



Review

Reviewed Work(s): *The New Social Contract: An Inquiry into Modern Contractual Relations* by Ian R. Macneil

Review by: Russell Hardin

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Macneil, Ian R. *The New Social Contract: An Inquiry into Modern Contractual Relations*.

New Haven, Conn.: Yale University Press, 1980. Pp. xiii+164. \$12.95 (cloth).

The thesis of this fine, small book recalls separate theses associated with Lon Fuller and Grant Gilmore. Fuller's thesis through various publications is that law is always much more than what is in a statute. In particular, it involves the larger social relations in which it is embedded. Gilmore has argued (in *The Death of Contract* [Columbus: Ohio State University Press, 1974]), as have many others, that contract law is being swallowed up as the realm of what can be left out of the responsibilities of contracting parties is increasingly governed by the law of torts. Macneil opens his discussion of modern contract by reasserting that "in the beginning was society" (p. 1) and goes on to argue that contemporary contracts commonly have implicit within their terms a vast array of social relations which determine their content and restrict what can be contracted. Formerly, free dealing was fair dealing, but it is no longer (p. 85).

Macneil develops his argument by drawing comparisons (in chap. 1) to show that primitive and modern contractual relations have much in common that distinguishes them from discrete transactions: they both involve large numbers of people, tend to long life, require future cooperation, remain binding through changes of personnel, and require solidarity (a degree of trust in others) to work successfully (p. 21). He then catalogs (in chap. 2) the norms which underlie discrete, primitive relational, and modern relational transactions. With the ground thus prepared, he goes on (in chap. 3) to the new social contract. Against the thesis that (discrete) contract is being swallowed, he argues that (relational) contract is swallowing almost everything in sight, including society and the nation state.

Macneil claims that Durkheim overrated the discreteness of reputedly discrete exchange in concluding that "the hypothesis of a social contract is irreconcilable with the notion of the division of labor." It is "plain enough to [Macneil] that, far from precluding a very sizable common conscience, the division of labor not only is utterly dependent on such a social consensus but generates it" (p. 101). The modern world of relational contract depends on the collective adherence to the usual norms of relational exchange, most especially perhaps to the norm of mutuality of interest, according to which neither party can seem always to come off disproportionately better than the other without damaging the relationship. Today, he suggests, some parties may be willing to gain minor benefits at the cost of disproportionate harm delivered to others so that the solidary belief which undergirds the new social contract may not survive.

Clearly, this is not only a lawyer's book. It should appeal more generally to social theorists interested in the broader understanding of social exchange. In addition to his brief argument with Durkheim, Macneil offers other far-reaching but undeveloped insights (e.g., on bureaucracy and on the world of agents without principals). His momentum carries him finally into oddity assisted by flourish in a discussion of Jacques Ellul's *Technological Society*. But even such contractual relations as are involved in giving the Rosenthal lectures at Northwestern University include unwritten but exacting expectations that the lecturer entertain, especially at the end of a heady argument.

RUSSELL HARDIN
University of Chicago