

## **The Broken Social Contract**

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### **Introduction -**

We have all heard the adage, “To a man whose only tool is a hammer, every problem looks like a nail.” From this adage, we should learn that not every problem can be solved in the same way. Similarly, we must accept that one size usually does NOT fit all. These concepts are particularly poignant in considering the ever changing roles of government.

In law school, it was always interesting how professors from different disciplines would approach the same issues or facts in trying to arrive at a resolution to a problem. Many times the end result was the same, but the applied methodology often varied depending on whether the favored discipline was: Torts, Property Law, Criminal Law, or Contracts. Being an attorney and CPA, my point of view on many issues is often colored by the economics of supply and demand and the relationships defined by the law of Contracts.

Consciously or not, each of us engages daily in series of seldom acknowledged and unspoken “social contracts.” These contacts may be personal as between ourselves and our coworkers, family members, friends, or neighbors. Or, the contracts may be collective as among groups and classes of people, or between the government and the governed. This latter relationship is the foundation of the formal “Social Contract” theories upon which the notion of “government by consent of the governed” is based. Nevertheless, social contracts exist in nearly every aspect our lives.

Legal contracts have several required elements, and these elements are often common to social contracts:

- An Offer made (essentially an invitation to contract or agree);
- Acceptance of the Offer (another party agrees to the terms being proposed);
- Consideration (*quid pro quo* – One thing in return for another); and
- Legal Subject Matter (consider in relation to limitations on the powers of Government).

### **Social Contract as the Source of Government Authority -**

Under established theories of Social Contract, persons give up certain rights and freedoms in order to exist in the relative safety and to enjoy the protections and benefits afforded by Government. The individual submits to the collective will of the governed, and the Government enforces the tenants of the Social Contract for the benefit of the collective.

In the United States of America (“USA”), the powers of the Government are limited so as not to infringe unnecessarily on the individuals’ natural or inalienable rights, including “life, liberty, and the pursuit of happiness.” In return for the protections, comfort, and certainty provided by Government oversight, we surrender the right to act with impunity in all things. Few of us ever consciously entered into this contract, but it exists nonetheless.

In the USA, the Government does not have unlimited power, which is normally vested in a sovereign authority. Debates about the proper role of Government represent continuing attempts to interpret, define, or apply the Social Contract that gives power and authority to the Government. Recently, political debate has become polarized, and the language used is often expressed in hyperbolic and absolute terms.

We forget that the Social Contract is subject to amendment, revision, and renegotiation. Instead of reasoned discussion, certain privileges and benefits have been placed off limits by couching the debate in terms of inalterable rights and entitlements. However, few who demand

access to those rights and entitlements have acknowledged any obligation to sacrifice or contribute in order to assure availability of the same or to impair any personal act in return for the government protections.

### **The Untenable *Status Quo* -**

The existing debate is predicated on the notion that proponents are always right and the opponents are always wrong. Similarly, popular thought contends that for every problem there is a single and immediately discernable right answer. It is unreasonable to consider every law as a vested right, and we should not invoke the powers of the Government to promote our every whim or defend against each perceived injustice. Social problems are the results of years of action and inaction by numerous parties, including lawmakers and the citizens that they serve. Such problems are not cured and corrected by fiat. We must accept incremental successes and also incremental failures on the parts of our politicians. While we should not reward failure, we should accept changes of course as inevitable parts of the process. The true failure lies in not trying or in creating obstacles to productive growth. When we expect perfection and cannot accept sincere effort rather than guaranteed results, we are guaranteed timid and ineffective leadership.

With every additional involvement (some would say intrusion) of government, there is inevitably opposing groups asserting disparate “rights,” which are being infringed upon by each government action. Civil discourse, which is a necessary cornerstone of efficient and effective government, has all but disappeared. Sincere energetic debate, with the objective of divining a refined truth, has been replaced with rhetoric, lies, and innuendo (from all sides). Negotiation has turned into stalemate.

The rub comes when my pursuit of happiness is perceived to be impeded by your desire to exercise certain liberties. It has been said that, “The right to swing your fist ends at another’s nose.” Today, the more aggressive of us wants to know with scientific certainty to the nearest nanometer how close that swing may come without resulting, not just in chastisement and rebuke, but also in significant personal cost and consequence. The more timid amongst us wants not only to be free from the physical assault but also to avoid the perceived threat of such an assault occurring at any point in the future. To say the least, these objectives are difficult, if not impossible, to reconcile to the satisfaction of all persons.

### **The Expanding Roles of Government -**

Historically, disputes and disagreements were personal and handled man-to-man. In the case of the USA generally and the federal government specifically, Government provided a forum of last resort. The availability of such a forum is a necessary element of civilized society. In order to forestall anarchy, those with grievances must be given a forum in which to have those grievances heard and resolved. As a civil society, we require mechanisms for establishing laws, enforcing laws, and entering judgment upon those who break those laws. Nearly no one would question the need to punish thieves, rapists, and murderers. However, the role of government has changed. The rules which are promulgated today involve the most intimate and detailed aspects of our lives. Increasingly, persons question the propriety of the “price” of such protections or of the reasons for extending government into such areas. The issues focus on whether the application of the Social Contract under the circumstances is “legal” given the restrictions placed on our Government.

## **The Master Becomes the Ward -**

Extensions of the powers of governments have created agencies and bureaucracies that act *in loco parentis* (in place of parents) over all of the governed, and governments have worked to establish systems of laws, taxation and benefits covering all aspects of our lives from cradle to grave.

The highest joy that any parent can have is to see a child succeed independent of the parent. No offspring can reach his or her full potential sheltered in the nest or home provided by the parent. Eventually, most children will choose to leave the nest eager to establish their own identities and to become self-sufficient and autonomous. Others may have to be nudged from the nest, but a disservice is done by the overly protective parent. Except in extreme cases, we must trust that persons have the abilities and tools necessary to assure their own well being, and that these persons will act in their own best interests. Where that trust proves misplaced the shortcomings should serve as a cautionary tale to others not a reason to deprive the opportunity to the many that prosper.

What does it say when government, acting *in loco parentis*, never sees the governed as being capable of taking care of themselves? What incentives do we citizens have to assume responsibility for our individual lives if the public dole is seen as the primary source of security? What disincentive exists to those that would seek to use their skills and labors to succeed when the government imposes impediments to that success in the name of uniformity and an ill-defined notion equality of outcome (as opposed to opportunity)?

## **The Breach of the Social Contract -**

Unfortunately, many persons do not realize that they are a party to the Social Contract, which gives rise to these relationships. Ignorant of the nature of these relationships, many people do not participate in the “negotiations” that lead up to the established agreement. In establishing Government, the contract is negotiated through civil debate and voting. Where persons do not recognize or accept the binding nature of the “contract,” they run afoul of the established rules resulting in personal harm or collective inefficiencies. Often times, persons want the benefit of the contract without the obligations, but one cannot be had without the other.

It is often forgotten that part of the Social Contract requires that we abide by the established laws of the Government, even when we do not personally agree with them or when arguably they are not in the best interests of us as individuals. Yes, all of us recognize the need and power of occasional Civil Disobedience in order to effect change where bad laws are entrenched and protected by a recalcitrant government. However, simply disagreeing with a law is not a license to flagrantly disobey it, and if one does disobey such law, he must be willing to suffer the consequences of that action, even if done in the name of Civil Disobedience.

In recent years, even our federal government, led by the Justice Department and Presidents, have publically announced refusal to support and/or enforce existing laws. These laws have touched areas such as: Immigration, Illegal Drugs, and the Defense of Marriage Act (“DOMA”). Regardless of your position on any or all of these laws, it sets a bad precedent when the individuals and agencies entrusted with the enforcement of these laws demonstrate a flagrant disinterest and disregard for enforcement. The federal government is not alone in its selective enforcement. Several States have established “Medical Marijuana” laws, which fly in the face of existing federal drug laws. Additionally, several major Cities have established themselves as

havens or “sanctuaries” for illegal immigrants and thereby implicitly have endorsed the continued flow of such persons across our borders. Concerning unfavorable laws, many of us have chosen to flout such laws rather than actively participating in the difficult but necessary process of renegotiating the Social Contract. The continuation and strength of the Social Contract are dependent upon consensus and self-enforcement.

What message does selective enforcement send to the average citizen, who is certainly adversely affected or stands in opposition to one or more existing laws? Is Government in essence giving license to citizens to pick and choose the laws by which they abide? What obstacles are there to enforcement (including the disappearance of a certain self-enforcing stigma) when we criminalize so many acts that nearly everyone runs the risk of being branded a “criminal”?

### **The Evolution of the Social Contract -**

Political debate recently has exposed the belief that, “Americans want a lot more Government than they are willing to pay for.” It is not inherently wrong to negotiate with the Government to provide cradle to grave protections, but each of us must be willing to pay the price not only in dollars but also in loss of autonomy and personal freedoms. Seldom, if ever, can this be a win-win for all sides and meet all objectives simultaneously. If we as children of the Government choose to stay under the shelter of that government, then we must be willing to abide by the rules of the parent’s house. This changing relationship creates an ironic dynamic: *A Government, whose source of power comes from the people, serves as caretaker of those from whom its power is derived.* It is not hard to imagine a situation where that dependence could eventually become servitude.

In the current state of our country, the negotiations regarding the Social Contract are sometimes viewed (and arguments are sometimes presented) as involving three distinct parties or groups:

- The Government that provides protection and a social “safety net” in order to assure what is deemed to be a reasonable standard of living for its citizens;
- Those who receive benefits from government institutions; and
- Those who provide the funds in order to operate the government and provide benefits.

The reality is that none of these groups are truly independent, separate, or distinct:

- The Government acts at the behest of the people. The objectives of that Government change over time, and the adopted policies inevitably benefit one group over another until some impetus forces change.
- Persons “dependent” upon the government includes everyone, admittedly to varying degrees, but the *per capita* share of all government expenditures (federal, state, and local) is approximately \$19,000 per year for every man, woman, and child in the USA (or over \$75,000 annually for a family of four). Few of us can complain that we are paying more than our fair share of those benefits.
- Looking at personal income taxes, more than Ninety Five Percent (> 95%) of all such taxes are paid by the top Fifty Percent (50%) of individual taxpayers, and the disparity is even greater at the higher income levels. However, persons of wealth not only reap “government benefits” common to all citizens (*e.g.* Military, Infrastructure, Law Enforcement, *etc.*), but they also benefit from the other “social contracts” among citizens.



These social contracts are no less important than the better understood Social Contract that established our Government.

### **Society as a Collection of “social contracts” -**

Most persons do not expect a society in which financial spoils are divided evenly. Even if such were a starting point, the realities of human frailty, as well as the inequities of trade and circumstance, would quickly result in an uneven distribution of wealth. Some may argue for adoption of the espoused Marxist mantra, “From each according to his ability, to each according to his need.” However, even such idealists must accept that no one performs to the best of his abilities at all times (and as a result available resources are inevitably limited), and the concept of “need” is quite subjective (and ever expanding by all indications).

Most persons are reluctant to surrender the fruits of their labor to feed those that are deemed capable of feeding themselves. Over the years, many in the USA have strived to extend the definition of “need” beyond subsistence to include perceived entitlement to a standard of living far beyond that enjoyed by the vast majority of the world’s population. Unfortunately, there has been a corresponding decrease in the concepts of self-reliance such that there is presently no shame in abject failure, and personal responsibility is all but a quaint concept. Where potential of abilities is woefully deficient and the definition of necessities is unreasonably broad, there will always be a tug-of-war between those who resent continued forced contribution and those who suffer from unmet expectations.

The “entitlement” mentality has extended to holders of wealth. Such persons assert that it is natural in a capitalist society to accumulate wealth and to benefit from the fruits of one’s labors. However, such persons often miss two (2) significant considerations applicable to collective the social contacts among citizens. First, wealth should in fact be the “fruits” of the

recipient's "labor." Resentment of the wealthy, generally comes where wealth comes without appreciable effort or where the recipient is merely a "money changer" skimming his profits from the pot without adding any real value. Second, the wealthy often give too much credence to their own efforts in "creating" their wealth. Factors, which are often overlooked but that have been significant in the growth of wealth in the USA, are the stability and efficiency of our society. These factors are not by-products of Government. Instead, they are direct benefits arising from the collective social contracts among the "governed."

While the USA has been described as a "nation of laws," our country has not been prosperous because of its collection of laws. Much to the contrary, we have been successful because of collaborative efforts among individuals that have made intense government intervention and micromanagement unnecessary. The conservative nature of regulations and the expectation of equal benefits to all are concepts generally contrary to the requisites for rapid innovation and inconsistent with the risk premium expected from investment of time and personal resources. Individuals have historically worked among themselves for a general common good. That is not to say equal results, but each person was free to seek a fair trade for his services or investment of resources, and each person determined for himself the acceptable level of risk balanced against the desired potential benefits. With greater risk, the opportunity for greater reward exists. Where the risks are real, persons will tend to act reasonably or suffer the consequences. So long as this system is seen as fair, inequalities can exist and are expected without jeopardizing the system.

## **Coordinating the Social Contract with Collective “social contracts” -**

Two of the primary roles of Government should be to protect the fluidity and perceived fairness of the system not to assure certain outcomes therefrom. The system does not preclude failure, but the hope is that one learns from his mistakes and with such knowledge the system as a whole becomes more efficient. However, should you remove the consequences of poor decisions and threat of failure, then risk and inefficiencies will escalate until the system collapses. In that case, not only does the individual fail, but the system does as well. The government’s primarily role in any social or economic model should be to prevent manipulations (even by itself) that would jeopardize that fluidity and perceived fairness.

Where the governed determine that the system is inherently unfair, no amount of government regulation will provide security or assure efficiencies of the system. When persons do not “buy into” the Social Contract, they willfully breach the contract, and they knowingly risk punishment for such breach because they feel that the potential benefits exceed those benefits allowed by the Social Contract. Citizens no longer feel that they are a voluntary party to the contract rather they feel that it has been imposed upon them.

Many of our collective social contracts are being breached today, and inefficiencies abound both in government and in our daily lives. If we as a collective people cannot reach an understanding on the roles of government and make a collective commitment to support and fund those new and continuing roles, government will fail us all. We cannot live our lives without risk and sacrifice, nor can the government insure us against all loss and harm. We cannot be rewarded or sustained by the government for merely being in that government does not create wealth. Government can only impress wealth from its citizens. If we demand a benefit, that

benefit must collectively be seen as fair, and those of us receiving that benefit must be willing sacrifice something (money, freedom, autonomy, *etc.*) in order to receive it.

### **To Whom Much is Given ... *Some* is Required -**

Those who have thrived by the Social Contract providing the relative safety and security of Government have a burden and face a sacrifice as well. Hoarding wealth or multiplying that wealth to the detriment of those with whom you share social contracts will result in uncertainty and unrest. The Social Contract by which the people established Government implies adherence by all persons to the laws and social conventions that make our lives convenient, safe, and efficient.

Historically, those of means recognized a need for the labor of the masses (even if reluctantly), and the more progressive among the industrial giants realized that offering that labor force a reasonable wage and providing a reasonable standard of living assured a contented workforce and ready market for their products.

More recently, markets have extended globally, and the goals to reduce costs and increase short-term profitability by any means has meant that much production and many jobs have gone overseas to countries with a lower cost of labor.

In losing the manufacturing base, we were sold on the fiction of a “service economy,” but exchanges of services do not create wealth. Ignoring *arguendo* certain increased efficiencies, if I give you an hour of my time for an hour of your time, what accretion of wealth has been seen by either of us? If persons of means increase their wealth and simultaneously remove opportunities for growth and advancement in others by investing and sending jobs overseas, then the wealthy

have no one but themselves to blame when the disgruntled and frustrated masses start demanding that the Government seize and redistribute larger and larger chunks of that increasing wealth.

When wealth accumulation is seen as greed and hoarding, those less privileged will become less and less content to abide by the social contracts which provide the framework of our society. Crime will increase; inefficiencies will increase; and strikes or work stoppages will become more prevalent. Without timely efforts to address these problems, there could be demonstrations or riots in the streets. Such actions could undermine both our social fabric and government institutions. The safety and comfort that have given rise to prosperity could disappear.

Think about where we are today. Look at the world around us. Look how inefficiently and ineffectively many of our once venerable institutions are working. Look at the animosity that abounds in government and society. Yes, animosity and disagreement have always existed, but when you stepped back you could usually see a gradual coming together of people and ideas (even if at a glacial pace). Today, the chasm is spreading with little effort toward reconciliation.

Do we stay on the inevitable course of the *status quo*, or do we accept that our Social Contract requires renegotiation and a renewed commitment? How long do we have to wait before dire becomes catastrophic ... a decade ... a generation?

### **Enforcement of the Social Contract -**

A Government that is inundated by enforcement issues cannot be efficient or effective. Not only can morality not be legislated, but the Social Contract cannot be enforced through coercion. Enforcement of Social Contract is only possible because the parties to it agree to be bound. Because the source of the authority and the source of enforcement are the same,

mutuality of assent is required. “We the people” established the government. Just as “we the people” are all parties to the collective social contracts that make up our society. If the Government is seen as oppressive, the Social Contract fails. If the results of the collective social contracts between citizens are not perceived as fair, those contracts will fail as well.

Our Government can no more enforce those collective social contracts than it could vote to disband itself. The source of authority for Government and the means of application and enforcement of the collective social contracts are individuals. Only if and when we as individuals take responsibility for our own actions, assume the obligations of providing for our own well being, and commit ourselves to actively participating in our social contracts will progress be made on the myriad of obstacles and challenges now facing all of us.

The problem is that the underlying social contracts are seldom derived face-to-face. There is no efficient mechanism to match persons with needs to persons of means. Such an interaction would conceivably result in a transfer of goods and/or services among the parties such that each would benefit. However, such a barter transaction often is deemed beneath most of us. We do not wish to be perceived as groveling for our necessities. We do not wish to acknowledge that we are dependent on another for anything. We want to project an aura of self-reliance and control, not accepting that control under nearly all circumstances is an illusion. So, we interject the Government between the parties and say, “Take from him that which I deem necessary, and redistribute it to me for no consideration.” In an irony of ironies, those with “needs” use the government as a modern day Robin Hood eagerly seeking redistributions of assets or benefits, which inevitably favor one group over another.

Lest you think that my observations are too one-sided or favor a particular class of citizens. I propose and acknowledge that even the wealthiest amongst us are lined up to feed at

the public trough. Banks and insurance companies, which paid exorbitant salaries to the “best and brightest” minds, recently lined up to take government bailouts to protect them from collapse. Certain automobile companies were pulled from the brink of extinction by government intervention, essentially rewarding (or at least affirming) decades of mismanagement and unsustainable policies. These entities and persons failed to demonstrate “personal responsibility” and rarely received punishment or endured the true costs for their misdeeds. Some of those spared, and many of a similar ilk, have demonstrated an utter lack of penitence and unrestrained hubris in rewarding similarly unreasonable behavior in the intervening years.

Corporate America is showing recovery while the Great Recession is still being felt along the Main Streets and in the residences throughout the land. We hear arguments about the disparities between the “haves” and the “have nots.” We hear how this disparity is growing and will likely continue to grow. We hear at all levels how survival is dependent upon government intervention in many different forms on nearly every level of our lives. We look to government, or at least someone other than ourselves, to fix our problems and to drag us out of this morass.

Do we honestly have faith that Government is capable of such a Herculean task? Have we devolved to the point that the personal initiative and gumption that made us an exceptional people are more memory than expectation?

### **The Whole is Greater than the Sum of Its Parts -**

We have a lot of work to do, and that means everyone getting dirty. We must take back responsibility for personally negotiating our “social contracts.” We must recognize that negotiation is a give and take. In order to reap the benefits, we must be willing give up something in return or commit to contribute something of value to the mix. We must be willing

to accept the consequences of our failures. That means paying for our mistakes and thereby hopefully learning from them. Finally, we must accept that the government is not the “hammer” that can be turned to in order to fix every problem, or more importantly, accept that not every problem has a satisfactory solution. At some point, we forgot to acknowledge and accept that life is not fair, but our job in living is to make the most of the opportunities that we are given.

How many of us can honestly say that we fully have taken advantage of each opportunity afforded us? How many cannot shoulder some responsibility for whatever predicament that we may find ourselves?

The tools and opportunities exist for all of us to improve ourselves and our lives. We owe it to ourselves and our families to do just that. In order to accomplish this task, we must be willing to work cooperatively with our neighbors, colleagues, and government to make not only our needs and desires known but also to let it be known what sacrifices and contributions each of us is willing to make to achieve those ends.

A friend of mine is fond of saying, “Fix it or stop complaining about it. If you can't do one, you surely must do the other.” He is much more succinct than I.

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