

## SUSTAINABLE ECONOMY V:

### 4. WHAT IS A SOCIAL CONTRACT?

#### Introduction

On a number of occasions, I have heard the term, “social contract,” utilized by industry and government in discussions or announcements about such things as economic development, natural resource management, or community well-being. I am never quite certain as to the meaning and context of the usage of the term. My first thought was of the several instances in some of the communities that I knew in the central and northern part of British Columbia which had had industries fund or help fund community facilities (ice rinks, curling rinks, recreation centres, etc.). However, this really didn’t have the ring of a ‘contract’ about it.

In trying to define a ‘social contract,’ my next thought was that a ‘social contract’ means a strong commitment on the part of industry or government to concern itself with the well-being of the community and its social capital. Was my interpretation correct? I had no idea so I decided to determine the source and meaning of the term.

The definition of ‘social contract’ which I dug up is:

*“Social contract theory posits a hypothetical agreement between people, setting out the rules for our interactions and spelling out what is acceptable behavior by mutual consent.”*

Not much clarity there to support or refute my thoughts. But I did think that social contracts might include collective bargaining agreements. Somehow, I thought that the concept of ‘social contract’ had a broader meaning and context.

#### Background/History

The concept of “social contract” has traditionally<sup>1</sup> referred to theories which try to explain how people form geo-political states to maintain social order. This notion of the social contract suggested that people cede a certain amount of sovereignty to a government or other authority in order to receive or maintain social order through the rule of law. In other words, the governed agree on a set of laws by which we are governed. Social contract theory has been integral to the historically important idea that legitimate state authority must be derived from the consent of the governed.

If we examine the human existence, absent of any structured social order, we could assume that an individual’s actions would be bound only by his or her personal power, and, hopefully, constrained by conscience. We would be living in a state of nature, where each of us has unlimited natural freedom and, thus, the freedom to harm all who threaten our own self-preservation. What would prevent an endless war of everyone against everyone else? To avoid this, we have established political communities, i.e., civil societies through a social contract in

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<sup>1</sup> Rousseau, J.-J. (1762) The Social Contract. eBooks@Adelaide (2005).

which each of us gains civil rights in return for subjecting ourselves to civil law or to political authority. A social contract itself is the means towards a common end — to the benefit of all members of society — and is legitimate only if it meets the general interest. Therefore, when failings are found in the contract, we renegotiate to change the terms, through an election, for example.

## Modern Theory

Modern social contract theory<sup>2</sup> is based on, as the definition quoted above states, “... *the existence and recognition of a hypothetical agreement between people, setting out the rules for our interactions and spelling out what is acceptable behavior by mutual consent.*” In other words, our focus must be on ethical actions, decisions, and reactions. What do we owe to each other? What obligations of honesty, respect, trust and consideration exist between people? We have reason to want to live with others and are motivated to seek agreement on a set of principles for the general regulation of behavior that others similarly motivated could not reasonably reject. Modern social contract theorists<sup>3</sup> have built on the traditional connotations and denotations of “social contract” and, in the process, have distinguished three additional and relevant concepts: “consequentialism,”<sup>4</sup> “contractualism,”<sup>4</sup> and “contractarianism.”<sup>5</sup>

**Consequentialism:** The fundamental motivation for consequentialism is the idea that consequences, outcomes, and results are the only morally relevant factors we should measure when we assess the rightness and impact of an action, plan, program or project. Specifically, the thought is that the focus should be on the overall utility generated as the result of an action. The unhappiness of a few can be outweighed by the happiness of the many. We should not distinguish between how the happiness is distributed over time and space, only the final total. But, ethically and morally, is this the only meaningful approach for us consider? We can define “ethics” as basically a matter of conducting our interpersonal relations with honesty and respect for one another, and demonstrating this respect by defining right and wrong in terms of what we can justify to other reasonable creatures. What is the practical result of this thinking? Focusing on ethics as relations between equals obviously rules out consequentialism,<sup>6</sup> that is, we cannot choose a course of action based on the total amount of good it will produce rather than how each individual fares. Ethically, we should not override an individual’s rights for the greater good. Thus, from a consequentialist standpoint, a morally right action is one that produces a good outcome, or consequence. This view is often expressed as the aphorism, “*The ends justify the means*”.

**Contractualism:** Contractualism is an ethical theory developed from social contract theory. Contractualism has no problem dealing with the idea that outcomes are morally relevant, it just does not agree that they are the only morally relevant factors. Contractualism holds that rationality requires that we respect persons, which in turn requires that moral principles be such that they can be justified to each person. Thus, individuals are not taken to be motivated by self-interest but rather by a commitment to publicly justify the standards of morality to which each will be held.

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<sup>2</sup> Scanlon, T. M. 1998. *What We Owe to Each Other*. Cambridge, Mass.

<sup>3</sup> Matravers, M. 2003. *Scanlon and contractualism*. Portland, Oregon: Frank Cass.

<sup>4</sup> Wallace, R. Jay. 2002. 'Scanlon's Contractualism'. *Ethics*, 112 (3): 429-470.

<sup>5</sup> Vallentyne, P. (ed.). 1991, *Contractarianism and Rational Choice*. Cambridge University Press, Cambridge, UK.

<sup>6</sup> Reibetanz, S. 1988. 'Contractualism and Aggregation'. *Ethics*, 108 (2): 296-311

Contractualism is based upon two fundamental ideas: that ethics is an essentially interpersonal matter, and that right and wrong are a matter of whether we can justify the action to other people. How does contractualism develop these ideas? The idea that ethics is rooted in how we relate to each other sets Scanlon's contractualism apart from contractarianism. Contractualism is not designed as an egoistic way to best fulfill our own desires. The key idea, and the title of Scanlon's book, is "what we owe to each other." What we owe each other is basic mutual respect, recognition of each other's intrinsic value. Contractualism respects other's intrinsic value by basing the definition of right and wrong on whether or not others can rationally reject it. "Wrongness" is the property of not being justifiable to a reasonable rational being: an action that can reasonably be rejected is wrong. An action that is not wrong is permissible, and when one could reasonably reject a course of action that leaves themselves worse off and others better off, but chooses not to exercise this right, that is above and beyond the call of duty, something to be admired. So ethics is basically a matter of conducting our interpersonal relations with respect for one another, and demonstrating this respect by defining right and wrong in terms of what we can justify to other reasonable creatures. What is the practical upshot of this? The focus on ethics as relations between equals obviously rules out consequentialist thinking, we cannot choose a course of action based on the total

**Contractarianism:** Contractarianism has its origins in social contract thinking, and it holds that persons are primarily self-interested, and that a rational assessment of the best strategy for attaining the maximization of their self-interest will lead them to act morally (where the moral norms are determined by the maximization of joint interest) and to consent to governmental authority. Contractarianism argues that we each are motivated to accept morality, as Narveson stated, "*...first because we are vulnerable to the depredations of others, and second because we can all benefit from cooperation with others.*"<sup>7</sup>

Contractarianism ascribes two fundamental elements to the social contract: (1) a characterization of the initial situation, called variously the "state of nature," the "original position," or the "initial bargaining position" by the modern political philosophers, and (2) a characterization of the parties to the contract, particularly in terms of their rationality and motivation to come to agreement.

**Initial Situation:** The initial situation posits what in bargaining theory is called the "no agreement position," the situation to which the individuals return in case of failure to make an agreement or contract. This situation may be more or less hostile, and more or less social, depending on what the theorist sees as human nature in the absence of rules of justice. But crucial to all contractarian theories, there is some scarcity or motivation for competition in the initial situation and there is some potential for gains from social interaction and cooperation.

In contemporary, normal contractarian theories, that is, theories that attempt to ground the legitimacy of government or theories that claim to derive a moral duty, the initial position represents the starting point for a fair, impartial agreement. While contractualists justify the requirement of a fair, impartial agreement by reasons external to the contract itself, contractarians hold that the success of the contract in securing cooperative interaction itself requires that the starting point and procedures be fair and impartial.

**Rationality of Contractors:** The second element of a contractarian theory is the rationality of the contractors. Firstly, contractarian (as opposed to contractualist) theories usually take

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<sup>7</sup> Narveson, Jan. 1988. *The libertarian idea*. Temple University Press, Philadelphia, PA. p. 148.

persons to be self-interested in order to justify rules of morality or justice. This is because persons are assumed to have given preferences and interests which do not necessarily include the well-being of others, which is taken to be a moral preference and as such not prior to morality. Secondly, persons are presumed to want the benefits of social interaction if they can be had without sacrifice of individual self-interest. These two aspects of the contractarian individual in part imply what some have called the "circumstances of justice," the conditions under which rules for justice could be both possible and necessary.

Justice, and so a social contract, is only possible where there is some possibility of benefit to each individual from cooperation. Social contract theories take individuals to be the best judges of their interests and the means to satisfy their desires. For this reason, there is a close connection between liberalism and contractarianism. Another point of criticism that arises from the characterization of the parties to the contract is that they must be able to contribute to the social product of interaction, or at least to threaten to destabilize it. This is because each individual has to be able to benefit from the inclusion of all those included. But this threatens to leave many, such as the severely disabled, outside the realm of justice, an implication that some find completely unacceptable.<sup>8</sup>

Social contract theories also require some rules to guide the formation of agreement. Since they are prior to the contract, there must be some source of prior moral norms, whether natural, rational, or conventional. The first rule that is normally prescribed is that there must be no force or fraud in the making of the agreement. No one is to be "coerced" into agreement by the threat of physical violence. The reasoning for this is quite straightforwardly prudential: if one is allowed to use violence, then there is no real difference between the "contract" arrived at and the state of nature for the threatened party, and hence no security in the agreement. However, there is a fine line between being coerced by the threat of violence to giving up one's rights and being convinced by the threat of penury to make an unfavorable agreement. For this reason, some contractarians are able to argue for a fair and impartial starting point for bargaining that will lead to secure and stable agreements. The second rule of contract is that each individual who is a legitimate party to the contract must agree to the rules of justice, which is the outcome of the contract.

Some points of controversy among contractarians concern the role of the initial situation in the theory: is it to be considered an actual historical situation, a possible historical moment, or is the contract situation completely hypothetical? Other questions that divide contemporary contractarians include: What are the ideal conditions and who are the ideal contractors that will make obligatory the outcomes of the contract for actual persons? What is the content of the hypothetical agreement?

### **So What is a Social Contract?**

After all this somewhat academic discussion, what is a social contract in today's terms? I will start by amending the formal definition given above. Thus, in today's terms, a useful definition of a social contract is:

*"... the existence and recognition of an agreement between and among people, communities, organizations, industries, and/or governments setting out the rules for our interactions and spelling out, by mutual consent, what is acceptable behavior."*

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<sup>8</sup> Kittay, E. F. 1999. *Love's labor*. Routledge, New York, NY.

The term, 'social contract,' is not to be used lightly or conveniently. It must represent a strong commitment from all parties concerned to treat each other fairly, respectfully, openly, and honestly. A social contract is an inclusive, mutually-agreed upon arrangement between two or more parties.

It is important to remember that the fundamental principle determining whether or not a social contract can be effective and meaningful is that the purpose of our economy is the health and well-being of citizens and their communities. Government revenues and industry profits are integral outcomes of economic success but cannot be the over-riding goals of the economy. A social contract is not to be taken lightly or discarded when the economic bottom-line is jeopardized.

Another important aspect in British Columbia is industry access to publically-owned natural resources. Does an industry (e.g., forest industry) have an obligation to negotiate, implement, and abide by a social contract with the community or communities in which it locates processing facilities and bases of logging operations, and in which reside the company employees? Is there not an obligation on the provincial government, when it negotiates harvesting agreements with the companies, to remember that they (governments) are representing the citizens of British Columbia and the resource in the process and must have our best interests at heart?

### **Applications of the Social Contract**

What are some examples of the application of a social contract? From an historical context, some of the more prevalent, general examples would include:

- the institution of systems of government;
- the derivation and implementation of constitutions, bills and charters of rights, and principles of justice;
- the design of our basic social institutions; and
- the commitment to give up to a sovereign government (some or all of) one's rights (thus does not include what happened in the United States and other parts of the world after 9/11).

Some of the more common, everyday examples of what I consider to be social contracts might include:

- government mandates as a result of elections;
- collective bargaining agreements between employees and employers;
- government health care programs/systems;
- old age security programs;
- Tree Farm Licence Agreements;
- Licence-to-Cut Agreements; and
- open-pit mining approvals.

While I consider the above to be examples of social contracts, there is little reference to them as such. They are viewed as part of our normal, day-to-day administrative functions, just attending to business. But, in the context of a new sustainable economy, this will have to change.

## Conclusions

It seems apparent that, in today's world, consequentialism pervades modern economic thinking. Build/revive/restore/stimulate the economy and create jobs – all will be well with the world. There is today, in my view, very little attention paid to an appropriate and meaningful social contract, either by governments or industry. A lot of what is proposed, planned and implemented by governments and industries these days is focused on the common good, and, as a society, we continue to marginalize social groups and cultures in this country. The rights of these groups and cultures are not being recognized.

What are some of the conclusions one can formulate from the above discussion:

- (1) The concept of 'social contract' has its roots deep in the philosophy of ethics and has been thought and talked about for decades. It is unlikely that any current usage by governments and industry today is based on an assessment of the philosophical roots of the concept. I suspect that it is a concept as badly mis-used as that of 'sustainability.'
- (2) Increasing the profile of the social contract in today's economy will be very difficult given the prevalent attitudes that social and environmental concerns are constraints or barriers to economic development.
- (3) Increasing the profile of the social contract in today's economy will be very difficult given the secrecy within which governments and industries plan and operate.
- (4) A social contract must represent a strong commitment from all parties concerned to treat each other fairly, respectfully, openly, and honestly.
- (5) A social contract is an inclusive, mutually-agreed upon arrangement between two or more parties. A social contract is not about winning and losing.
- (6) A social contract is not about legacies and monuments, it is about justice and long-term community well-being.
- (7) Negotiating a social contract should be an integral part of the process of approval for any economic development in the province.

Compiled and synthesized by:

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