

Module 5. Property Rights and Social Contract

This Module provides crucial conceptual background for analysis of corporate social responsibility (CSR) in our cases. Do NOT skip this module; read it carefully. It is critical for case analysis.

Module 5a. Property: Outline

There has been a dramatic proliferation in the assertion of "property rights" in Western countries in the last 50 years, and more recently in developing economies as well. This assertion of property rights by groups external to business are often set against the traditional rights of business management to manage their businesses in the manner they see fit to maximize the benefit to their shareholders.

Below are listed some of the rights issues that have historically been raised to challenge the profit-seeking rights of Western business and other rights issues that are "in play" today and the groups that are asserting them.

- A. Historical Rights Granted and Widely Accepted
- B. New Rights Issues (accepted in varying degrees)
- C. The Role of Non-Governmental Organizations (NGOs) as Property Rights Advocates
- D. Rights of "Unprotected" Groups (generally protected by social movement groups)
- E. The Rights of Business

Module 5a. Property: Text

The evolving definition of the "bundle" of rights to which all citizens in a society and special classes of citizens in a society are entitled is a fundamental construct of this course. As each case is presented, it demonstrates the clash between the assertion of rights by or on behalf of a group within a society and the traditional concept of property, more often than not as it relates to the "bundle" of rights that historically was the "property" of the business corporation. **Consider for yourself the status of each of these property rights in the Czech Republic and/or your home country.**

- A. Historical Rights Granted and Widely Accepted
 - 1. Political rights of citizens:
 - a. to vote
 - b. (in the US) to bear arms (own guns)
 - c. to privacy
 - d. to freedom of expression
 - 2. Economic rights of citizens (and businesses):
 - a. to contract

- b. to protection of "ownership" of "real property"
- B. New Rights Issues (accepted in varying degrees)
1. Ordinary citizen's right to
 - a. clean air
 - b. clear water
 - c. affordable basic necessities: housing, food
 - d. affordable health care
 - e. social security benefits upon retirement
 - f. all social security dollars that have been paid into the pension system
 - g. an attractive physical environment
 - h. dispose of waste
 - i. free education through high school
 - j. affordable education beyond high school
 - k. childcare (pre-school and elementary school age)
 - l. be marry and/or be a parent (lesbian/gay couples)
 - m. to have children
 - n. to control reproduction (women)
 - o. access to "privileges", e.g., recreation
 2. Community's right to
 - a. set community standards for
 - i. aesthetics
 - ii. morality
 3. Worker's rights to
 - a. wages for work performed
 - b. quit a job
 - c. bargain collectively
 - d. a "living" wage
 - e. a "saving" wage
 - f. a safe and healthy work environment
 - g. employer funded healthcare
 - h. healthcare benefits for family members
 - i. healthcare and other benefits for unmarried "partners"
 - j. a employer-funded pension program
 - k. leave for
 - i. maternity
 - ii. paternity
 - iii. care for sick family member
 - l. a job
 - m. "meaningful" work
 - n. to not be dismissed without cause
 - n. permanent, not "temporary" work status
 4. Customer's right to
 - a. product paid for
 - b. product choice
 - c. safe products

- d. product information as to
 - i. content
 - ii. proper use
 - iii. inherent health and safety risks
 - iv. quality (e.g., freshness dating)
 - e. complain
 - f. warranties
 - g. truth in advertising/promotion
 - h. non-manipulative advertising/promotion
 - i. "fair" pricing (e.g., pharmaceuticals)
5. Shareholder's right to
- a. accurate and timely information about company performance
 - b. company plans for the future
 - c. ethical and socially responsible company behavior
 - d. establish constraints on company operations, e.g., don't invest in politically undesirable countries.
6. Minority and/or historically disadvantaged (women, racial minorities, disabled, and to some extent ethnic and religious minorities, gay/lesbian and the elderly) group's right to
- a. non-discrimination
 - b. affirmative action (preferential treatment)
 - c. non-exploitation

C. The Role of Non-Governmental Organizations (NGOs) as Property Rights Advocates

Non-governmental Organizations (NGOs) (sometimes referred to as "Social Movement Organizations" (SMOs) or "Private Voluntary Organizations" (PVOs) form for three reasons:

- 1. to advance some political objective, such as world peace
- 2. to advance the interests of one of the above groups to the particular right or bundle of rights noted above
- 3. to protect the rights of groups who cannot act to protect their own rights

D. Rights of "Unprotected" Groups (generally protected by social movement groups)

- 1. laboratory animal rights to
 - a. not be used as test subjects
 - b. "humane" treatment
- 2. farm animals rights to
 - a. "humane" living conditions
 - b. "humane" methods of being killed
- 3. wildlife rights to
 - a. habitat
 - b. protection from extinction
 - c. not be hunted in "inhumane" ways
- 4. future generations' right to
 - a. observe endangered species
 - b. enjoy wilderness
 - c. inherit a healthy economy

5. rights of the unborn to
 - a. be born (anti-abortion movement)
 - b. "nature's 'roll-of-the-dice'" at being healthy (environmentally-generated reproductive risks)

E. The Rights of Business

1. Historically, the rights of business were broadly defined and included the right to
 - a. contract with employees, customers, suppliers, etc.
 - b. control the workplace
 - c. hire, pay, promote and fire at will
 - d. maintain an unsafe or unhealthy workplace (if the employee did not like it he/she could quit)
 - e. choose the location where it would do business
 - f. choose product content and features (if the customer did not like it, he/she could buy from someone else)
 - g. market by any method or manner within the limits of the law
 - h. extract the maximum profit the marketplace would allow

2. More recently, because of the expansion of CSR and accompanying laws and regulations, all of the above rights are being constrained, and in some cases, reduced substantially.

Entry-level Employee Perspective

Consider for yourself the status of the property rights above (including historical origins and future directions) in the Czech Republic and/or your home country.

As an entry-level employee in your first professional job out of college, what do you see as your property rights? For example, from the list of "rights" employees are asserting in varying degrees in industrialized societies, which of these do you honestly expect from your employer?

- a. a "living" wage
- e. a "saving" wage
- f. a safe and healthy work environment
- g. employer funded healthcare
- h. healthcare benefits for family members
- i. healthcare and other benefits for unmarried "partners"
- j. a employer-funded pension program
- k. leave for
 - i. maternity
 - ii. paternity
 - iii. care for sick family member
- m. "meaningful" work
- n. to not be dismissed without cause
- o. "permanent," not "temporary" work status

In particular, what is your view of the last item on the list, given the widespread use by European firms of “temporary” contracts with young employees in order to avoid providing employees with many benefits of “permanent” work status?

NOTE: The rights of government agencies and NGOs are not at issue in the cases in this course and should not be included in any analysis of rights conflicts! However, these actors do advocate on behalf of the rights of others in many cases.









Module 5b. Social Contract: Outline

A. Social Contract defined:







Social contract is a concept from political philosophy to describe the relationship between a social organization, and its members, defining mutual expectations, rights and duties.

1. Extended to the business--society relationship, social contract helps understand the origin, power and legitimacy of expectations being placed on the modern business enterprise by various external actors in the business environment.





2. Recognition of a firm's social contract facilitates business decision-making as to the appropriate corporate response to current expectations and challenges from stakeholders

-  Formally still the limited economic contract of early capitalism.
-  Evolved into complex written (laws and regulation) and unwritten (culture) terms
-  The formal and informal bargaining process in the public domain
 -  The marketplace
 -  The media
 -  Public policy making
 -  Intellectual circles—books, journals and the universities
-  The parties to the process-- the “stakeholders”-- and the terms of the contract are constantly changing.

B. Understanding the Social Contract: the View from Today's Enterprise

-  Still want to view from the framework of the limited economic contract of early capitalism.
-  Resistant to written (laws and regulation) terms of the social contract
-  Resistant to, and not understanding, unwritten (culture) terms with the result:
 -  Hostility to the media, government, and intellectual institutions
 -  Slow to understand changes in expectations
 -  Active resistance where cooperation may be more beneficial.

C. Understanding the Social Contract: View of Today's Enterprise Managers

-  What are these expectations?
-  What is it that society wants from me and my business?
-  Are the expectations reasonable, given my fiduciary responsibilities?
-  Are they more than my business can reasonably provide?

Module 5b. Social Contract: Text

If you have limited time, you can skim these first few paragraphs of historical background and go to the section, "Property Rights and Social Contract in Case Analysis in this Course." If this section is not clear to you, go back and read the entire text you have skipped.

Social contract is a concept which appears frequently in writing by political philosophers, where the term is used to describe a bilateral undertaking between a social organization, usually "society" or "the state" (government), and its members, defining mutual expectations, rights and duties. By extension of the social contract model to the business--society relationship in the social contract form, one can better judge the origin and power of the broad range of expectations being placed on the Modern Corporation. From a social contract perspective, it becomes easier for the business executive to decide on the appropriate corporate response to the numerous expectations and challenges the corporation faces in Modern Capitalism.

The Social Contract in Political Thought

Between the mid-seventeenth and mid-eighteenth century, three of the most influential of Western political philosophers, Thomas Hobbes, 1588-1679, John Locke, 1632-1704, and Jean Jacques Rousseau, 1712-1778, brought forth their ideas as to the origin and nature of the relationship between the government of a society and its individual members--the "social contract". According to these writers, "state of nature" is not inherently social or political, but enters and remains in society and supports the "state"--the government of the society--because it is the best "means" available by which to satisfy needs and goals, most importantly self-preservation. Man does not participate out of any felt sense of duty or responsibility to his fellow man. Societies and governments are thus "man-made", originating in an informal "contract" (or "compact" or "agreement" or "covenant" or "convention") to which all its members subscribe.

All three writers give special emphasis to this existence of a contractual relationship between the governing body and the governed in which expectations and duties are imposed on one by the other. In Rousseau, for example, the government had the obligation to act only for the "general will" or public good and legislate only laws general in their purpose and application.

The authority of government derives from and exists for the benefit of the governed. Governments rule conditionally, not absolutely, being subject to the condition that they satisfy the expectations of the governed. In the words of J.W. Gough, "The rights and duties of the state and its citizens...are reciprocal, and the recognition of this reciprocity constitutes a relationship which by analogy can be called a social contract."

According to Steiner, "Institutions, or systems, are not created and accepted as the result of some mystical conception. They are created and accepted by society in order to perform important societal functions. At any one point in time there is a working relationship between society and its institutions that sets the interconnections between the institution and society as a whole and among institutions. This is called the social contract.

In Luthans' view, "(T)he social contract that a business makes with society (occurs) when filing for its legal charter of incorporation or beginning business as a partnership or sole proprietorship." Any cursory review of the American economic system makes infinitely clear the importance of economic goals in our society and the performance of numerous public functions in the private sector have given business a central position in our political system, a fact that is widely recognized in academic writings.

The Social Contract of Early Capitalism

Just as the social contract imposes obligations on governments, in early capitalism there exists a social contract for business. However, that social contract did not include the variety of non-economic expectations which are inherent in the social contract of Modern Capitalism. Rather, it involved the performance exclusively of economic functions--principally the productions of goods and services for customers, jobs for workers, and profits for shareholders.

These economic expectations were internally consistent, that is, you could not maximize profit without also maximizing the satisfaction of customers and employees, at least according to economic theory. Obviously, the reality often fell far short of theory, as in the formation of trusts and other forms of economic combination and restraint of trade. However, for a time at least, society did operate at something close to the classical economic model, and expectations on business as well.

The Social Contract of Modern Capitalism

The contract which the business firm makes with its employees, customers, suppliers, and various levels of government, although formally still the limited economic contract of early capitalism, has undergone a substantial transformation in this century. It has evolved from a simple exchange of promise and performance between individuals to a continuous economic and social relationship between large groups and organization guided as much by unwritten as written terms of consideration. The bargaining process through which this "social contract" is achieved and the terms of the contract are often implicit as well as explicit, public as well private. Moreover, the parties to the process and the terms of the contract are constantly changing.

Many of the conflicts between the Modern Corporation and contemporary American society stem from a failure to recognize, understand or accept the terms of the social contract which the society wishes to force upon it. Those who manage corporations are still inclined to define and examine relationships in terms of the specific expectations which govern them, and the result is a failure to see the broader, more fundamental expectations which the other party to the contract has. It is these unwritten expectations of society which more often than not are the source of business-society conflict and the low esteem in which business is held today.

So what are these expectations? What is it that society wants from business? Are the expectations reasonable? Are they more than business can provide? If business is being asked to do more than it was in the past, is it reasonable to ask what additional consideration is business receiving from customers, employees, government and other elements of society? After all, contracts, including social contracts, imply reciprocity.

In exploring the expectations which business and society have of each other and the basis upon which these expectations are constructed. The outcome is not a definition of the

responsibility of business but rather a framework for identifying the terms of the social contract between business and society in any country around the world.

Theory

To understand the transformation of the social contract between business and society, it is useful to view society in a theoretical context. Parsons and Smelser offer one useful framework. They assert that there are four "functional imperatives" which all societies must perform, referred to as the cultural, political, economic and social functions. Traditionally, American society was specialized in the performance of these functions. Business performed the economic function, with other institutions performing the other functions.

In Modern Capitalism, two important changes have taken place. First, there is a blurring in the boundaries between institutional specialization in our society. Accompanying this blurring has been the extension of institutions into new functional realms. Thus, business becomes involved in performing social political and cultural functions, and the federal government becomes involved in performing or ensuring the performance of economic functions.

This change is the result of the weakening of traditional institutions such as the church and the family. For example, the impact of business institution, e.g., television and television advertising, on values. It is also the result of breakdowns in the capitalist system, e.g., pollution makes necessary governmental involvement in manufacturing process decisions. It also is the result of certain institutions seeking to expand their influence, e.g., business electoral campaign contributions and lobbying extend the business institution into the political realm.

The result of the changing "statuses" of the Western business firm--it now has cultural, political, and social as well as economic statuses--is a rise in the expectations that the business firm will behave like a cultural, political, social and economic institutions. This is a tall order, since the additional responsibilities associated with these new statuses is not accompanied by any diminution of the responsibilities associated with its traditional economic statuses. Moreover, these new expectations are not always clear, and can change very rapidly.

In sum, the task of management today is far more complex and difficult than it was a generation ago.

Property Rights and Social Contract in Case Analysis in this Course

Case analysis in this course often begins with the setting out of the property rights issues that underlie the case. Typically, they would be set out in the following format:

The right of business to ___ [*state very specific to the case*] _____ vs.

The right of (an external group) to ___ [*state very specific to the case*] _____.

There may be multiple rights involved on the side of business or external group(s).

This contrast then becomes the definition of the differing interpretation of how these rights translate into actual business practice, i.e., how the business sees its social contract vs. how the external group sees the business's social contract (or how you to as an outside observer). For example, in a case, a business may acknowledge that the neighbors in the immediate environment of a manufacturing plant have a right to "clean air," but the two sides may differ significantly on how clean the air must be in terms of rigorous measures, such as "parts per million." Government officials and Facebook may agree that Facebook should work diligently to minimize ISIS recruitment on Facebook, but they may disagree on how aggressive Facebook should be in rooting out ISIS Facebook users and making their identity known to its users.

Consider for yourself the status of the social contract (including historical origins and future directions) between business and society in the Czech Republic and/or your home country.

NOTE: The rights of government agencies and NGOs are not at issue in the cases in this course and should not be included in any analysis of rights conflicts! However, these actors do advocate on behalf of the rights of others in many cases.