

CLEARING THE GROUND FOR A NEW SOCIAL CONTRACT - SOLON, ROUSSEAU AND LOCKE REVISITED

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ABSTRACT: We are today at a societal juncture, where we need new approaches to tackle societal issues. The transition from an industrial society to one dominated by digital means, as well as the neoliberal policies that have been dominating during the past 30 years or so, have led to growing social inequalities. Thus, a new social contract is often called for, and it is then timely to look back at Jean-Jacques Rousseau's Social Contract. We will do so here, and pin Rousseau's theory down through the Papakonstantinidis' Win-win-win method.¹

KEYWORDS: Social Contract; Solon; Rousseau; Locke; Win-win-win method

The win-win-win method is a situation, game, negotiation or strategy in which all parties benefit in one way or another as well as *the community as a whole* – there are no losers. In a conflict situation, when participants are trying to find a solution, a win-win strategy is one in which everyone is accommodated, all participants, but also non-participants win.

An early example of a win-win-win solution is Solon's reform that laid the foundation for Greek democracy.²

¹ Leonidas A Papakonstantinidis, *The win-win-win model, Euracademy Guide*, Uppsala University, Visby, 2002, p. 68

² The introduction of vine and olive culture on a large scale, around the middle of the 8th century BC, led to increasing concentration of land and wealth with a parallel devastation of the power of the king. With this structural change followed growing social inequalities and economic problems. Small farmers had to mortgage their land, with the result that many farmers became serfs when unable to pay the mortgages. Those without land were sold into slavery. Those thus subdued, and peasants, were supported by the urban middle class in their pressure for change. In the face of social upheaval all parties agreed, in 594 BC, to vest

This is how Solon, himself, pictured his reform:

I gave to the people as much esteem as is sufficient for them,
Not detracting from their honour or reaching out to take it; And to those who had
power and were admired for their wealth I declared that they should have nothing
unseemly. I stood holding my mighty shield against both,
And did not allow either to win an unjust victory.

Criticism against his reform was mounted on all sides and this is Solon's
response to their criticism:

If I am to reproach the people openly, I say that what they now have their eyes
would not have seen Even in their dreams. And those who are greater and more
fortunate in life Should praise me and make me their friend.³

So, those who were powerful and fortunate had to give up part of their wealth
for the common good, thus society as a whole.

Every negotiation - even the infinitesimal one - has a direct or indirect impact
on the whole society, even the global one.

There are many different types of outcomes – everyone can win, one can win
while the other loses, or all parties lose. Solon's reform is an illustration of a give
and take where the whole society won.

Rousseau's *The Social Contract*⁴, with its famous opening sentence "Man is
born free, and everywhere he is in chains", stated instead that people could only
experience true freedom if they lived in a civil society that ensured the rights and
well-being of its citizens. Being part of such a society involved submitting to the
general will – a force that transcended individuals and aimed to uphold the
common good.

Jean-Jacques Rousseau, born in Geneva in 1712, had an important influence
on political philosophy in the 18th century and since, in particular through his
book *The Social Contract*, published in 1762. This monumental work is part of the
family of older, major writings on social contract theory by Thomas Hobbes

Solon, the chief magistrate, with absolute power to carry out reforms, which he did aimed at both political
and economic adjustments. These reforms were viewed as moderate and had the effect of leaving all parties
unsatisfied. Edward McNall Burns et al. *Western Civilizations*, WW Norton & Company, New York, London
(1980) pp. 118-119

³ Aristotle, *The Athenian Constitution*, Penguin Classics, (1984 reprint 1986) pp. 51, 53

⁴ J.J. Rousseau, (1755) *Discours sur l'origine de l'inégalité (Discourse on the Origin of Inequality)*, AMSTERDAM
Ed.1775

(1588-1679)⁵ and John Locke (1632-1704)^{6,7}.

RELATIONSHIPS

The relationships between individuals, the state and government form the key components of Rousseau's "social contract". A first principle to govern these relationships is that man has no natural authority over other human beings and sheer force exercised by one individual over another does not justify authority. Rather, legitimate authority must find its rationale in so-called social pacts or contracts. Secondly, competition among men will stimulate the need for a social pact, so that each can preserve oneself and be protected by the "general will" enacted by the people.

The social contract purports to provide a proper alternative to the "state of nature". For Rousseau, the state of nature was initially peaceful, this harmony being attributable among other things to the small size of the population, the abundance of nature and the absence of competition. Gradually society became more complex, introduced private property and created new forms of dependence among men, resulting in economic and social inequalities. The state of greed and competition that came into being led Rousseau to propose a new social pact, in broad agreement with Hobbes. Hobbes proclaimed men to be rational and interested in such a social pact, as it would bring them a better life compared with the state of nature. In addition, for Locke, a particularly strong reason to abandon the state of nature and for men to contract with civil government was the emergence of war.⁸

Rousseau compares the social contract to an "act of association" whereby there is reciprocal commitment between the state and the individual. The individuals as citizens share sovereign power, but as subjects submit themselves to the laws of the state. Rousseau also defines government as one of the principal actors: it is an intermediary body between the subjects and the state with the main tasks of executing the laws and preserving civil and political freedom.

⁵ Thomas Hobbs (1651) (2006). *Leviathan*. Rogers, G. A. J., Schuhmann, Karl (A critical ed.). London: Bloomsbury Publishing

⁶ John Locke (new ed, 1959) *An Essay Concerning Human Understanding*: In Two Volumes, Vol. Two (Dover Books on Western Philosophy)

⁷ John Locke *Two Treatises of Government*, A Mentor Book, Cambridge University Press (1960, reprint 1963)

⁸ <https://www.britannica.com/topic/The-Social-Contract>

Interestingly, Rousseau uses economic reasoning in the evaluation of the social contract, by comparing losses and gains: "What man loses by the social contract is his natural liberty and an unlimited right to everything he tries to get and succeeds in getting; what he gains is civil liberty and the proprietorship of all he possesses"⁹. (Note here that "natural liberty" is constrained by the physical power of the individual, whereas it is the general will that defines the contents of "civil liberty". In addition, "property" is based on a legal title whereas "possession" is the result of man exercising force.) According to Rousseau, the result of this kind of cost-benefit analysis is clearly positive: individuals will get net benefits, as the social contract will preserve them and protect them through the general will which is shaped by the same individuals. Furthermore, the adoption of a social contract is rational, as without it the state of nature (which is also referred to by Rousseau as a "primitive condition") is put under such pressure that it would collapse.

JOHN LOCKE (1632-1704)

Property is, thus, as central to Rousseau's social contract as it is to John Locke's legitimation of government, but with a very different emphasis. In his *Second Treatise of Government* (ST), Locke sets out his considerations about property in the following somewhat drastic way. "Political power...I take to be a right of making Laws with Penalties of Death, and consequently all less Penalties, for the Regulating and Preserving of Property, and of employing the force of the Community, in the Execution of such Laws, and in the defence of the Commonwealth from Foreign Injury, and all this only for the Publick Good."¹⁰

For Locke, a property in a thing is a right to exclude others from it, to use, enjoy, consume or exchange it. He shows in the *Second Treatise* that individuals have a natural right to property, a right which is prior to civil society and government, and not dependent on the consent of others. The right to property is deduced from the right of self-preservation and the property in, or right to, one's own person – "the labour of his body, and the work of his hands, we may say, are properly his". (ST Chapter I, sect. 3)

Locke considers property rights essential to individual rights and freedom.

⁹ Chapter VIII, The Civil State

¹⁰ John Locke, *Second Treaties of Government* (1963)

The right to property he bases on natural reason, which tells us that man has a right to preservation, for which he needs, beside food, also other things which nature affords for his subsistence. Locke pursues an argumentation in favour of private property as against communal property. He sets out to show how men could gain possession of that which God gave mankind in common, without an explicit agreement of the whole collectivity. He begins this argument by noting that "though the Earth, and all inferior Creatures be common to all Men, yet every man has a Property in his own Person." From this premise he develops the right to property. "The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property". In this way the rights of others are excluded, but with a qualification "at least where there is enough, and as good left in common for others." At this stage of argumentation Locke considers that there is a limit to the amount of property a man can appropriate from nature. In addition to the requirement that enough and as good be left to others, he introduces a further limit, the extent to which property can be enjoyed. "The same Law of Nature, that does by this means give us Property, does also bound that Property too... how far...? To enjoy. As much as anyone can make use of to any advantage of life before it spoils; so much he may by his labour fix a Property in". So, "whatever is beyond this, is more than his share and belongs to others." Locke also sets a limit to landed property. "As much Land as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his Property. He by his Labour does, as it were, inclose it from the Common."¹¹

We here find a 'natural' limitation to property, which shares features with the distinction Aristotle made between the means needed for the household, as distinct from wealth accumulated for its own sake. There is, however, a difference in focus in these qualifications. Aristotle's criterion is that a natural limit is what is needed for the self-sufficiency of the household, for a good life, whereas for Locke it is as much as a person can consume. The limit to property that Locke

¹¹ Second Treaties, Chapter II Of the State of Nature, Chapter III Of the State of War and Chapter V Of Property, Vivan Storlund, *To each one's due at the borderline of work: Toward a theoretical framework for economic, social and cultural rights*, Helsinki Yliopistopaino (2002) pp.80-82
<https://helda.helsinki.fi/bitstream/handle/10138/18371/toeachon.pdf?sequence=2&isAllowed=y>

here appears to set, he soon substitutes by another notion. He observes that this rule would hold "had not the Invention of Money, and the tacit Agreement of Men to put a value on it, introduced (by Consent) larger Possessions, and a Right to them." From here on Locke turns property into a utilitarian 'Publick Good'. He, who appropriates land to himself by his labour, does not lessen but increase the common stock of mankind. "For the provisions serving to the support of humane life, produced by one acre of inclosed and cultivated land, are (to speak much within compasse) ten times more, than those, which are yielded by an acre of Land, of an equal richnesse, lyeing waste in common. And therefore he, that encloses Land and has a greater plenty of the conveniencys of life from ten acres, than he could have from a hundred left to Nature, may truly be said, to give ninety acres to Mankind." (ST, Chapter V). Trickle down economics comes here to mind, which as practice shows, has not materialised the way theory has it.

THE FREEDOM OF CONTRACT

Rousseau begins *The Social Contract* with the remarkable phrase "Man is born free; and everywhere he is in chains". Because these chains are not in the state of nature, they must be contract constructions. Rousseau thus seeks the basis for a legitimate, political principle according to which people must give up their natural freedom. It sets two conditions for a legitimate state and creates many clauses to ensure their implementation. Firstly, there should be no relationship of particular dependence on the state and secondly, by obeying the laws, a person obeys only himself. Rousseau's solution to the problem of legal power is the "social contract", an agreement by which people unite for their mutual preservation.¹²

Rousseau observed that competition among men will stimulate the need for a social pact, so that each can preserve oneself and be protected by the "general will" enacted by the people.

The freedom of contract has played a pivotal role in this pact. In the liberal scheme of the early 1900, everyone was considered free to conclude such contracts as one pleased, and this was accompanied by a strict adherence to the

¹² Leonidas Papakonstantinidis, *Behavior Within The Bargaining Problem: A Win-Win-Win Papakonstantinidis Model Application* Amazon, 2022 p. 347

fulfilment of contractual obligations. In the law of contract of the time, there was no room given social equity aspects. Labour contracts were treated under the same conditions as contracts between merchants or manufacturers. In the United States where the liberal scheme existed in about its purest form, legislation designed to strengthen workers' position by providing protection against coercive measures by the employer, were for a long time viewed as unwarranted deprivations of liberty and property, and disturbances of equality of rights. This view equally applied to provisions aimed at protecting workers' rights and their right to belong to a union. Rulings of the US Supreme Court offer interesting illustrations of the thinking in the early 20th century. The court was faced with a number of cases in which it assessed the constitutionality of protective statutes. Justice Harlan argued in *ADAIR v. US*, 208 U.S. 161 (1908) that it is important to preserve the balance of freedoms which exists between employers and employees: "The right of a person to sell his labor upon such terms as he deems proper is, in essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it."¹³ In other words, hiring and firing at will.

Locke has thus contributed to strengthening property rights, as part of the classical rights and liberties. This legacy is firmly cemented in economic life, but equally so in the regulation of working life, because property rights are embedded in the employer prerogative.¹⁴

How can we now assess Rousseau's social contract within the context of the development of contractual arrangements, such as in the health sector? The social contract is focusing on principles of political organization and cooperation at the highest levels of society, and its usefulness for practical approaches at the micro- or meso-levels is scant. In particular, the process of seeking agreement for specific contracts does not find ready and practical advice in Rousseau's book, but its principles help in understanding the rationale for cooperation in the health sector. For example, a country may experience the uncontrolled development of nongovernmental organizations whereby they develop infrastructure and offer health services according to their particular preferences, constraints and

¹³ <https://supreme.justia.com/cases/federal/us/208/161/>, <https://www.oyez.org/cases/1900-1940/208us161>

¹⁴ Storlund (2002) pp.105, 106

possibilities. The country may judge that cooperation between the public and private health sectors (including such organizations) is needed to respond coherently to society's public health objectives, thereby aiming at enhancing efficiency and equity. The social contract facilitates here, albeit indirectly, by making a case for abandoning a free and anarchic situation (which could conceptually be likened to the state of nature) and for adopting a cooperative approach¹⁵.

In the US Supreme Court ruling cited above we have a question of legislation that 'interfered' with the 'equality of rights' of the parties. With the subsequent introduction of labour law, the asymmetrical nature of the employment relationship was acknowledged. But in addition to the injustices that still persists in the employment relationship itself, there also remains an aspect of neutrality in the way working conditions are settled through collective bargaining. It is not the substance of the work, but the bargaining power that determines salaries and conditions of work. Employers mostly have the strongest bargaining power. Among unions, those whose work input can be measured in the contribution to the gross domestic product, GDP, have a stronger bargaining power than those who serve human needs, such as health personnel. The Covid pandemic exposed the hard work and societal importance of the health sector but, despite some professed efforts, this has not been followed up by an adequate increase in their salaries and working conditions. We here have constellations where we need to break with current practices by applying the win-win-win method.

WIN-WIN-WIN AND SOCIAL CONTRACT

The win-win-win method should be the guiding principle of a social contract that reflects the social constellations of the world today. It is in line with Rousseau's ambition. Rousseau stated in the introduction to his *Social Contract* that he inquires whether there can be, in a political order, some lawful and certain principles of government, which allow men as they are, and laws as they might be in order that justice and utility are in no way divided. (1966, p. 39)¹⁶

¹⁵ Guy J Carrin PUBLIC HEALTH CLASSICS *Rousseau's "social contract": contracting ahead of its time?*

¹⁶ Rousseau, (1966), p. 39, Storlund, (2002), p. 220

Indeed, win-win-win defines Rousseau's social contract through game theory. It shows the interconnectedness of justice and utility. Rousseau's demand that justice and utility be combined fits admirably with our present need to measure human interests. This makes win-win-win combine justice and utility.

Rousseau, in his *Discours sur l'origine de l'inégalité* (1755, *Discourse on the Origin of Inequality*), argued that in the natural state men were lonely but also healthy, happy, good and free. What Rousseau called "emergent societies" were formed when people began to live together as families and neighbours. However, this development gave birth to negative and destructive passions, such as jealousy and pride, which in turn encouraged social inequality and human wickedness. The introduction of private property marked a further step towards inequality, as it made law and government necessary as a means of protecting it. Rousseau lamented the "fatal" concept of property and the "horrors" that resulted from being removed from a state in which the land belonged to no one.

Civil society as Rousseau described it was created to serve two purposes: to provide peace for all and to ensure the right to property for those fortunate enough to own property. So, it was of some advantage to all, but especially to the rich, since it converted their de facto property into legal property and kept the poor destitute. It was, indeed, a somewhat insidious social contract, since the poor got much less of it than the rich.

But Rousseau also believed in the possibility of a genuine social contract, in which people would receive in return for their independence a better kind of freedom, that is, true political or democratic freedom. As described in *The Social Contract*, such freedom is found in obedience to what Rousseau called the "general will" —a collective will aimed at the common good or common interest.

Andranik Tangian observes in his book *Mathematical theory of democracy* how Rousseau develops his theory by "deriving statements from the original position that man must keep close to nature. The 'natural' state, with its original freedom and equality, is hindered by the 'unnatural' involvement of man in collective activities which result in inequality, which in turn violates liberty. The purpose of this social contract, which is a kind of tacit agreement, is simply to guarantee equality and, consequently, liberty as the highest social values... Certain political statements, especially about the organization of powers, come from the 'offices'

of the equality of citizens and their submission to the general will."¹⁷

Rousseau argues that the political aspects of a society must be divided into two parts. First, there must be a sovereign consisting of the whole population, which includes women (in a way not generally practiced by any country and thus quite a revolutionary suggestion), who represents the general will and is the legislative power within a state. The second division is that of the government, being distinct from the sovereign. This separation is necessary because the sovereign cannot deal with specific matters such as the application of the law. To do so would undermine its generality and thereby undermine its legitimacy. Thus, the government must remain a separate institution from the sovereign body. When government exceeds the limits set by the people, it is the people's job to abolish such a government and start anew.

Rousseau claims that the size of the territory to be governed often determines the nature of the government. Since a government is only as strong as the people, and that power is absolute, the larger the territory, the more power the government must be able to exercise over the population. In his view, a monarchical government is able to exercise the most power over the people, since it has to devote less power to itself, while a democracy has the least. In general, the larger the bureaucracy, the more power is required for government discipline. Normally, this relationship requires the state to be an aristocracy or a monarchy. When Rousseau uses the word democracy, he is referring to direct democracy rather than representative democracy. In light of the relationship between population size and governmental structure, Rousseau argues that like his native Geneva, small city-states are the form of nation in which liberty can best flourish. For states of this size, an elected aristocracy is preferable, and in very large states a benevolent monarch. But even monarchical power, to be legitimate, must be subordinated to the sovereign rule of law.

According to Rousseau man sacrifices his individual freedom to obtain his political freedom which is superior because it indicates cohesion in a community. On the other hand, "win-win-win" indicates the necessity to connect utility with empathy and social justice. One might say that "political freedom" is synonymous with "we win" because the citizen shows "bravery" by accepting the collective -

¹⁷ Tangian, Andranik (2014): *Mathematical theory of democracy. Studies in social choice and welfare*: XIII, p. 615

common benefit behind each negotiation.

In a political order "win-win-win" indicates legitimate and certain principles of governance. It introduces "superego" in place of "individualism", that is, an ethical component of the personality that provides the moral standards by which the ego operates.

The citizen functions on the personal level as an individual but on the collective as a citizen. The "conflict" between the individual and the collective is expressed in "I win - you win - we win" (win-win-win).

Social contracts are made by the people for the people in citizenship. Because "bargaining" is at the heart of our lives, win-win-win agreements are much more powerful, covering both the "legal" and the "moral" part of everyday life.

In Rousseau's concept of "citizen" individualism, empathy, and communitarianism come together. They are exactly the three elements that project win-win-win. At a later stage, we can say that perpetual accumulation is no longer the great goal. It makes no sense to unbridled individualism. It is increasingly realized that individualism must be connected to empathy in order to make any human sense (win-win). John F. Nash comes to the same conclusion as a strategic and political thought (win-win).¹⁸

If the concept of "citizen" is not deeply understood then the third "we win" represents the completed version of the negotiation, which coincides with the mental completion. Economic, social and cultural rights have always had to give way for classical rights and freedoms. Applying the win-win-win method would ensure that economic, social and cultural rights would have to be considered on a par with classical rights and freedoms.

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¹⁸ John F. Nash, Jr (1950) The Bargaining Problem *Econometrica*, Volume 18, Issue 2 (Apr., 1950), 155-162.

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