, the first in the natural state that founds ethics of care and the second in the policy state that founds ethics of retribution. The work of John Locke with ethical and political dimension has an important epistemological dimension, contributing to the social construction of the idea of science. The difference between knowledge and judgement is, in Locke's vision, based on the distinction between apprehension of reality as natural capacity and rational knowledge on the basis of evidence³⁴.

The contractualist model on laws imposed by the Enlightenment philosophers is the largest concept in the work of Jean Jacques Rousseau (1712-1778), and suggests the origin of the laws and implicitly of the state in a social contract. Every man is essentially free, his freedom being a feature of human existence as an individual. Social life and coexistence requires voluntary withdrawal of a certain amount of his absolute freedom in favor of society, and of other members of society, in return for ensuring coexistence and efficient operation of social mechanisms³⁵. Thus a „social contract” arises between individuals, who by their free will give up manifesting freely in an arbitrary manner, accepting a series of rules of social cohabitation, which the group imposes on the individual as laws. Governance is a delegation of authority achieved through the transfer of some content of power from the level of individual freedom to that of the state in the form of national sovereignty and good governance. The purpose of the social contract is to ensure freedom. Society becomes a moral collective body and this posture of the state as a legal subject classifies it as sovereign. Genevieve Vrabie shows that, for Rousseau, the leaders of the state have the role of mere civil servants who may be dismissed at any time³⁶. Sovereignty is in fact the exercise of general will, and thus is inalienable, its theory standing at the basis of the ideology of the Bourgeois Revolution of 1789.

Social coexistence is based on the need of human beings to defend against hostile external environment. In the competition for survival, where primitive people were involved together with animals often more powerful and aggressive, the human species has chosen the path of evolution in the community, and with this the human species has developed language and cognitive abilities to successfully dominate elements of nature and its hostile forces. The foundation of any legal system is fear. Feeling fear is a complex feeling, being present in all deep levels of social life. Fear of arbitrary application of force generates the need of framework for organizing the social life as a consecration of the relations of power and lawful use of force. Loss of social freedom and inequality is actually acquired, and not a natural situation of human being. In human society, along with its development, social inequality arises, firstly based on the inequality of power, adding afterwards the unequal status between political leaders and the led ones on one hand, and between the inhabitants of occupied territories and conquerors, situation evident in the ancient empires. The development of the government systems and their division into aristocracy, monarchy, democracy, etc., can be considered a result of the transformation of human beings into *zoon politikon*, after the name given by Aristotle, and transforming the struggle for wealth, power and prestige into legitimate objectives of individuals.

The social contract is based on voluntary membership of all citizens to the principles established and constituted in law. It is this contract and the adherence of all citizens that guarantees the legitimacy of laws and their imperative character, since this is the force of law which should supersede the law of force. Rousseau makes a distinction between the will of all, a simple sum of individual wills, each with its own purpose, and the general will of society, understood as the sum of the individual wills of members of society directed toward a common goal. Rousseau compares the social body to the body of an individual, thus the head being the sovereign power, the magistrates being the nervous system, while the whole economic body is the heart and the citizens its members which provide movement itself. Democracy is the key to ensuring the functioning of the social organism, and it should be manifested in the form of direct democracy. Representative democracy is

³³ Friend, C., op. cit.

³⁴ Sandu, A., „A Constructionist Understanding...”, op. cit.

³⁵ Herseni, T., *Sociologie*, Editura Științifică și Enciclopedică, București, 1982.

³⁶ Vrabie, G., op. cit.

an imperfect form of manifestation of the will of the people, but certainly preferable to any tyranny. For governance to be in the interest of the people it must be based on principles such as equality before the law, and social and political freedom of all citizens. Philosopher's ideals will find their application within the French Revolution, developed into three words that have become programmatic: freedom, equality and fraternity.

Contractualist constructivism at John Rawls (1921-2002)

John Rawls is considered one of the most important American philosopher and ethicist of the twentieth century who reflected on the social and politics. In his work: *A Theory of Justice* (1971), the author prefigures theoretically the conception of generalized welfare state, which underpins the neoliberal policies regarding the welfare state.

Rawls' liberal political philosophy is based on the idea of legitimacy and stability that allows within a law state the manifestation of different points of view of citizens. Citizens of the democratic state accept the legitimacy of law which is understood as being reasonable³⁷. John Rawls restructures the theory of social contract bringing it from the area of political regulation to the ethical justification of the action. Cudd³⁸ classifies John Rawls among the Kantian contractualists.

Rawls' theory of social contract aimed at mutually beneficial acceptance of principles of justice by reasonable members of society. Understanding the social contract as a negotiation of interpretation of principles of justice places Rawls' vision within constructivist philosophy. Kantian vision of presumed rationality³⁹ of all actors involved in ethical decision puts them in a position of equality and autonomy. Social contract is based on a primary equality of individuals who appear to be behind a veil of ignorance. From this pre social state, individuals step into the „contractual” society based on justice. Rational capacity of building juridical as a foundation of social is undermined by the disadvantaged position of persons with disabilities⁴⁰.

The most important contribution of Rawls in both political philosophy and ethics is considered the idea of justice as fairness⁴¹. The metaphor of the veil of ignorance mentioned above as the foundation of Rawls' contractualist constructivism allows the author to formulate a starting point where individuals are without prior knowledge of moral values or specific preferences and in the absence of negative feelings such as envy. From this starting point Rawls aims to build a legitimate framework to establish political power. The maximum moral standard of operating of a society is the distribution of justice as fairness⁴². The basic structure of society of society is the focus of justice because the political and social institutions such as: the legal system, economy, family, distributes the benefits and the difficulties of social life⁴³. The manifestation form of the basic structure of society requires a deep understanding as it profoundly influences the attitudes, goals, relationships and character of individuals.

The two principles of Justice as Fairness are:

1. Each person has the inalienable right to a set of basic liberties compatible and equal with liberties of others.
2. Social and economic inequalities created within society must be manifested in terms of fair equality of opportunities and the maximum benefit for the most disadvantaged members of society (the difference principle)⁴⁴.

Rawls⁴⁵ also emphasizes on the primary goods absolutely necessary for the welfare of the individual. Between primary goods we can find freedoms and fundamental rights, including the

³⁷ Leif, W., „Property Rights and the Resource Curse”, *Philosophy and Public Affairs*, vol. 36, issue 1, 2008.

³⁸ Cudd, A., „Contractarianism”, in *The Stanford Encyclopedia of Philosophy*, Fall Edition, edited by Edward N. Zalta, 2008.

³⁹ Silvers, A., Stein, A., M., „Disability and the Social Contract”, *The University of Chicago Law Review*, 74, 2007.

⁴⁰ Cudd, A., op. cit.; Silvers, A., Stein, A. M., „Disability and the Social Contract”, *The University of Chicago Law Review*, 74, 2007.

⁴¹ Rawls, J., *A Theory of Justice*, Harvard University Press, Boston, Mass., 1971.

⁴² Leif, W., op. cit.

⁴³ Idem.

⁴⁴ Rawls, J., *Justice as Fairness: A Restatement*, Harvard University Press, Boston, Mass., 2001.

freedom of movement and rights of free choice of occupation, wealth and income levels, responsibility, self-esteem and social respect, recognition of merit.

Social construction of law and justice

Constructionism is concerned mainly with explaining the processes by which people come to describe, explain and take note of the world they live in and it includes them⁴⁶, and to construct cognitive-behavioral structures starting from the accomplished interpretations.

Legal discourse is a particular form of discourse and therefore it can be understood in a constructionist way within the framework of textual analysis. Analysis of the legal system must take into account its character of interpretive collective construction that generates social consensus⁴⁷. Frederick Schauer⁴⁸ considers the concept of law as changing with time, depending on the evolution of society and the cultural context in which it is interpreted. The theory called „Beneficial Moral Consequences Thesis” is based on the criticism of both the vision according to which morality is a necessary condition of legality⁴⁹ and the independence of the moral law. Law is a socially constructed institution⁵⁰, and has no ontological value in itself, meaning it can not exist outside the social system in which it appeared. Analysis of the legal system must take into account its character of interpretive collective construction. The set of of existing collective interpretations at the level of society is the „culture” of that society, and therefore the interpretive grid of its normative system⁵¹.

Administration of justice is in its essence a process of interpretation of a „factual reality” called test case through a hermeneutic grid given by legal framework on one hand and the negotiation of interpretations regarding the test case and occurred between the parties involved in the administration of justice on the other hand. The specialist must understand the human framework where legal norms operate, to individualize and understand them by reference to the norms and values of the individual on one hand and the social on the other hand. In this respect Scoffield⁵² believes that the social consensus is invoked non-substantially as „justification of formulation of rigid prohibitions” with respect to cloning and medical assisted reproduction.

Analysis of the legal system must take into account its character of interpretive collective construction. The set of of existing collective interpretations at the level of society is the „culture” of that society. There are many possible interpretations of the way of the social construction of legal institutions, each specific to a particular culture, ideology and historical period. Interpretation of legal fact with instruments of social hermeneutics originate in the work of Gadamer⁵³, who believes that in order to express the meaning of a text (including a text of law) we must first translate it into our own inner language.

Human rights and social reconstruction of social contract

Contractualist theories of modernity identifies the specific of natural state with absolute freedom but impossible to be achieved in social practice. Entire modernity is based on individualism. Therefore social construct created to legitimize the idea of power law was based on the social contract as a manifestation of the free will of individuals together to form the company. The appearance of this construct required a semiotic fiction called the natural state in which individuals expressed their complete freedom in a purely selfish way. The concept of freedom is the basis of all meta-narratives

⁴⁵ Idem.

⁴⁶ Gergen, K., op. cit.

⁴⁷ Devlin, P., *The Enforcement of Morals*, Oxford University Press, Oxford, UK, 1954.

⁴⁸ Schauer, F., „The Social Construction of the Concept of Law: A Reply to Julie Dickson”, *Oxford Journal Legal Studies*, vol. 25, issue 3, Autumn, 2005.

⁴⁹ Fuller, L. L., „Positivism and Fidelity to Law – A Reply to Professor Hart”, *Harvard Law Review*, vol. 71, 1958.

⁵⁰ Schauer, F., op. cit.

⁵¹ Sandu, A., *Appreciative ethics...*, op. cit.

⁵² Scoffield, H., „Canadians Favour Limited Use of Clones for Emergencies Only, Survey Finds”, *The Globe and Mail*, June 16, 2002.

⁵³ Gadamer, H.G., *Adevăr și metodă*, Editura Teora, București, 2001.

that underlies modern theories about contractualist origin of law and state. Choosing the idea of freedom was not random. The objective of contractualist philosophers is to legitimize a rational and predictable exercise of power. The individual as citizen who adheres to the social contract is presumed not to be only free but also capable to realize it. The direct result of the social contract is the equality before the law.

Globalizations of freedom and human rights remains without doubt one of the most important social and political transformations of the last century. Freedom, as understood today, may be divided into regional components. We distinguish on one hand, the political freedom embodied in the right to participate in good governance, the right to elect and be elected, universal suffrage, direct and secret voting for all citizens without discrimination on ethnic, racial, or genre criteria etc.⁵⁴

Cultural freedom includes the right of free access of individuals to culture, and all spiritual goods of humanity, which is associated with freedom of conscience understood as the right of individuals to adhere to any religion, philosophy, political, scientific or theoretical current they want. Freedom of expression is understood as the right of individuals to make their views known, without being restricted or censored. Along with civil liberties, economic freedoms should be taken into account: the right of individuals to economic prosperity through free access to the labor market, including the freedom to choose residence and freedom of mobility, access to health, education services etc. If currently political freedom is a global component, economic freedoms are still in the process of affirmation, with restrictions in the freedom of movement - in some or for certain states and territories, the ownership right, especially in states still under communist regimes. The right to work is still burdened by discriminating practices regarding the access to the labor market of some ethnic or gender categories, people with special needs, or former prisoners⁵⁵.

Instead of conclusions

The social contract is a founding act of meaning. Power relations can be understood as semiotic relations establishing an interpretative will. Natural state, original state in most theories of social contract, is not only a pre-political one, but also pre-semiotic. Affirming the border between the individual and otherness generates the need for interpretation. Failure to include structural otherness will be compensated by the ability to establish it as meaning. The supremacy of law is primarily a way to interpret the difference. If we were to interpret semiotically in contractualist vision, the role of the sovereign in Hobbes' model of social contract would be as semiotic arbitrator. Social semiotics should consider not only the significance of social constructs but rather the acts of establishing meaning. The formation of Polis is a significant act of establishing the power relations as interpretative rules.

„War of all against all” has a symbolic value. Social Contract establishes, from political point of view, the status quo which intervened in the semiotic war. Documents establishing the meaning are not pure negotiation between symbolic equal actors but rather semiotic contracts guaranteeing language convention.

The failure of the modern and romantic project of nation state, the perspective of nuclear annihilation of all mankind drive to replace nationalist ideology by imposing human rights philosophy based on an ontological ethics of tolerance as a virtue. In response to new social realities were generated new ethics based on respect for human dignity, the dignity of the human species, and the values of tolerance, communication and even interdependence. In our opinion, the construct that lies on the foundation of social contract will be replaced, within new semiotic pacts: from liberty of individual with dignity of human kind.

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⁵⁴ Sandu, A., *Appreciative ethics*, op. cit.

⁵⁵ Idem.

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