Relational contract theory

Key element

All contracts are embedded in relations

• This means that they produce (relational) norms

• Over time

• And that there are many conventions (customs) that are not written down.

• But should be taken into account
All contracts are embedded in relations on a scale that ranges from discrete to relational.

Thus (‘somewhat confusingly’): the term relational sees both to the approach of contracts as to a specific type of contracts
Key terminology

- Discrete vs. Relational
- Classical- neoclassical - relational
- Common contract norms
10 common contract norms

• Role integrity, which caters to stability as social roles are recognised.
• Mutuality and reciprocity, based on the assumption that exchange is mutually beneficial.
• The implementation of planning, which is a means for the reduction of uncertainty.
• The effectuation of consent as commitment of a choice that, by definition, sacrifices other opportunities.
• Flexibility, which makes it possible to adapt to changing conditions.
• Contractual solidarity, which involves enduring exchanges over time, even when other opportunities occur.
• Linking norms, connecting contractual obligations to contractual remedies.
• The creation and restraint of power to control relations.
• Propriety of means, which holds that there are limits to the ways ends may be legitimately achieved.
• Harmonisation with the social matrix, which means that contracts must be consistent with wider social norms.

• Note: cf Peter Jones (the new public contracting)
Strategic use of power?

- A large car-company, called Troënn, has several factories in various countries. In order to cut costs, it announces that it will close one of its factories and asks the various local governments for an offer. The large city of Yalul, offers a tax-rebatement of 22% for the next ten years as its neighborhood ‘car-ville’ depends on the Troënn-factory (85% of its working inhabitants, work at the factory). After, three years Troënn decides to close the factory anyway. Yalul decides to fight this decision in a court.

- Debate
Ongoing consent vs Prior Consent

• Prior Consent: you know what you sign, and agree to the content
• Ongoing consent: while the (development) contract is being executed, consent needs to be renewed.

Difference is of specific importance in unequal power relations
Community Contracts

Direct agreements with local communities on development projects to cater for their specific needs or to provide them with economic opportunities

Arnstein's ladder of citizen participation, 1969
Community Benefit Agreements

• Contain the conditions under which community groups will not use their power to hinder a project
• Could solve the ‘fourth-chair’- problem
• Are a means to capture value
Good CBAs

- Are signed by the right stakeholders
- Contain the benefits that the community needs
- Are transparent
- Are enforceable

(cf Vincent Jones criteria)
US Practices

- Living wage (- zones)
- Local job training and hiring programs
- Social and affordable housing
- Environmental remediation
- Funds for community programs

Note: CBAs resemble S106-agreements and development agreement formats of UN Habitat
Incentives

• Developer: wins time; project may be more feasible if it is embraced by the community
• Government: make the project more responsive to needs, show off connection to citizens
• Residents: a chance to be involved and not only heard; enforceable agreement
• General public: ‘smarter cities’
CBA

• Social/ Affordable housing:
  - Focus on ‘how and for whom’ not on ‘percentages’

• Jobs
  - Focus on inclusion of (unorganized) locally bound independent contractors in projects and on training programs
CBA: step 1

• Planning Authority and Developer reach an agreement on the bandwidth of the agreement with community organizations
• If not, the bandwidth is set by the planning authority
Step 2: collect data on projectcollectivity

• Collect data on households (types of residents)
• Make an inventory of existing community organizations
• Who is represented and who is not?
Step 3: organize

• Appoint a community organizer to create an interest group for the non-represented citizens

• Alternatively, the non-represented citizens can join existing organizations
Step 4 Publish invitations

- It is made public who the community organizations are that will be invited to negotiate.
- During a fixed period, citizens can become a member of the organizations and other organizations can ask for an invitation (criterium is ‘would it have standing in court’).
Step 5: Negotiation Phase

• Developer and community organizations negotiate an agreement
• Public authorities support and facilitate the process
• When signed, the public authorities check if the agreement is in line with public policies
Step 6 Contractual Phase

• Joint compliance committee checks if the contract is being carried out
• CBA-board yearly reviews the contract to make sure that it is still responsive to the needs of the project (= ongoing consent)
Kingsbridge Armory

- Local Coalition in Bronx (NY) called KARA
- Protested plans of mayor for conversion into shopping mall
- Organized itself and got a seat at the table, negotiating various benefits for community