

THE NEW
AMERICAN
SOCIAL
COMPACT



RIGHTS AND RESPONSIBILITIES IN
THE TWENTY-FIRST CENTURY



JANE A. GRANT

The New American Social Compact

Rights and Responsibilities in the 21st Century

Jane A. Grant

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The New American Social Compact

*To Jane Silva, whose moral compass always points to the truth, and
to Sol Ostrow, who believed in scholarship, his family, and justice.*



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CHAPTER ONE



The American Social Compact: Past, Present, and Future Considerations

History knows many periods of dark times in which the public realm has been obscured and the world becomes so dubious that people cease to ask any more of politics than that it show due consideration of their [own] vital interests and [their own] personal liberty.

—Hannah Arendt, *Men in Dark Times*, 1968¹

The social compact is composed of the threads that, woven together, form the fabric of a nation. Unlike ordinary threads, however, these strands might be thought of like those postulated by contemporary string theory: they are dynamic, and they can change.² This book examines the American social compact in the past and the present; it also explores what it might look like in the decades to come. The social compact has two components as I am using the term here: it connotes the rights as well as the obligations of citizenship. It includes the civil, political, and social rights that belong to each and every citizen, and that have emerged over two centuries of discussion, debate, and conflict. It also entails a civic ethos, the principles and beliefs that support those rights and define our obligations under it.³

According to contract theory and the philosophy of liberalism that developed during the 17th and 18th centuries, citizens would gain a set of civil liberties and political rights, while forfeiting other liberties and freedoms, when

they voluntarily established systems of governance and laws.⁴ Civil liberties gained might include those guaranteed to individuals, such as the right to freedom of speech and religion, while political rights might pertain to suffrage and the equal protection of the laws.⁵ The mix of liberties and rights accorded to citizens, as articulated, for example, in the U.S. Constitution and in subsequent amendments to it, has been contested terrain in the nation from the beginning. Conflicts emerged not only over the content of rights, but who would be entitled to them. Beginning in the 19th century in the United States and other nations, the contract was expanded to also include a set of social rights. These involved access to education, protections for workers, health care entitlements, and social insurance programs for the poor, elderly, and disabled. Such endeavors have also been a source of continuing debate and political conflict in American society.⁶

Besides a set of rights, the social compact also includes a civic ethos. It connotes the underlying principles and beliefs that support or contest these rights, as well as supporting or contesting the obligations that may be inferred or developed from them. Such obligations could include responsibilities to others in one's own nation, to future generations, to other nations and their citizens, to stateless individuals, and to other species and the biosphere.⁷ Thus, the rights, principles, and obligations comprising the social compact appear enmeshed in a complex fugue⁸ that has emerged over time, and throughout our history, in response to changing social and economic conditions and in reaction to critical issues propelled by democratic discourse, social and political movements, and effective leaders.

Analysts such as Michael Sandel and Robert Bellah⁹ have suggested that a "civic republican" ethos dominated American society from its beginning through the first decades of the 20th century. After that, a "procedural republican" ethos became central. The civic republic was characterized by a tightly conceived civic ethos, which contained within it a circumscribed number of rights. It emphasized the development of virtue in citizens and the active participation of citizens in their own governance. This early vision, however, left many outside the protections of the compact: African Americans, women, Native Americans, and newly arrived immigrants were not entitled to its rights and protections. In the late 19th and early 20th centuries, during the period shaped by the Progressive movement, there were efforts to expand the compact to include both newly defined rights and those persons previously excluded from the existing compact.¹⁰

Sandel has suggested that a competing framework, that of the procedural republic, was also present from the beginning in America; it did not become dominant, however, until the early decades of the 20th century. This framework emphasized due process of law, the centrality of individual rights, and

the absence of an overarching set of beliefs to define the “good” life. This alternative ethos emerged, in part, because of the ongoing expansion of the compact itself. As the range of rights within the compact increased and as access to the compact widened, the ethos binding citizens together into a common framework frayed. The procedural republic is marked by a strong devotion to the efficacy of the law in providing fair and unbiased opportunities to protect individual rights and liberties. Beyond that “thin” consensus, the nation has struggled to define what shared beliefs and common principles support those rights and our obligations under them.¹¹

In the last sixty years, conflict over the contemporary American social compact has intensified. On the conservative end of the political spectrum, whose champions have dominated political discourse in the United States especially since the 1980s, there have been calls for a more restricted sphere of rights, a greater focus on character and virtue, and a more limited role for government in society. This, in a sense, harkens back to the earlier civic republic. Other conservatives have argued for a biblical and fundamentalist Christian ethos to provide the nation’s guiding principles. Economic conservatives have pushed for extensive privatization of public services and programs, advocating economic growth regardless of its consequences, while “neo-conservatives” have promoted aggressive and triumphalist foreign policies. These groups are not mutually exclusive and have overlapping members. On the liberal and progressive side, the focus has been on the expansion of rights, but there have been difficulties in specifying an ethos to contain and ground those rights. Some liberals are content with a procedural ethos that supports a neutral state orientation, while others have searched for a more communal ethos to guide social and economic policies and programs. There are liberals/progressives who argue for greatly increased public expenditures to provide a needed safety net within the framework of a market economy, while others offer a radical critique of contemporary capitalism and the hegemony of corporate, military, and political elites. As with conservatives, there may be overlapping memberships in these groups. Many contemporary analysts have come to believe that a new ethos is needed to direct the United States in the 21st century. This need is perhaps also recognized by the public; in recent surveys, over seventy percent of Americans indicate that they believe the country is “off on the wrong track.”¹²

This book proposes a new American social compact, appropriate for the 21st century, that incorporates aspects of both the civic and procedural republics. The compact would contain a *civic procedural ethos* that honors the expansion of the civil, political, and social rights in America, which are a legacy of the procedural republic. At the same time, the ethos would surround those rights with a set of responsibilities defining our obligations; these could

include what we owe to others in our own society, future generations, other nations, and the species and ecosystems of the biosphere. In this respect, it would emulate the outward and collective orientation of the civic republic. The content of the new ethos would be democratically determined through the normal functioning of representative government. However, it would also be forged through discussion and participation in civil society, formal deliberation in the public sphere, the influence of social and political movements, and the leadership of accountable and ethical officials. This new ethos may require changes to the electoral process, including more effective campaign finance laws and a redesign of the electoral college.¹³ The approach I am proposing here relies on the work of numerous scholars who have grappled with these issues with great thought and insight over the years.¹⁴

A social compact, as I employ the term in this book, depends on the idea of the social contract, while expanding it. Both compact and contract denote “an agreement between two or more individuals.”¹⁵ Political philosopher Hannah Arendt observes that, when such an “alliance” is codified into a written constitution, it becomes a “mutual contract by which people bind themselves together in order to form a community.”¹⁶ Arendt’s notion of creating a community through a “mutual contract,” however, is closer in meaning to the earlier civic republican ideal of a shared polity where “citizens” actively participated in public life. In contrast, the understanding of the social contract that emerged during the Enlightenment, which is the more important influence on the “procedural republican” ideal now prevailing in the United States, is linked to the work of Thomas Hobbes (1588–1679) and, especially, John Locke (1632–1704).¹⁷ Each understood the motivations for entering into the contract differently. For Hobbes, the contract was needed to control human aggression, and, so, “the solution [to the problem of order] was coercive.”¹⁸ For Locke, the contract was understood to be voluntarily agreed upon by humans hoping to improve their lot through “mutual self-interest.”¹⁹ Jean-Jacques Rousseau (1712–1778) is also associated with the social contract in this period. For him, the social contract was an expression of the “general will,” which could then become the basis for a “normative consensus.” As such, it is much closer in meaning to the Arendtian and civic republican notions of a contract.²⁰

The social contract connotes the freedoms and liberties that individuals give up in return for the security, civil liberties, and political and social rights they gain by creating a state (or central government) and a system of laws. Yet, while the U.S. Declaration of Independence, written in 1776, firmly states that governments derive “their just powers from the consent of the governed,” what those powers were, how limited or expansive they should be, and what precisely the role of government in society should be,

has been a source of debate, discord, and conflict in the nation from the founding.²¹ Tied to the purposes of government, then, is a society's understanding of what citizenship means: not only what civil liberties and political and social rights are guaranteed to citizens, but who is a citizen and what are the responsibilities he or she is obligated to uphold, either to others in his or her own society or to any other significant entity designated by the polity.²² Contemporary social and political theorists, in dealing with the variety of rights I have labeled civic, political, and social, and whose expansion marked the ascendance of a procedural republican ethos in the 20th century, have tried to draw a distinction between the "negative" and "positive" rights of citizenship.²³

Negative rights are those conferred on individuals (via the social contract) that insure freedom *from* government. They align with the civil liberties, articulated in the Bill of Rights, and the political rights found in the Constitution and subsequent amendments to it. Positive rights, on the other hand, are those things or conditions provided to us *by or through* government that may be seen as necessary "to promote the general Welfare."²⁴ They align most closely with what I have called social rights. Efforts to expand the social compact in America in the last one hundred years to include more positive rights, such as increased access to education, workers' protection and compensation programs, health care and retirement insurance, or laws to protect human health and the environment, have run into serious political objections, especially from those we might term conservatives or free-market advocates.²⁵

Cass Sunstein makes the argument, however, that a rigid distinction between negative and positive rights creates a false dichotomy. Even the most restricted conception of the legitimate role of government, such as its function in guaranteeing the right to property and the freedom of contract, requires a complex system of laws, rules, regulations, and agencies. He states:

Private property depends on property rights, which do not exist without government and law. Those rights and everything that accompanies them are created by the legal system. Government is needed both to create the system of property rights and to police it. Without trespass laws and a police force, property could not exist.²⁶

Franklin Roosevelt, serving as president from 1933–1945, directly linked the role of government in protecting opportunity in a free society and the role of government in promoting the security needed by citizens to effectively participate in that society. In his State of the Union message to Congress on January 6, 1941, he explicitly joined "negative" and "positive" rights

in his definition of the “Four Freedoms”; they included “freedom of speech and religion, and freedom from want and from fear.”²⁷ Then, in a State of the Union address delivered as a “fireside chat,” on January 11, 1944, Roosevelt asserted that “necessitous men are not free men.”²⁸ He went on to propose a “Second Bill of Rights” for Americans. It included “the right to a useful and remunerative job”; “the right to earn enough to provide adequate food and clothing and recreation”; “the right of every family to a decent home”; “the right to adequate medical care and the opportunity to achieve and enjoy good health”; “the right to protection from the economic fears of old age, sickness, accident, and unemployment”; and “the right to a good education.”²⁹ Sunstein notes that Roosevelt never considered amending the Constitution to incorporate this “second bill of rights.” Instead, he envisioned them as “constitutive commitments” that would play a formative role in our society, in the same way as the vision of equality and human rights marks the Declaration of Independence.³⁰

Thus, it could be argued that the social contract, even within the terms of liberal philosophy, can be construed to include both negative and positive rights, as it is in many western European societies. Nonetheless, I have decided to employ the term social compact here to connote the agreements that a society adopts that encompass both the negative and positive rights of citizenship (i.e., civil, political, and social rights), as well as the principles supporting those rights and the obligations they may entail (i.e., the civic ethos). This book argues that the social compact in the United States has evolved and changed through at least two discernible patterns; now may be the time to initiate a new framework for the 21st century. In arguing for one that borrows from the past, utilizes what is essential from the present, yet remains cognizant of emergent national and international conditions, a new “middle way” might be conceived.³¹ It would require simultaneously recognizing the increasing “plurality” of citizens in the United States (and throughout the world), while searching for principles useful in defining mutual concerns and shared commitments.³² The effort to create a new social compact will not be easy; for some it may be neither possible nor desirable.³³

Concerns with the Social Compact in Contemporary America

The contemporary social compact in the United States, derived from liberal theory, has focused especially on the right of individuals to define for themselves what a good life is; it insists, therefore, that the state remain neutral in that regard. The only limitation on that individual right is when the exercise of it may harm another. This approach also emphasizes fair procedures and a

framework that regards citizens as “unencumbered selves,” devoid of particularized “differences.”³⁴ This orientation helps to promote tolerance or, at the least, a willingness to abide a diversity of worldviews. To a very great extent, liberal theory places individual autonomy (and the derivative efficiency of the market) at the forefront of what society should value and protect. Yet, by so revering individual liberty, liberalism, especially as it operates presently in the United States, diminishes, at least in the public sphere and governmental sectors,³⁵ the importance of providing opportunities for deliberative consideration of, and concerted action on, questions dealing with shared obligations and public principles. Not only does this weaken concern for anything that cannot be categorized as self-interested or economically rational; it also denies the reality of how utterly interconnected and interdependent our lives with each other in this nation and across the world, and within the biosphere, always have been, currently are, and will continue to be. Over seventy years ago, Franklin Roosevelt observed:

“Without the help of thousands of others, any one of us would die, naked and starved. Consider the bread upon our table, the clothes upon our backs, the luxuries that make life pleasant; how many men worked in sunlit fields, in dark mines, in the fierce heat of molten metal, and among the looms and wheels of countless factories, in order to create them for our use and enjoyment.”³⁶

That observation is as true today as ever before; the world grows increasingly linked, at least through the logic of “system integration.” Dennis Wrong has defined that as “the coercive and economic exchange solutions to the problems of social order.”³⁷ It is now generally understood as the process of “globalization.”³⁸ Wrong contrasts that with “social integration,” defined as the “normative solution to the problem of order . . . that connotes the relatively secure ‘consensus, solidarity or cohesion’ among interacting individuals.”³⁹ Normative concerns about the polity and the role of citizens within it have traditionally been linked to civic republicanism. The civic republic focuses on what will contribute to a good society; it is concerned with the ability of citizens to effectively participate in their own governance. As Sandel observes:

The strong version of the republican ideal, going back to Aristotle, sees civic virtue and political participation as *intrinsic* to liberty; given our nature as political beings, we are free only insofar as we exercise our capacity to deliberate about the common good, and participate in the public life of a free city or republic.⁴⁰

Hannah Arendt, in discussing the exemplary qualities of the civic republic, equated the practice of politics with the existence of a public realm. In fact, John McGowan notes that “the identification of the ‘political’ with ‘the public sphere’ is so intense for [Arendt] that the two sometimes seem coterminous.”⁴¹ With the emergence of the modern nation-state and a market economy in the 14th, 15th and 16th centuries, that all-encompassing polity became differentiated into the realms of the state (government) and the privately oriented spheres of society.⁴² Arendt lamented this loss of public space, for it was within it, she believed, that citizens could fully realize who they were and how their own fates were interwoven with the other members of the polity. Seyla Benhabib observes:

What constitutes the authentic political attitude [for Arendt] is the capacity and the willingness to engage in “the enlarged mentality”; to give reasons in public, to entertain others’ point of view, to transform the dictates of self-interest into a common public goal.⁴³

Jurgen Habermas, whose work built upon Arendt’s, is more optimistic than she was about the potential of the complex and heterogeneous “society” associated with modernity to provide locations for meaningful “communicative action” in the public realm. He has argued that, over time, diverse routes of “opinion formation” throughout civil society, that realm of organizations and voluntary action located between the private sector and the public sphere, and throughout the public sphere itself, could generate a broadly based discourse about emerging issues. These ideas could eventually flow into the governmental sector for further discussion, deliberation, and even formal enactment into law, which he called “will-formation.”⁴⁴ Some analysts, however, are concerned about the weakening of mediating institutions in the private, civil, and public sectors that are needed for a vibrant democracy.⁴⁵ Others, such as Ethan Leib, Bruce Ackerman, and James Fishkin, have argued for the creation of new institutions for public deliberation; they want to ensure a place for informed and meaningful citizen deliberation to precede decisions made in the governmental sector.⁴⁶ Social theorists from the time of Alexis de Tocqueville have pointed to the importance of mediating structures and venues for public discussion as essential for creating the “habits of the heart” that allow citizens to think beyond their own interests and to learn the language of coordination, as they work together to fulfill common goals. Bellah et al. note:

Tocqueville described the mores—which he on occasion called “habits of the heart”—of the American people and showed how they helped to form Amer-

ican character. He singled out family life, our religious traditions, and our participation in local politics as helping to create the kind of person who could sustain a connection to a wider political community and thus ultimately support the maintenance of free institutions. He also warned that some aspects of our character—what he was one of the first to call “individualism”—might eventually isolate Americans one from another and thereby undermine the conditions of freedom.⁴⁷

In fact, a number of contemporary social and political analysts are troubled about what they regard as an attenuation of normative ideals and shared practices that join Americans together in civil society and the public sphere, at the same time as there are declining opportunities for, and interest in, deliberating together about the nation’s course. They point to an increased focus on the self and self-interest in American society; the growth of depersonalized and commercialized relationships, not only in the economy, but in the realm of civil society, the public sphere, and even the governmental sector; and the decline of a public culture that even attempts to grapple with the meaning of the common good.⁴⁸ It is perhaps this sense that we should not or cannot depend on each other, and that so much of what goes on in our own country and the world is not within our power to change, that caused Sandel to identify the contemporary “discontent” of the United States as the fear that “the moral fabric of community is unraveling,” while “we are losing control of the forces that govern our lives.”⁴⁹

A March 2006 public opinion poll found that 66 percent of respondents thought “that things in this country . . . have pretty seriously gotten off on the wrong track.” By May 2007, 72 percent of Americans held that opinion.⁵⁰ Participants in the 2006 survey were very concerned about the three year-old war in Iraq: 57 percent thought the war was “going badly,” while 70 percent believed that the war was “not worth the costs.” By May 2007, 76 percent of respondents thought the war was going badly.⁵¹ Still, one might hypothesize that this sense of the country going in the wrong direction might also have to do with other anxieties Americans are experiencing. One, perhaps, is the more general fear of “terrifying” violence afoot in the world, while, at the same time, America is less trusted than in the past. Eighty percent of Americans in January 2006 thought that defending the nation against terrorism should be the country’s top priority. Yet another survey in late 2005 also found that 66 percent of the populace believed that the United States was now less respected in the world.⁵²

There are also concerns about the economy, as global markets become more concentrated, corporations shred their “social contracts” with employees, and