

The Social Contract

IS THE CONSTITUTION A SOCIAL CONTRACT?

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COMPARING THE SOCIAL CONTRACTS OF HOBBS AND LOCKE

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THE SOCIAL CONTRACT RENEGOTIATED: PROTECTING PUBLIC LAW VALUES IN THE AGE OF CONTRACTING

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Shaw v The State of Western Australia Attorney General Mr Jim McGinty [2004] WASC 144 (at 11-12)

"I must confess, with all due respect to the plaintiffs, that I have no idea what is intended by these pleas. The assertion that the Constitution Act constitutes a contract is plainly not intended to be understood in the sense that the concept of a social contract between rulers and ruled was used by the 17th century philosopher John Locke and the other social contract theorists. It is clearly intended to plead a contract enforceable by law in the courts, presumably by any member of the public, although the parties to the contract are not identified in the pleading. The plea is plainly misconceived. The Constitution Act is a statute and has effect as such. It does not give rise to contractual rights or obligations on the part of the first defendant or anyone else. It is also manifestly plain that the "content and intent" of the Constitution Act could not be altered through the actions of the defendants, whether in alleged collusion or otherwise."

<https://freemandelusion.com/wp-content/uploads/2019/06/shaw-ors-v-the-state-of-western-australia-attorney-general-mr-jim-mcginty-anor-2004-wasc-144.pdf>

Sol Theo and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 58:

"Mr Theo contends that since he has been a taxpayer over time, consistent with the requirements of the Income Tax Assessment Act 1936 (Cth), he enjoys a social contract which entitles him to be paid an age pension. ... There is no substance in the notion that Mr Theo's historical status as a taxpaying citizen of Australia gives rise to a social contract between Mr Theo and the Commonwealth which entitles him to any class of social security payment, independently of a valid claim for such a payment properly established in accordance with the provisions of the social security law.

Mr Theo also argues that the social security legislation is invalid to the extent that it imposes any eligibility requirements that conflict with a social contract between taxpayers and the Commonwealth. Mr Theo says the Commonwealth's income tax reforms in the 1960s were

introduced on the basis that the taxes collected would be used to fund a universal aged pension scheme. He says he paid his taxes and is therefore eligible to participate in the benefits which were promised.

I told Mr Theo at the outset of the hearing that I would not entertain any submissions in relation to his argument that there is a social contract which affects the operation of the social security legislation. That jurisdictional argument has been considered and rejected on a number of occasions by the Federal Court. He accepted that ruling in good grace, and we moved on to discuss other aspects of his case."

[Leone & Cino \[2016\] FamCAFC 224](#) (from 17)

"The husband filed a notice of discontinuance on 13 October 2015 in which he sought to discontinue the whole of his initiating application filed on 23 April 2013. At [3] of her reasons for judgment, the primary judge said:

In addition to filing the Notice of Discontinuance, on 13 October 2015 the husband also filed an affidavit affirmed that day. The husband deposed in that affidavit as follows:-

- 1. I [Mr Leone] of the family [Leone] being a sovereign and free man under God, am hereby writing this letter to formally remind and reconfirm to the court of my oral and written withdrawal of my participation in this matter on the 28th August 2015. Therefore anything prior to, on, or after that date with relation to these proceedings is null and void.*
- 2. This affidavit is further confirmation that I do not consent to participate in these proceedings.*
- 3. I am not under any contract that binds me to the Municipal Corporation which identifies itself as the Federal Court and the Family Law Courts.*
- 4. I do not consent to any application or request for me to attend court or participate in proceedings, and any attempt to drag me into court or bind me into proceedings will initiate a claim for damages under common law, against any party who has initiated or made that application or request on, of, or against me.*
- 5. I am not bound by any valid social contract to any of the parties or Municipal Corporation which obligates me to participate in their masquerades, such as and including these purported court proceedings.*
- 6. Any contracts that I was fraudulently induced into entering or forced into entering, by any parties, or Municipal Corporations, such as the Federal Court, Family Law Court or Magistrates Court etc, are hereby declared to be void, invalid and of no lawful effect, because I was not provided full disclosure of the actual relevant details of the contract, or the details of the party purporting to contract with me.*
- 7. On the 28th August 2015 I formally advised the Court that I discontinued these proceedings and a notice of discontinuance has been filed on this day with the court.*

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[Needham v Commission of Police \[2011\] QDC 373:](#)

"Can you stand up, please, Mr Needham? Mr Needham, you and I met in August 2008. It was of course a sad and difficult time for you, but it was also a sad and difficult time for Mr Harris who suffered significant injuries as I have just outlined as a result of your dangerous operation of a motor vehicle. The holding of a licence is a privilege. When you hold a licence, whether you realise it or not, you are participating in a social contract with everybody else who is driving or in some other way uses the road or in some other way interacts with the roads in Queensland.

The social contract is a simple one. It is that we will all drive, knowing that our actions can affect others. You know very well just how catastrophically your actions have affected others and of course, we ask the same of everyone else. We ask that they drive with ongoing care and respect for each of us, so it's what we give and it's what we expect, that's the contract, that's the deal."

[Dutton v Gorton \[1917\] HCA 40; 23 CLR 362:](#)

"In either case the action of the majority is outside the fair scope of the social contract, and is a decision by them as judges in a real contest between themselves and the minority, who are claiming that in effect the partnership agreement of sharing the common property in specified proportions is openly violated. That is a flagrant abuse of power."

"As noted by this Court in IceTV Pty Ltd v Nine Network Australia Pty Ltd [56], the "social contract" envisaged by the Statute of Anne, which underpins copyright legislation, is that an author (or owner) of copyright obtains a statutory monopoly, limited in time, in return for making the subject matter of a copyright available to the public. However, recurrent legislative balancing of the competing interests of copyright owners and the public does not support absolute propositions such as that copyright is an inherently unstable right, or that reductions in the exclusive rights to do acts within a copyright are always permissible adjustments under s 51(xviii) of the Constitution which do not attract the guarantee under s 51(xxxi)."



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