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The Role of Negotiation and Conciliation in Modern Models of Political Power Legitimization

Abstract

This article aims to demonstrate that mechanisms of negotiation and mediation in dispute resolution are embedded within the contractual theory justifying the prerogatives of public authority. It closely examines such elements as the equality and competitiveness of parties who freely dispose of their rights. Within this context, the article addresses the rationalist assumptions of the ideologies validating contractual legitimacy. The final section reflects on the implications of these assumptions for the development of contemporary models of negotiation and mediation.

Keywords: political power legitimisation, social contract, mediation, conciliation, democracy.

Introduction

The issue of mediation and conciliation in dispute resolution has become one of the dominant themes within the realm of economic activity. The dynamic nature of both domestic and international markets, combined with the multitude of relationships governing the flow of goods and services, has exposed the limitations of a state-monopolized judicial system in resolving commercial conflicts. Even in the face of increasing administrative intervention and the evident need for greater state involvement in liberal economies, the development of extrajudicial conciliation mechanisms remains is still highly pertinent. On one hand, it is a repercussion of eighteenth-century laissez-faire ideology; on the

other, it plays a crucial role in shaping a new paradigm of contractualism in the relationships among actors within a globalizing world. In this light, it is important to note that the issue of mediation transcends the narrow boundaries of private law and enters into the realm of public law, albeit in a transformed manner.

It is hardly surprising to claim that the negotiation-based model of dispute resolution is rooted in the principles of the obligations law - itself a creation of the Western, and thus Roman, legal tradition. Within this framework, we encounter at least two parties equipped with conceptually defined rights and capable of exercising them freely, all within a context of mutual equality and competitiveness. However, this structure raises numerous theoretical problems. And it is no longer merely a matter of the fact that, strictly speaking, competitiveness and equality are mutually exclusive. What appears to be far more significant is the issue of the division between the public and private spheres — a distinction known already in Roman times. Specifically, in a free-market negotiation model, even the prerogatives of public authority — at least in a functional sense — may be reduced to private law entitlements. This, in turn, calls into question the very concept of sovereignty and affects the contractual mode of legitimizing public power.

Of course, this extensive and multi-threaded problem cannot be fully addressed within the scope of the present article. Doing so would require an interdisciplinary research effort involving not only dogmatic legal scholars and historians of ideas, but also philosophers, theologians, and sociologists. Even outlining the specific problems deserving study lies far beyond the scope of a single paper. Nevertheless, it is possible to reflect in this article on negotiation, mediation, and conciliation as they appear in doctrinal concepts foundational to modern democracy. Thus, the research hypothesis is that elements of mediation and conciliation are embedded into the logic of legitimizing the modern state.

The following discussion begins with an analyse of the conciliarist origins of modern democratic theory. It then turns to the contractual theory of state formation and finally addresses current issues of legitimizing public authority.

1. Conciliaristic Roots

The title of the article refers to “modern models of political legitimacy.” Naturally, given the connotations of this phrase, any mention of the late medieval ecclesiastical concept of conciliarism may appear somewhat exotic. Nevertheless, it should be remembered that the boundaries between historical epochs—such as the Middle Ages and modernity—are inherently conventional, and when a history is stripped of such divisions it appears as a continuum of both events and ideas. Hence, scholars who trace the roots of modern democracy to concil-

iarist ideas are justified in doing so[1]. According to John Neville Figgis, the decrees of the Council of Constance constitute the culmination of medieval struggles between autocratic rule and constitutionalism—struggles that ultimately bore fruit in the events of French revolution. The innovative character of conciliarism lay in its proclamation of the community's unlimited sovereignty[2]—a notion which, in turn, required a new approach to the legitimacy of political authority. Let us now attempt to explain how this relates to the topic of negotiation and conciliation.

In the 14th century and at the dawn of the 15th, the Church was mired in a crisis commonly referred to as the Western Schism. This involved the increasing fiscalization of the Holy See, glaring moral deficits at the papal court, and a rise of heterodox chiliastic movements. The key issue of the schism, however, was the division, initially between two, and after the Council of Pisa (1409), in to three papal obediences and three parallel lines of succession to the papal office. Resolving this situation demanded profound reforms—administrative, theological, and pastoral[3]. Initially, efforts were made to reconcile the rival popes through mediation. Only when these attempts failed were conciliation methods adopted[4]. Theoretically, the problem lay in the fact that each pope held equal power, and according to the doctrine developed since Gregory VII, a pope had the supreme authority in the world. Thus, there was no earthly institution with the legitimacy to depose reigning popes. Of course, there were always coercive options or political pressure. However, it must be remembered that every political action requires doctrinal justification. To this end, it was necessary to establish an entity superior to papal authority—hence the development of conciliar ecclesiology.

Conciliarism, however, was not an invention of the 14th century. Already Hugh of Saint Victor perceived the Church as a community of the faithful in which the highest legislative authority was the council, and over which the pope exercised executive power. William of Ockham viewed the Church as a community of believers—God-fearing and poor in spirit—where the supreme authority resided with the assembly of the faithful. In the same spirit, the heterodox thinker Marsilius of Padua expressed his views. Conciliarist theology reached its most advanced form at the universities of Paris, Padua, Prague, and Kraków,

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[1] For example, John Neville Figgis considers the decree of the Council of Constance proclaiming the superiority of the council over the pope to be a pivotal moment in history. He sees the events of 1415 as marking the beginning of the modern era. J. N. Figgis*, Political Thought from Gerson to Grotius: 1414–1625: Seven Studies, Kitchener 1999,* p. 28*.*

[2] Ibidem, p. 30.

[3] J. Krzyżaniakowa, *Koncyliaryści, heretycy, schizmatycy w państwie pierwszych Jagiellonów,* Krajowa Agencja Wydawnicza, Kraków 1989, p. 1.

[4] F. Oakley, *The Conciliarist Tradition. Constitutionalism in the Catholic Church 1300-1870*, Oxford 2003, p. 36.

where such thinkers as Pierre d'Ailly, Jean Gerson, Francesco Zabarella, and Matthew of Kraków were active[5]. The latter wrote of ecclesiastical authority as follows:

For if a superior holds power in the Church, then all the more does the Church itself possess that power, for the superior receives it from God through the Church and for the Church. The Church, therefore, is in the most direct and intimate way the Bride of Christ. It is the Church that elects the pope or entrusts his election to others in the name of Christ. The pope is thus not directly bound to Christ, but to the Church, insofar as he is a member of the Church, its servant, and son. Without the Church, he would not be united to Christ, would not exist as pope at all, and would have no spiritual foundation[6].

Conciliar ecclesiology thus gave rise to a doctrine whereby the community held sovereign power[7]. Although the issues addressed by theologians were strictly ecclesiastical, the arguments they formulated were transferable to the realm of political thought[8]. Firstly, they transformed the role of the monarch—from an earthly sovereign responsible only to God, to that of an official. According to this logic, the authority of the emperor, king, or pope was therefore neither autonomous nor self-justifying but dependent and delegated. Secondly, the mode of legitimizing monarchical authority also underwent transformation: a ruler governed because the people desired it. And thirdly, conciliarism disrupted the hierarchically conceived social structure, in which every individual had a fixed place within both the ecclesial and political community. In the new model, the individual was part of the community on equal terms with other participants, and their will was an element of the will of the sovereign people. All these ideas would later be developed in modern political doctrines, both of democratic nature and those that aimed to shape sovereign nation-states. The practice of conciliatory conflict resolution itself became imprinted in the very origins of the intellectual tradition that would ultimately give rise to the paradigm of modern democracy.

This analysis allows us to trace a morphological continuity between late medieval conciliarism and contemporary concepts of mediation and conciliation in conflict resolution. Firstly, conciliarism in theory established the equality of participants, who—despite differing in their particular goals—strive toward

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[5] J. Krzyżaniakowa, op. cit., p. 6 et seq. Clearly, this list is not exhaustive. Conciliarism gained the support of a wide range of theologians and political thinkers who, beyond seeking a solution to the problem of the schism, saw in it a doctrine capable of limiting the influence of the Roman Curia over emerging national states.

[6] Mateusz z Krakowa*, O praktykach Kurii Rzymskiej; tekst łac. wyd. oraz na jęz. pol. przeł. W. Seńko*, Kraków 2007, p. 221.

[7] Conciliarist arguments experienced a notable revival not long ago in the context of debates on the democratization of the Church. Vide*: J. Ratzinger, H. Maier, Demokracja w Kościele, Kraków 2005, p. 18.*

[8] J. N. Figgis, op. cit., p. 32.

unity in pursuit of a good that offers universal benefit. Secondly, the concept of the People of God provided a justification for the privileged role of the mediator—the sovereign—endowed with competencies none of the negotiating parties possess.

It is also worth noting that this model—designed to justify the scope of prerogatives and the legitimacy of public authority—exhibits notable parallels with private law concepts, especially the law of obligations. From here, it is only a short step to affirming that the product of negotiation is the social contract itself.

2. The Social Contract as the Result of Mediation

Although commonly associated with the classical formulations of Hobbes, Locke, and Rousseau, the concept of the social contract was known already in antiquity and from then underwent numerous transformations. In early times, it was linked to the natural rights of the individual; medieval authors interpreted it within the framework of feudal order; and in the modern era, it was developed in the light of natural law theory. Contemporary contract theorists, in turn, commonly utilise rational choice theory, game theory, and decision theory[9]. It would not be an overstatement to claim that a true renaissance of interest in the construct of the social contract occurred in the second half of the twentieth century. Among many relevant publications, the following stand out: Barry's *Justice as Impartiality*, Buchanan and Tullock's *The Calculus of Consent*, Gauthier's *Morals by Agreement*, Grice's *The Grounds of Moral Judgement*, Rawls's *A Theory of Justice*, Scanlon's *What We Owe to Each Other*, and the influential collection of essays by Harsanyi[10].

Let us leave aside ancient and medieval interpretations and focus on those more relevant to the present discussion. Without a doubt, the novelty of modern contractual theory of the state lies in its rationalist axioms. Influenced by Cartesian, rationalism emphasized methodological assumptions, particularly the a priori conditions of the knowing subject. The resulting concept of the human subject bore the mark of universality. In other words, Cartesian rationalism proclaimed the existence of universally shared cognitive structures inherent to all individuals, regardless of time, place, or culture. This notion had profound con-

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[9] M. Łuszczyńska, *Umowa społeczna jako przejaw racjonalizmu w refleksji nad państwem i prawem*, „Annales Universitatis Mariae Curie-Skłodowska" 2018, vol. XV, 2, p. 149-150.

[10] Vide: B. Barry, *Justice as Impartiality*, Oxford 1995; J. M. Buchanan, G. Tullock, *The Calculus of Consent,* Michigan 1962; D. Gauthier, *Morals by Agreement*, Oxford 1986; G. R. Grice, *The Grounds of Moral Judgement*, Cambridge 1967; J. Rawls, *A Theory of Justice*, revised edition, Cambridge 1999; T.M. Scanlon, *What We Owe to Each Other*, Cambridge 1998; J. C. Harsanyi, *Essays on Ethics, Social Behavior, and Scientific Explanation*, Dordrecht 1976.

sequences in political and legal thought. First, it legitimized a new conception of natural rights — accessible to universal reason (Grotius), secondly, it made possible to create the construction of the state of nature: an a priori domain, typically understood negatively, as a realm in which individual behaviour is not shaped by civilization or cultural constraints (Hobbes, Locke, or Rousseau). If all individuals placed in similar conditions are endowed with the same a priori cognitive and volitional faculties, they are, necessarily, expected to reach similar conclusions and make comparable choices. Consequently, they must enter necessarily into a social contract of a determinate nature[11]. Of course, although each philosopher had its own way of understanding anthropology, vision of the state of nature and the content of the social contract itself, the underlying a priori schema remains the same.

Individuals, experiencing the hardships of life in the state of nature, initiate negotiations. These negotiations take place under conditions of equality, and their subject matter concerns rights that all parties possess and dispose of freely and equally. Here, the similarities with the principles of the law of obligations become evident. One must remember that although the social contract is a pact of a special kind since it concerns political authority and thus it belongs to the realm of public law — it remains, structurally, a contract shaped by the logic of the law of obligations. It gives rise to, extinguishes, or modifies the rights and duties of the contracting parties[12]. From the standpoint of individuals, the contract generates a set of obligations and claims toward one another — and in some cases, toward the sovereign authority established thereby[13]. This demonstrates that both mediation and conciliation are deeply embedded in the formation and the legitimation of sovereign power.

These reflections can be further developed. First, we should observe that in the idealized state of nature, the contracting parties negotiate without the assistance of any judicial institution that could establish a framework of their discussions or enforce the execution of outcome it. Their interactions, therefore, occur entirely outside of any court-regulated procedures — in a space of extrajudicial dispute management. Second, the minimal outcome of these negotiations is the selection of a mediator or arbiter endowed with the authority to resolve future conflicts. This conciliator due to their role becomes the Leviathan — the bearer of political authority. In *On the Citizen*, Hobbes characterizes the benefits secured by the contract: individuals gain protection from external ene-

[11] M. Kumiński, *Problem stanu natury i stanu politycznego w teorii umowy społecznej Thomasa Hobbesa*, [in:] Z. Rau, M. Chmieliński (red.), *Umowa społeczna i jej krytycy w myśli politycznej i prawnej*, Warszawa 2010, p. 113 et seq.

[12] M. Łuszczyńska, *Umowa społeczna jako przejaw racjonalizmu w refleksji nad państwem i prawem*, „Annales Universitatis Mariae Curie-Skłodowska" 2018, vol. XV, 2, p. 148.

[13] Ibidem, p. 149.

mies and assurance of internal peace; they may acquisitive wealth as long as it does not disturb public security; and they may fully enjoy their liberty so long as it does not cause harm to others[14].

Both the catalogue of goods obtained by the social contract and the rationalist spirit of classical theories are echoed in currently discussed approaches. As Albert Weale rightly observes — all contractual approaches presuppose the existence of decision principles for "rational" individuals. Nevertheless, the differences lays in the way of understanding this "rationaliy". Thus, the debate focuses on whether a utilitarian model should be adopted — in which invidivuals select from available alternatives — or whether rationality should be interpreted in terms of motivational theory, whereby individuals act on the basis of reasons that are the most effective for them. Differences also arise in relation to decision-making processes themselves. In some theories, these processes are seen as a set of negotiation techniques, where each participant argues from their own perspective. In others, they are conceived as the result of mediatory efforts to define a common good whose realization would ensure the satisfaction of all parties. Finally, reflection on the social contract increasingly extends to its use as a framework for regulating economic justice and the principles and practices of interpersonal morality[15].

Thus there is a clear link between theories of mediation and rationalist anthropology. This connection extends further — encompassing the contractual theory of the state, its institutions, agenda and legal order. Ultimately, this correlation also encompasses the ideological foundations of the paradigm of liberal democracy[16]. This truly "patchwork-like" configuration may lead to multifaceted consequences should any of its constituent elements fall into crisis.

3. The Crisis of the Liberal Leviathan and the Problem of Mediation

One of the driving forces behind the development of twentieth-century contractual and mediation-based theories of political legitimacy was the growing awareness of the progressive atrophy of liberal democracy. In 1975, the Trilateral Commission published a report concerning the crisis of modern democracy. The authors argued that liberalism fuels an unrestrained growth of claims, which, in turn, places increasing pressure on governments, undermines authority, and erodes discipline—both on the part of individuals and entire social groups. Ultimately, the authors concluded, that this leads to a rejection of any

[14] T. Hobbes, *On the Citizen*, Cambridge 1998, p. 144.

[15] A. Weale, *Modern Social Contract*, Oxford 2020, p. 8.

[16] P. Kimla, *Umowa społeczna współcześnie*, „Miscellanea Historico-Iuridica", 2016, vol. XV, p. 160.

sense of the common good and the universal interest of all citizens[17]. While the Commission's findings may not seem particularly groundbreaking from today's perspective, in the final decades of the twentieth century they were developed toward analysing democratic societies using patterns (institutions) derived from the law of obligations and a negotiation-based model of interaction among the users of liberal regimes.

Thus, it was emphasized that under liberal economic conditions, professions once associated with a certain degree of authority had been devalued. Relationships previously considered as expert and therefore hierarchical such as doctor–patient, teacher–student, believer–priest, or litigant–lawyer — have been reshaped according to the free-market model of a transaction between seller and buyer. Every value has been reduced to the status of a tradable good[18]. Perhaps this would not be inherently bad, were it not for the fact that these professions once helped form something what might be called as the common good. Consequently, as Jacques Rancière aptly observes, the egalitarianisation and marketisation of these relations results in the exhaustion of both political and religious collective transcendence[19].

In this difficult situation, where the common good disappears from the horizon, the void is filled by the self-serving desires of attention-seeking and perpetually dissatisfied individuals. Whats more, political regimes—along with their pluralist party systems, elections, and equally valid worldviews—increasingly come to resemble a personalized self-service society, characterized by try-before-you-buy options and combinatorial freedom[20].

Yet this is also a crisis of rationalist anthropology and of rationalism itself. It turns out that in the pluralistic context of a globalized world (a phrase that only *prima facie* seems to be pleonastic) it is extremely difficult to identify any universal principles that govern the a priori-constructed individual. Every attempt to establish such principles risks a serious mismatch with the a posteriori reality of many cultures that were not grounded in Roman concepts of contractual law. Besides, the very notion of the individual has become problematic since an individual is not considered to be in a state of nature, but rather it is perceived as a consumer who is ultimately reduced to a agglomerate of demands. These challenges confront all contractual theories that employ elements of negotiation and mediation in the construction of political and legal order. But that is not the end of the matter.

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[17] Vide: M. Crozier, S. P. Huntington, J. Watanuki, *The Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission*, New York 1975. The Trilateral Commission is a group of statesmen, experts, and businessmen from the United States, Western Europe, and Japan, established in 1972. It is often credited with formulating the idea of a future "new world order." *J. Rancière, Hatred of Democracy, Warsaw 2008, p. 13.*

[18] D. Schnapper, *La Démocratie providentielle*, Paryż 2002, p. 169-170.

[19] J. Rencière, op. cit., p. 26.

[20] G. Lipovetsky, *L'ère du vide: essais sur l'individualisme contemporain*, Paryż 1983, p. 145-146.

Contractualism also encounters dysfunction on the international stage. The Westphalian idea of the sovereign Leviathan, the idea that at least in theory is the source of international legal norms—is no longer capable of securing the interests of the parties to the social contract, specifically, the preservation of peace. Whereas international conflict ultimately brings about a return to the state of nature. One may therefore expect that current political, philosophical, and theological thought will eventually create a new method of legitimizing authority—one that shall abandon the frameworks provided by theories of negotiation, mediation, or conciliation.

These probabilistic reflections provoke a further question: is the relationship between the contractual or mediation-based model of dispute resolution and the legitimization of political authority the one of bidirectional type? If so, then a change in the ideological framework legitimizing public authority would inevitably reverberate through the foundational assumptions of mediation—namely, party equality, competitiveness, and the free disposition of rights. At this stage, it is hard to predict how this changes will unfold.

Conclusion

This reflections have revealed a profound interdependence between the mechanisms of negotiation, mediation in dispute resolution and the doctrines of contractual political theory. Although the core axioms of these doctrines can already be found in the late medieval tradition of conciliarism, they reached their intellectual apex through the lens of modern rationalism. What's more, a priori assumptions continue to serve as the foundation for contemporary contractual theories.

Also, the initial hypothesis proposed in the introduction has thus been confirmed: the social contract draws on the assumptions of private law, while the mechanisms that make agreement between parties possible are precisely negotiation and mediation.

The analysis also exposed key issues concerning contractual theories of authority. Currently, a priori conception of individuals entering into a social contract fails to explain the reality. The tension between the a priori model of the human being in the state of nature and the a posteriori grounded participant in a global free-market exchange casts doubt on the very possibility of constructing a universal subject.

Bibliography

Barry, B., *Justice as Impartiality*, Oxford 1995.
Buchanan, J. M., Tullock, G., *The Calculus of Consent*, Michigan 1962.

Crozier, M., Huntington, S. P., Watanuki, J., *The Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission*, New York 1975.
Figgis, J. N., *Political Thought from Gerson to Grotius: 1414–1625: Seven Studies,* Kitchener 1999.
Gauthier, D., *Morals by Agreement,* Oxford 1986.
Grice, G. R., *The Grounds of Moral Judgement,* Cambridge 1967.
Harsanyi, J. C., *Essays on Ethics, Social Behavior, and Scientific Explanation,* Dordrecht 1976.
Hobbes, T., *On the Citizen,* Cambridge 1998.
Kimla, P., *Umowa społeczna współcześnie,* „Miscellanea Historico-Iuridica" 2016, vol. 15, no. 2.
Krzyżaniakowa, J., Koncyliaryści, *heretycy, schizmatycy w państwie pierwszych Jagiellonów, Krajowa Agencja Wydawnicza,* Kraków 1989.
Kumiński, M., *Problem stanu natury i stanu politycznego w teorii umowy społecznej* Thomasa Hobbesa, [w:] Rau, Z., Chmieliński, M. (red.), *Umowa społeczna i jej krytycy w myśli politycznej i prawnej,* Warszawa 2010.
Lipovetsky, G., *L'ère du vide: essais sur l'individualisme contemporain,* Paryż 1983.
Łuszczyńska, M., *Umowa społeczna jako przejaw racjonalizmu w refleksji nad państwem i prawem,* „Annales Universitatis Mariae Curie-Skłodowska", 2018, vol. 15, no. 2.
Maier, H., Ratzinger, J., *Demokracja w Kościele*, Kraków 2005.
M. z Krakowa, *O praktykach Kurii Rzymskiej;* tekst łac. wyd. oraz na jęz. pol. przeł. Seńko, Kraków 2007.
Oakley, F., *The Conciliarist Tradition. Constitutionalism in the Catholic* Church 1300–1870, Oxford 2003.
Rawls, J., *A Theory of Justice, revised edition*, Cambridge 1999.
Rencière, J., *Nienawiść do demokracji*, Warszawa 2008.
Scanlon, T. M., *What We Owe to Each Other*, Cambridge 1998.
Schnapper, D., *La Démocratie providentielle,* Paryż 2002.
Weale, A., *Modern Social Contract,* Oxford 2020.

Rola negocjacji i koncyliacji w nowożytnych modelach legitymizacji władzy politycznej

Streszczenie

Artykuł zmierza do wykazania, iż mechanizmy negocjacyjne i mediacyjne rozwiązywania sporów wpisują się w kontraktualną teorię uzasadniającą prerogatywy władzy publicznej. Szczegółowemu rozważaniu poddano takie elementy, jak równość i konkurencyjność stron, które w sposób wolny dysponują swoimi prawami. W tym kontekście poruszono problem racjonalistycznych założeń ideologii uzasadniających kontraktualistyczną legitymizację władzy. Wnioski zaś odniesiono do kierunków rozwoju modeli negocjacyjnych i mediacyjnych.

Słowa klucze: legitymizacja władzy politycznej, umowa społeczna, mediacje, koncyliacje, demokracja.