**Brexit, the EU and the European Project**

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**Abstract**

We rethink the exit option strategy made by the British electorate as part of the “European Project”. To this end, we first note limitations of the classical and recent contractualist tradition. Brexit has been perceived as a crisis of the “European Union” but mainly is a problem or manifestation of the “European Project”. How to rethink Brexit? As part of an ongoing process where a European social contract is being developed. To do this, we resort to the contractualist tradition and highlight the limitations it has to rethink the sophisticated and unprecedented contemporary European process.

**Introduction**

The “European Project” has been an unparalleled institutional innovation but, however, has not accordingly generated in contractualist thinking the need to innovate. On the contrary, the emergence of the Rawlsian theory and its sequel contributed to an extensive reflection on a liberal contract increasingly alien to worldly human behavior. This has been paradoxical: with Rawls (1971) the contract theory moved away from the human reality when, at the same time, a deeply human experience (the “European Project”) was consolidated, which was liberal, dynamic and increasingly complex.

Brexit is a recent political episode that has contributed to confirm the limitations of contemporary political philosophy to interpret some complex social manifestations, namely, certain decisions that do not necessarily seek to defy the existing social contract by denying it, but instead seek to challenge it by enriching it.

The limitations of the classical social contract have been made evident due to the inability to acknowledge Brexit’s nuances. It is that we have fallen too much into a Manichaean discussion between black and white, where white was supposedly the civilizing effect of remaining in the EU and black was the barbarism of leaving it. As we know, the social contract has been an analytical tool designed to articulate consensus. In the logic of a contract, there are no nuances: contracts are fully respected or not respected. A contract can not be partially respected. A partial respect reflects a breach.

But This view has proved unsatisfactory. Given that we think of the European contract as the classical social contract, we have analyzed and de-codified the exit option made by the British electorate in black and white. It has been extremely difficult to find nuances. However, shortly, we can question this widespread belief. We can see that there is in Brexit a decision to leave the EU which is not necessarily a decision to leave the European project. But to see not only evident problems but also concrete opportunities we have to stop thinking about Brexit in a static way. We need to incorporate a temporal dimension.

Thus, if instead of a static analytical construction one could think of the contract as a discovery process, it would be possible to rescue two characteristics that Brexit informs us but that we cannot decode due to the absence of a satisfactory conceptual apparatus: 1) Though it may be true that the exit option adopted could weaken the previous contract (that is, the EU formal apparatus), it is also possible to imagine a scenario where the decision of the British electorate generates incentives that, at a given moment over time, could strengthen it so as to produce substantial changes in the EU; (2) both those who aspire to leave and those who aspire to remain may find themselves in a different contract in the medium run and for this (1 and 2) to happen, a temporal dimension must be incorporated.

Thus the contractualist aspiration to reach consensus is unrealistic for the static whereas the healthy aspiration of dissent is perceived as a threat precisely because we have conceptual limitations to conceive the temporal dimension (or the role of time). There is a discussion systematically avoided in the classical and contemporary contractual tradition: what are the benefits and opportunities of dissent? (dissent is in our example represented by the exit option).

That is, Brexit cannot be thought of as a zero sum game but it is not possible to think of positive sum games if we do not add a temporal dimension into the game. In post-Brexit readings, self-fulfilling prophecies follow, reflecting an essential inability to think of the British electorate's decision beyond immediate impact.

The social contract does not represent the moment where all agree to converge but where everyone accepts both the possibility of converging and the legitimate right to exercise the exit option. Thus, if we interpret the exit option strategy as an action that forms part of the contract, we could rethink Brexit as an option that does not intend to leave the “European Project” but only a formal part of the project, which we call the “European Union”.

If Rawls's input has contributed to highlighting the limitations of the classical contractualist conception, the Brexit phenomenon revealed another kind of even more fundamental limitation: the inability to think of the exit strategy as part of an intertemporal contract. If we introduce the exit option as part of a dynamic contract, we could think Brexit as a decision that partly seeks to improve the “European Project” and not, as most have mistakenly assumed, to repudiate it entirely.

Next, instead of starting from the certainty of Brexit as a terminal problem for the “European Union”, let us start from the suspicion of Brexit as enriching event of the “European Project”. For this, it has become clear that we must rethink the conceptual apparatus where the meaning and scope of the contract lies (in our case, this is the European contract).

The theory of the classic social contract is obsolete. Rawlsian theory is challenged. The unprecedented European contract lacks an adequate theory. Then, from the inability to think of the European project as an innovative social contract follows an inability to think of the Brexit crisis as a particular form that has taken that unplanned European contract.

Contractualism had contemporary revived by three seemingly unrelated events: Rawls' “A Theory of Justice”, the “European Project” and post-war abundance. The correlation between the first two events (Rawls's book and the “European Project”) is paradoxical: on the one hand, Rawls introduces a remarkable theoretical innovation but is still a static understanding of a dynamic political phenomenon while, in parallel, the “European Project” was consolidated as something unprecedented, precisely because it incorporated successive contracts, that is, it introduced a new social contract, where a dynamic order emerged.

The influence of both phenomena has been directly related to the unprecedented postwar abundance in Western Europe and the United States: the political dimension of the “European Project” and the conceptual and academic dimension of the rawlsian project cannot be understood without the unprecedented abundance that liberal democracy brought in the United States and Western Europe in the decades after the end of the Second World War (and with its nuances it has reached our times).

**Rethinking Brexit: a Conceptual Framework**

THEN, The social contract becomes a sequel that needs 3 moments: a crucial moment A (where the exit option takes place), a moment B, where the parties speculate, from what happened in A, about the characteristics of a hypothetical place of arrival, and a moment C (arrival) where the parties try to reconcile the intuitions about social life they developed in B (Hirschman, 1970; Fried, 2003).

In B the notions of equality, freedom, fallibility and diversity (Gray, 1995) are developed using point A as the philosophical, political and moral point of reference. It is necessary to point out that the potential strength of this moral and political construction is a direct consequence of the philosophical and epistemological modesty (simplicity) that generated A as an original moment.

A’s  original modesty (or simplicity) is key because instead of closing the analytical frame (as Rawls and most contemporary political philosophers do) to seek a rigorous, demanding and sophisticated agreement, an opening scenario is generated where the parties “think big" from the framework driven by A that contains or encompasses a large number of possibilities that, however, coexist in a " meta liberal" philosophy.

Rethinking the contract as a 3-part process contributes to the emergence of conceptual and political tools. Now there is a first moment (A) where the parties leave, there is a second moment B where the parties seek a new place and there is a third moment where the parties reach C. This contributes to decompress the political and moral role that both the classical and rawlsian political philosophy have assigned to C as the ambit of ​​conflict resolution. In our framework, C does not have to "solve everything" for two relevant and obvious reasons: on the one hand, some  conflicts have been resolved in A and some others have been solved in B so the tension is less when C emerges. Second, it is now clear that C is a point of arrival, encounter and agreement, but the agreement has nothing definitive and timeless and this follows naturally from the previous dynamics where C can become a new A. It is necessary to stress that the exit option at C does not have to be thought of as a fourth step of the process because it conceptually reflects the same situation as in A which, in turn, is possible to suppose, was constituted in its moment as another departure from a previous C.

The construction of the contract as the succession between A, B and C causes that we attribute less demands to C. C is now a place of arrival and a potential departing point. Both things make C have fewer attributes and requirements than in the classical and rawlsian contract. This contributes to generate a more realistic and dynamic framework, making possible to build different contracts able to solve certain demands and problems, but stressing and celebrating the possibility of not solving other problems and demands.

The emergence of A as the starting point (or original position) of the contract contributes to a radical conceptual change in C. While in the classical (Hobbesian or even Rawlsian) version, C represented the explicit quest to end dissent because it constituted a threat, in our version C is that place that is enriched and takes advantage of the past dissent, generates the conditions for a possible agreement and institutionalizes the conditions for a potential exit option from C to other possible Cs. C is a place where tolerance is institutionalized and this institutionalization does not require a formidable and ultimately unrealistic political and intellectual effort, as indeed is the case in the Hobbesian and Rawlsian version of the contract. The emergence of dissent (A) as the original position of the contract makes C a politically modest and morally ambitious ambit. This combination could not be planned by anyone and became central part of the “Liberal Project”. Brexit has been the closest experience of this dynamic.

Then, Brexit has been perceived as a crisis of the “European Union” but from our conceptual framework mainly is a problem or manifestation of the “European Project”. We rethink the contractualist theory introducing a moment previous to the original agreement or position. We assume that the actors recognize the difficulty of a total agreement and consequently assume the right of the parties to exit. A (the original position) is not the agreement but the acceptance of the disagreement. B is the (analytical) path that runs between the exit at A and the arrival at C place of arrival. Brexit is part of C and, as such, we rethink it analytically as a potential A.

In this way, the moment of the classical agreement ceases to be hypothetical because we build as hypothetical an earlier moment and this contributes to 1) provide historical realism for a subsequent agreement (at a second moment) since, as it is now clear, the parties will no longer need a contract that contains all but some of them, 2) introduce the temporal dimension in the contractual construction and 3) consequently, introduce as part of the contract the hypothetical future exit option of the parties involved. This pre-contractual hypothetical construction makes it possible to introduce a realistic historical dimension to the scope and limits of agreement (consensus) in human affairs. This realistic dimension, in turn, enriches the conceptual apparatus as, for example, it contributes to explain phenomena such as Brexit that from our theoretical perspective is a phenomenon that happens within the contract but which, for most analysts, has represented the breach of the european contract. As we mentioned, this is due to the inability to perceive the exit option as a decision that belong to the imponderables and legitimacies of a contract.

Why do we always think of Brexit as a problem? Because it is inconceivable to recognize in the exit option that a referendum reflects an opportunity for a future agreement. Why is it so difficult? Because from Hobbes to Rawls and its current sequels we have conceived the social contract as a mechanism to build (the polis) and it is inconceivable to think dissent as the engine of human agreements.

On the other hand, if we assume that dissent is a constituent part of the contract, then we come to two important initial considerations: the exit option (in our case, the Brexit referendum) is a key part of a contract that is under construction and, secondly, time is a constituent part of the search for consensus. There is no contract without time because there is no agreement without a previous exit option. As we see, from a sequence 1) the exit option at A, 2) a path (B) to C, 3) arrival and agreement in C, it is possible to think of a point 4) that basically consists of the legitimate possibility of going through 1) again, that is, to re-choose the exit option.  Brexit is an exercise of the exit option that, although challenging the EU, happens within the “European Project”.

That is, given that we think of the EU as a zero-sum game between its parts (and we do that because we think of the contract as a timeless process) then the appearance of an alternative like Brexit is interpreted only in its static dimension (its zero-sum logic). This contributes to a self-fulfilling prophecy: since there is a zero-sum game because the Referendum does not have time, then the exit option becomes an institutional crisis and not a way (virtuous or not) to rethink it. If we were to add the temporal dimension to the construction of the social contract, Brexit would not only be a crisis but an opportunity. Brexit critics see only the crisis because they do not conceive nuances in the idea of ​​the social contract: it is within the contract or is outside. There is an analytical vicious circle recreated by this conception or thought: if there is no time in the social contract and in the EU only is inside or outside, there is no possibility to rethink the nuances that Brexit has introduced.

Brexit is just many people dissenting. Indeed, people disagree. Why then has it generated such a convulsion and catastrophic perceptions? Because we do not have a proper conceptual apparatus to incorporate dissent virtuously. That is, mainly because we do not (have not been able to develop) recognize or understand the benefits of dissent and, consequently, the benefits of virtuously encouraging it. After Brexit this is paradoxical, ironic and even tragic: we witness one of the most representative and formidable historical events of the intimate relationship between dissent and civilized life and, instead of taking advantage of it and studying what are the analytical and institutional tools that would consolidate it and deepen as a noble human manifestation, we have dedicated to denigrate it and associate it with racist, xenophobic and provincial manifestations.

If we thought the contract as a dynamic construction, Brexit could be thought of as a demand to change (or modified) the “European Project”. On the other hand, since most actors assume that the contract has been thought and implemented statically, Brexit becomes a final decision. Then, Brexit becomes a crisis for the UK and for Europe. The discussion is a succession of static places and zero sum games. Rethinking how the social contract is constructed is a necessary condition to envisage or reformulate the connotations of Brexit.

**Contract and Dissent**

An adequate conceptual apparatus for thinking about social life should not only contemplate dissent as an inexorable characteristic of human nature but should theorize about its benefits. How to do it? Our approach incorporates dissent as the political phenomenon that initiates the social contract. Thus, instead of incorporating dissent as a secondary factor (as an inexorable condition of civilized life), we position it as a central factor that not only generates tension but also is a factor that promotes the cohesion of life in society. Thus exposed sounds anti-intuitive. However, shortly we see that the acceptance of dissent as a constituent part of the polis contributes to generate mechanisms of moderation. The first mechanism is respect for the legitimate exercise of exit by one or more actors.

We seek to rethink Brexit as a noble part of the “European Project”. To this end, we emphasize that the exit option made by British electorate has been an essentially liberal manifestation and liberalism is a central part of the informal institutions of the European project. Shklar argued that "liberalism" has become an "all-purpose word" but, he goes on to point out, this is because it has become “"the metacategory of Western political discourse". For the philosopher ”Before we can begin to analyse any specific form of liberalism we must surely state as clearly as possible what the word means. For in the course of so many years of ideological conflict it seems to have lost its identity completely. Overuse and overextension have rendered it so amorphous that it can now serve as an all-purpose word, whether of abuse or praise” (1989, 3).

Then, we run the risk that liberalism is everything and therefore does not mean anything substantial and contestable. This, by the way, is an extremely ironic risk because being "everything", liberalism has been unable to provide or at least attempt a reading of a phenomenon like Brexit, a phenomenon that, shortly, it is possible to argue as a liberal expression or with purely liberal facets (Gray, 1995).

The contract as a myth and as a mechanism of static coercion lies at the root of a problem that liberal societies have not yet recognized: the noble role of dissent. Dissent is (tautologically) a constituent part of an open society. There is no freedom without the legitimate right to the possibility of dissent, whether or not that right is exercised. Both in history and in myth, it has been so difficult to reach the contract that, once achieved, it is difficult to think to challenge it as something essentially virtuous. “A la Brexit”, to challenge the contract looks like some form of barbarism, tragedy or uncivilization and not, as it has been, a way of rethinking the conditions of coexistence, that is to say, of a possible current dissent that could constitute a future consensus.

The idea of the social contract has a long and noble tradition. Thinkers like Hobbes[[1]](#endnote-1), Locke, Rousseau and, contemporary, Rawls, Buchanan or Gauthier assume the conceptual existence of an initial moment or original position from where people agree to integrate an ambit with certain rules that all will respect (Rawls, 1971; Buchanan, 1975; Gauthier, 1977; Bogart, 1985)[[2]](#endnote-2). The recent literature on the state of the art of contractualism is equivocal. On the one hand, it is possible to argue that after the Rawlsian Copernican revolution  the debate has decanted and, in part, has stalled. The growing temporal distance from the breakpoint of Rawls' book (published in 1971) has allowed political philosophy to generate an analytical relationship close enough and far enough to weigh the size of the revolution[[3]](#endnote-3).

Contemporary contractualism theories have avoided recourse to the integral Hobbesian consensus (Hardin, 2005) as a static initial moment but have not been able to introduce a temporal dimension or have introduced the role of time only forward. On the other hand, when in the Rawlsian sequel explicitly or tacitly a temporal dimension is incorporated, its role seems to be only a vehicle in search for the inexorable agreement. For example, the Stanford Encyclopedia of Philosophy sustains that “To explicate the idea of the social contract we analyze contractual approaches into five variables: (1) the nature of the contractual act; (2) the parties to the act; (3) what the parties are agreeing to; (4) the reasoning that leads to the agreement; (5) what the agreement is supposed to show”[[4]](#endnote-4). As we see, the 5 points seek to build an analytical framework where it is assumed that the parties desire to converge and where the argumentation tries to legitimize how that should be done. Thus, there is only time forward and as a condition of the search for an agreement. Then there is not even a small door to think about the role of dissent in the contract. Since it is assumed that it is contradictory to resort to dissent to think the contract, then it becomes impossible even to position dissent (as an exit option) as the original moment of a civilized life.

The repercussions of Rawls's work provoked a dialectical spiral. The first response was Robert Nozik's book "Anarchy, State and Utopia" (1974). There followed a large literature impossible to include in this work, among them, Sandel's communitarianism (1982), Gerry Cohen's radical egalitarianism (1995), Ronald Dworkin's egalitarianism (1981a, 1981b) and Will Kymlica's cosmopolitanism ( 1995, 1998). On the other hand, in the rawlsian sequel it is necessary to briefly quote a Nobel Prize in Economics (1986), James Buchanan, who in 1975 published a sophisticated contractualist reading, where he famously starts his “The Limits of Liberty” sustaining that “ Precepts for living together are not going to be handed down from on high. Men must use their own intelligence in imposing order on chaos, intelligence not in scientific problem-solving but in the more difficult sense of finding and maintaining agreement among themselves. Anarchy is ideal for ideal men; passionate men must be reasonable” (1975, 1)[[5]](#endnote-5).

Buchanan is an economist writing on political philosophy who believes in the inherent inefficiency of human institutions. On page 3 he maintains “Institutions evolve, but those that survive and prosper need not be those which are ‘‘best,’’ as evaluated by the men who live under them. Institutional evolution may place men increasingly in situations described by the dilemma made familiar in modern game theory. General escape may be possible only through genuine revolution in constitutional structure, through generalized rewriting of social contract. To expect such a revolution to take place may seem visionary, and in this respect the book may be considered quasi-utopian. Rethinking must precede action, however, and if this book causes social philosophers to think more about ‘‘getting to’’ the better society and less about describing their own versions of paradise once gained, my purpose will have been fulfilled”( 1975, 3). Buchanan speaks of "escape" and does not seem to pay enough attention to the “exit” definition, articulated by Hirschman in his classic 1970 book. In turn, as we have mentioned, conceptual escape is always forward. It seems there is no possibility of incorporating time backwards[[6]](#endnote-6).

The publication of "A Theory of Justice" in 1971 has made possible a new discussion on the validity of the social contract as an explanatory ethical and political concept. Until "The Theory of Justice," the idea of ​​the contract had in part been weakened by the rigorous and systematic critique of the long anti-contractualist liberal tradition that ranged from Hume (1978) to Hayek (1960). By reincorporating the contract tradition at the center of the debate, modern theories of justice have given us the possibility to rethink their problems and limitations. Primarily, Rawls’ construction has given us the opportunity to rethink the contract by incorporating the sophisticated analysis that has entailed the veil of ignorance in the original position.

**Some Final Remarks**

The classical social contract theory has made it difficult for us to understand the inconveniences of an integral consensus. In its initial Hobbesian version, the contract had to demand a total consensus because the option was Manichaean: war or peace. Obviously, this conception had in itself the impossibility of dissent. There, dissent was a betrayal. However, this elemental version had and could be improved through the understanding of a simple postulate: dissent was a noble mechanism for enriching peace. Peace and civility were not only built of people who did not war and agree but, even more, of people who did not war and dissent. Again, thinking about the current importance of Brexit and its consequences, it is necessary to notice this deep belief of the liberal tradition.

The idea of Europe (even the EU as an idea) is a liberal project and Britain's exit option has a deeply liberal dimension. Following this conceptual sequence, it is possible to think that in the liberal option (that has been Brexit) rests a possibility to enrich the “European Project”.

As we mentioned, in the necessary re-reading of Brexit, we begin with a relevant intuition: as long as we are able to perceive the exit option as part of the contract, it will be feasible to think that in that episode lies (or, at least, could lie) an opportunity to enrich the contract and not, as we assume, a dramatic episode that reflects the collapse of the agreement.

Both Hobbes and Rawls have been unable to perceive the central role played by dissent in open societies. Particularly in post-Rawlsian political philosophy, it has been conceptually difficult to understand that dissent (and the practical mechanisms that surround it) is a constitutive part of a just society. It is that this is anti-intuitive: Rawls made a remarkable theoretical effort to justify the convergence of the parties towards a center that had to possess a set of characteristics to satisfy the demands of a just society. Since this theoretical effort sought to converge the parties to the center, incorporating divergence as a necessary condition not only of a stable order but of a just order seems to be a meaningless complication. In the original ralwsian reading and its neo ralwsian sequel, dissent would be informing us of some kind of injustice that would have to be repaired.

The rigidity of the classical social contract has prevented us from understanding that the presence of dissent does not necessarily imply failure. Moreover, the “European Project” (where the “European Union” is only a part) has represented a new form of the social contract and has confronted us with the limitations of the traditional conceptual apparatus. The classic social contract is not only too rigid, but is also obsolete because of its inability to pay attention to the benefits of dissent. Thus, while dissent has always been an inexorable feature of the human condition, only recent (postwar) history has been able to make explicit its essentially virtuous condition and, moreover, post-war European experience has contributed to show the deep limitations of classical contractualist thinking. As we mentioned, the rigidity of the conceptual apparatus has prevented us from apprehending the virtues that the exit option entails for the contract. People exercise their exit option. This aspiration can be successful or not, irresponsible or not, but it is an aspiration that must be rethought as a virtue and not as a threat.

Civilized life does not lie in the ability to coexist through consensus but in generating mechanisms to coexist (and, even more, to prosper) in present or next dissent. That was Brexit. We have been unable to "see" it because we do not have the right tools or lenses. Brexit may have expanded our civilized area of ​​dissent then contributing to a more stable coexistence in diversity.

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1. Hardin sustains in “Indeterminacy and Society that “Hobbes was not statically concerned with optimizing welfare by reallocating among us through voluntary exchange what we already have. He was dynamically concerned with giving us the opportunity to produce more and thereby to increase our welfare.”(Hardin, 2005, 43) [↑](#endnote-ref-1)
2. Where the contract is situated? For Gauthier (1977), “The conception of social relationships as contractual lies at the core of our ideology. Indeed, that core is constituted by the intersection of this conception with the correlative conceptions of human activity as appropriative and of rationality as utility-maximizing. My concern is to clarify this thesis and to enhance its descriptive plausibility as a characterization of our ideology, but to undermine its normative plausibility as ideologically effective. I The thesis refers to our ideology. There are two terms here which require immediate clarification; the first is "our." Philosophers habitually use the first-person plural pronoun; its use demands specification. Who are "we"? In this essay, first-person plural references are intended to denote those persons who have inhabited Western Europe, who are descended from such inhabitants, or who live or have lived in social structures developed from those of Western Europe during the past three to four hundred years. I am supposing, without further defense, that these persons share certain ideas and certain ways of thinking and behaving that permit the attribution to them of an ideology. “The social Contract as Ideology” [↑](#endnote-ref-2)
3. For example, we can turn to the Stanford Encyclopedia of Philosophy to describe the vitality and validity of post rawlsian debate. Although political philosophy does not revolve around Rawls, its sequel is relevant as both theory and intuition. <https://plato.stanford.edu/entries/contractarianism-contemporary/> [↑](#endnote-ref-3)
4. <https://plato.stanford.edu/entries/contractarianism-contemporary/> [↑](#endnote-ref-4)
5. Also, for Buchanan “We start from here, from where we are, and not from some idealized world

   peopled by beings with a different history and with utopian institutions. Some

   appreciation of the status quo is essential before discussion can begin about

   prospects for improvement.” (1975, 1). [↑](#endnote-ref-5)
6. The same problem of incorporating time only forward in conceptual construction and not repairing its analytical richness if it is also incorporated backwards is seen in the work done by the center of Law and Justice of the University of Oxford, where it effectively introduces the analytical need to think of the contract as a continuous process ". However, it is remarkable how time has legitimacy only forward. The paper sustains that “Before explaining the concept of social contract capacity, the reasoning behind the social contract methodology should be clearly articulated. As noted earlier, social contract theory must satisfy two stages of legitimation: ex ante, the contracting parties are imagined to negotiate the basic structure of society; ex post, the actual parties inquire whether the hypothetical contract lives up to its promise. These two stages are not unconnected from each other; indeed, it is crucial that surrogates and stakeholders not only initiate an original contract but are participants in a continuing process. The underlying assumption is that today’s stakeholders are influenced, even transformed, by the terms of the hypothetical contract. They are meant to become more and more like their idealized surrogates. They are supposed to become freer, better informed, and better equipped with social-contract capacity. This is how stability between the ideal and the real is created. The social contract is meant to be a process which produces better contractors, that is, parties who are better equipped to consider, discuss, and construct a social order based on justice. If the state fails to do so, those who are worse off ‘will interpret the social contract as no more than a giant swindle perpetrated by the well-to-do’.” In other words, contractualism ignores whatever happened before this contract.

   http : //www.fljs.org/sites/www.fljs.org/files/publications/Paz-Fuchs-SummaryReport.pdf (pages 6 and 7), [↑](#endnote-ref-6)