

# The Theological Role of Contract Law

By Val D. Ricks\*

## INTRODUCTION

A contract is a promise that the law will enforce. “Contract Law” is the rules and customs created or enforced by governments relating to the formation, interpretation, and enforcement of contracts.

*--Is contract sanctioned by or supported by God and His laws and part of His plan?*

## I. The General, Salvific Freedom Justification for Contract Law

Doctrine & Covenants 98:4-7 indicates that the Lord justifies human laws only on certain narrow grounds. “[W]hatsoever is more or less than this, cometh of evil,” He said (v.7).

*Is contract law part of the law that is justified or part of the evil? Some or all?*

Emphasis had been added to the following excerpts:

Bruce R. McConkie, *Mormon Doctrine* 377 (1966):

“As a natural and automatic inheritance from their Creator, all men are born into the world with certain *inalienable rights*, rights which cannot be surrendered, transferred, or alienated. .... In the full sense they include every natural and inherent right necessary for the working out of one’s salvation in the kingdom of God. Freedom of thought and of worship, freedom of

speech and of preaching the gospel, freedom to investigate the truth, to worship God according to the dictates of one’s own conscience, *to earn a temporal livelihood*—these are among our inalienable rights.”

Ezra Taft Benson, Conference Report, April 1968, 49:

“No people can maintain freedom unless their political institutions are founded upon faith in God and belief in the existence of moral law. God has endowed men with certain inalienable rights, and no legislature and no majority, however great, may morally limit or destroy these. *The function of government is to protect life, liberty, and property*, and anything more or less than this is usurpation and oppression.”

Parley P. Pratt, 1 JD 137, 139 (July 4, 1853):

“In the principles of the Constitution formed by our fathers, and handed down to their children, and those who should see fit to adopt this country as theirs, there is no difficulty, that is, in the laws and instruments themselves. They embrace eternal truths, principles of eternal liberty, not the principles of one peculiar country, or the sectional interest of any particular people, but the great, fundamental, eternal principles of liberty to rational beings—liberty of conscience, *liberty to do business, liberty to increase in intelligence and in improvement, in the comforts, conveniences, and elegances of this life*, and in the intellectual principles that tend to progress in all lives.”

Ezra Taft Benson, *The Teachings of Ezra Taft Benson* 672-73 (1988):

“In general terms, the proper role of government includes such defensive activities as maintaining national military and local police forces for protection against loss of life, *loss of property*, and loss of liberty at the hands of either foreign despots or domestic criminals. It also includes those powers necessarily incidental to the protective function, such as the maintenance of courts where those charged with crimes may be

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\* This lesson draws freely from Val D. Ricks, *Contract Law and Christian Conscience*, 2003 B.Y.U. L. Rev. 993.

tried and where disputes between citizens may be impartially settled; the *establishment of a monetary system and a standard of weights and measures* so that courts may render money judgments, taxing authorities may levy taxes, and *citizens may have a uniform standard to use in their business dealings.*” (An Enemy Hath Done This, pp. 131-32.)”

David O. McKay, Statements on Communism and the Constitution of the United States 23 (1966):

“We are placed on this earth to work, to live; and the earth will give us a living. It is our duty to strive to make a success of what we possess—to till the earth, subdue matter, conquer the globe, to take care of the cattle, the flocks and the herds. It is the Government’s duty to see that you are protected in these efforts, and no other man has the right to deprive you of any of your privileges.”

Hugh B. Brown, 66 Improvement Era 1058 (1963):

“[I]t is a moral evil to deny any human being the right to gainful employment, to full educational opportunity, and to every privilege of citizenship, just as it is a moral evil to deny him the right to worship.”

#### **Discussion:**

--Do you think that contract law is part of government’s divinely sanctioned role?

--Why is it important for God and His work that there be laws governing contracts?

## **II. Specific Applications**

The excerpts above support the view that contract law, administered in support of the rights named, can be considered a proper function of government.

The following material explores (A) a specific theological justification for a law of contracts (B) and how contract law might support or facilitate development of certain virtues.

### **A. The Private Property/Stewardship Justification for Contract Law**

Please consider the following line of reasoning. It contains five premises. Four are taken from scripture. The fifth relies on facts commonly known to lawyers, namely, ways in which wise contract law benefits the common good.

1. *God’s Children Are Given Dominion over the Earth.*

*Gen. 1:26, 28 (and Moses 2:26, 28; Abraham 4:26, 28).*

#### **Discussion:**

--Do you think it would be possible for people to own real property without government playing some role in establishing enforceable rules?

2. *God’s Laws Require Equality in Earthly Things.*

*DC 49:20; 70:14; 78:6; Moses 7:18; see also 3 Ne. 26:19, 4 Ne. 1:3; Acts 2:44, 4:32; DC 51:3.*

Joseph Smith, 3 History of the Church 304 (1976) (March 25, 1839, from Liberty Jail):

“Here is a principle also, which we are bound to be exercised with, that is, in common with all men, such as governments, and laws, and regulations in the civil concerns of life. This principle guarantees to all parties, sects, and denominations, and classes of religion, equal, coherent, and infeasible rights; they are things that pertain to this life; therefore all are alike interested; they make our responsibilities one towards another in matters of corruptible things ....”

3. *Private Property Is Therefore Justified.*

This conclusion follows from (1) and (2), and is also supported by the following passages: *DC* 104:13-17; see also *Isaiah* 65:21-23 (describing a Millennial time in which private property exists); *Acts* 4:32 (confirming that each believer retained control of “his possessions,” though she did not call them her own); *DC* 38:20 (“[Y]e shall have it for the land of your inheritance, and for the inheritance of your children forever, while the earth shall stand, and ye shall possess it again in eternity.”), 45:58 (“And the earth shall be given unto them for an inheritance . . . .”); *DC* 42:32 (“a steward over his own property, or that which he has received by consecration”); *DC* 42:84-85 (requiring that those who rob or steal be delivered “up unto the law of the land”); *DC* 51:4-5 (mentioning portion of the stewardship “that is deeded unto” the steward); *DC* 83:3 (holding that after a man died, his wife and children “may remain on their inheritances according to the laws of the land,” which would have provided that ownership devolved upon heirs or legatees); *DC* 101:101 (“They shall build, and another shall not inherit it; they shall plant vineyards, and they shall eat the fruit thereof.”).

#### 4. *Given Initial Inequality in Resources, Equality Requires a Right to Convey Property.*

*DC* 42: 30-39, 53-55; *DC* 70:14 (“and this not grudgingly”); *DC* 78:3-7 (“you must prepare yourselves”).

#### 5. *Contract Law Makes Property of Promises, Allowing Us to Gain Stewardship and to Better Achieve Equality.*

Because we come to earth with nothing, some method for obtaining a stewardship is necessary. In a cohesive, religious society, earthly blessings could be distributed by commandment or by inheritance. This was done in ancient Israel, and among the Nephites to an extent. It could perhaps be done today if humankind were willing to abide by God’s commands. But they are not. Moreover, preservation of freedom not to accept the Lord’s will may require a method

of obtaining property other than by the Lord’s command or by inheritance. The need for some other method of obtaining stewardship is at least one clear reason for some law of contract. Contract is a method of obtaining stewardship consistent with salvific freedom. A law of contract thus augments a stewardship/property regime. Contract law allows us to barter our natural assets—labor, most obviously—for other things. Without a law enforcing promises, transaction costs involved in trading labor for other goods may well be too high to make such a transfer profitable enough to meet the stewardship needs of the population. Also, sometimes the best stewardship of property is to trade it for something the steward can make better use of. So a law of contract assists and encourages everyone’s stewardship. In a sense, it effectively brings the future—one’s future labor, for instance—within the stewardship/property regime, expanding that regime by generating more property and allowing it to be spread more equally among more stewards.

#### **Discussion:**

*--What portions of the above statement do you agree with? Why?*

*--If people lived the Law of Consecration regarding their private property, would government enforced contract law be necessary?*

*--Do you think that some system of contract law would be necessary in a Zion society? Or in a millennial society?*

#### **B. The “Beneficial Side Effects” Justification for Contract Law**

Controlling the earth’s resources, including property in a promise, allows one to learn consecration, work and planning, and the overcoming of greed and covetousness. Controlling the earth’s resources also allows us to understand the difference between laying up

treasures on earth and the laying up of treasures in heaven.

1. Consecration and property: *Acts* 4:32-37, 5:1-11; *2 Cor.* 8:9-15; *Mosiah* 4:21; *Alma* 1:27; *4 Nephi* 1:3, 25; *DC* 19:26, 42:30, 49:20, 51:3, 78:5-6, 105:5; *Moses* 7:18. With respect to consecration and the law of tithing, see *Gen.* 28:22; *Lev.* 27:30; *Mal.* 3:8-12; *DC* 68:23; *DC* 119:4.

2. Work and planning: *Gen* 3:17-19 (“cursed is the ground for thy sake”); *DC* 42:42.

3. Overcoming greed and covetousness: *Exod.* 20:17; *Deut.* 5:21; *Rom.* 7:7-12, 13:9 (“Thou shalt not covet.”); *Mosiah* 13:24; *DC* 19:25, 88:123.

4. Laying up treasures in heaven: *Matt.* 6:19-21, 19:21; *Mark* 10:21, 12:41-44; *Luke* 12:33-34, 18:22; *Helaman* 5:8; *3 Nephi* 13:19-21.

### Discussion:

--If one of the purposes of life is for God to see how we will manage the responsibilities and stewardships we are given in this life— if we all will ultimately be accountable to God for what we do with our “stuff”— isn’t some system of contract law essential to that purpose?

### III General Questions and Cases for Discussion.

1. How do individual doctrines of contract law support these theologically justifiable roles? You might consider, for instance, consideration, unconscionability, mutual mistake, mistake in transcription, the parol evidence rule, and the statute of frauds.

2. Can one be sanctified through the conduct of business activities?

3. How much profit should one take?

4. Does contract law determine the limits of ethical and moral behavior in some cases? In

all cases? Why or why not?

#### 4. Case studies:

#1. Maker Inc., a manufacturer, made by phone, in November, a contract with Reseller Corp., a distributor. Under the contract, Reseller was to be the exclusive distributor of Maker products in a certain geographic region for the entire next calendar year, beginning January 1. In late December, Distribution Services, LLC, approached Maker and offered to distribute for a smaller compensation than Reseller had demanded. Now (in late December), Maker wishes to sell through Distribution Services for the next calendar year. You are Maker’s lawyer. Maker reminds you that Reseller has nothing in writing and asks if Maker can avoid its contract with Reseller. Under the Statute of Frauds, Maker has the right to do so.

*Should Maker have that right?*

*Should you defend Maker in Reseller’s action for breach?*

(This example is adapted from *The Coleman Co., Inc. v. Cargil Int’l Corp.*, 731 So.2d 2 (Fla. App. 1998).)

#2. A woman engaged to be married hired a music company to provide music for the ceremony, dinner, and reception. She carefully planned the music to add meaning to each of these events. A string quartet was to play carefully chosen music at the church, music the bride considered sacred. The same quartet was to accompany the dinner with a more classical repertoire. A larger ensemble was to back up her chosen singer that night at the reception and provide music for dancing. On the day of the wedding, however, no musicians appeared at the church. She called the company, but no one answered. A friend offered to play on the church’s organ, but the friend could play none of the planned music. The bride opted for no music, instead, and felt the ceremony was cheapened as a result. No musician appeared at the dinner, either, but someone found a boom

box and some string quartet cds, which were played. The boom box had to suffice for the reception as well, though the selection was nothing like what was planned. The bride had promised the music company \$2,000 for their performance, and had left a \$200 deposit. The bride spent \$10,000 on the other preparations. The next day, the bride went to the music company and found the sole shareholder and CEO there. In response to her question why no one came to the wedding, he answered that he was in the middle of a divorce and that it was affecting his ability to do business. He had misplaced her order. He said he was sorry and offered to pay back her \$200 deposit. She later sued the music company for \$12,000.

*What should the damages be under contract law?*

*What would you advise the bride to do?*

(This story is adapted from *Deitsch v. The Music Company*, 453 N.E.2d 1302 (Hamilton County Municipal Court, Ohio 1983).)