

# Agency and power: The contractual illusion

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## Abstract

Many forms of governance today stress the contractual form. This article asks if this phenomenon is real or just an illusion. The contract is analysed in light of Steven Lukes' power theory. The contractual form avoids everything that the Lukesian or Foucauldian 'third dimension' of power seeks to establish. Contracts aim to make power visible, transparent, accountable and based on conscious, informed consent. The article argues, on the basis of the theory of justification developed by Boltanski and Thévenot, that contractual power is a response to the principle of justification in contemporary society, where agency is a measure of human dignity and worth. Contractual power explains the tendency to exclude people who are incapable of assuming agency. The contractual form is literally an illusion, but has real consequences in society.

## Keywords

agency, Lukes, power, social contract, theory of justification

## Introduction

Ideologies, structures and practices of governance have undergone a fundamental transformation in the Organisation for Economic Co-operation and Development (OECD) countries in the last 30 years. The set of reforms designated as 'New Public Management' have introduced modalities of governance that appear to mimic the market: competition, transparency, calculation of costs and benefits and articulated choice between alternatives (Clarke et al., 2000; Newman, 2000; Power, 1997). Similar structures and practices of governance are widely applied in less advanced and emerging societies (Larbi, 1999).

One of the most apparent changes linked to this reform relates to the role of non-profit organizations in service provision and in acting as the voice of citizens' needs and interests (Funnel et al., 2009; Rose and Miller, 2008). Many believed that the functions of

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charity associations would be taken over by the professional public sector in modern societies (Alexander, 2006), and that interest articulation would be the task of class-based political parties. This was expected especially in the Nordic countries with strong state-centred service delivery systems and well-developed systems of parliamentary representation (Esping-Andersen, 1999). However, civil society organizations are increasingly part of mixed welfare economies. They are also necessary partners in the institutions of deliberative democracy and citizen participation programmes (Fishkin, 2009).

The market is the paradigmatic institution of contract, and it is the contractual form that is constitutive of the new forms of governance even when no market transactions are involved. The contractual form is a key element in auto-regulated quality assurance of public services, for example in medical care, itself transformed increasingly into a contractual relationship between service providers and consumers (Ogien, forthcoming 2010). Management by results, now widely applied in the whole public sector, is constructed as a system of contracts between ministries and the operative units such as local communities, universities, research institutions and security organizations. Usually civil society organizations are connected to public institutions through contracts or contract-like agreements: for example, when they implement morally or politically contested policies such as drug substitution programmes, health counselling or environmental protection.

The contractual form is also central in activating labour market policies and in other empowering programmes designed to help clients, patients or marginal groups to help themselves. A pioneer case is the well-known integration contract (*contrat d'insertion*) introduced in France in 1988. Recipients of social security allowances commit themselves to look after their children, find a place to live, look after their health and, above all, not to turn down employment opportunities (Messu, 1999). Similar contracts and plans have become the norm in most welfare and activation programmes in Europe. In Britain, unemployment benefits are granted on the basis of a contract that defines the terms of accepting work if offered (Pieters, 2003). In crime prevention programmes, convicts leaving prison after serving their sentence are often requested to sign similar contracts, and parole surveillance institutions have been developed which both require and support convicts' collaboration. As with consumers on the commodity market, clients are expected to define their priorities and make choices. The contract society stresses agency and autonomy instead of governance and plan-based command structures.

In this article I analyse the new contractualism as a configuration of power and justification, more profound than a hegemonic ideological turn back to the boon of market competition. Contractual power is based on explicit as well as implied consent. It stresses the agency of its managers as well as of its subjects, and it has real consequences for those who exercise it as well as for those who are subjected to it. In this article I propose and defend the view that contractual power is an illusion, but a necessary one that corresponds to concerns about agency in contemporary society. It is an illusion that has real consequences and real foundations in the principles of social bonding. Whenever a form of social life seems both unlikely and necessary to a point of being taken for granted – both illusory and real at the same time – there is a need for a sociological enquiry. The task for sociological elucidation is to identify the phenomenon and diagnose it: i.e. to show how it connects to other characteristics of contemporary society, to interpret isolated

phenomena in terms of the diagnosis, and to explain it in its historical context. This is what I attempt to do in a very concise way in this article.

What forms could the required analysis take? Critiques of new practices of governance suggest three. A sociologist could show that my generalizing premise, or identification of the phenomenon, is false: contracts between hospital authorities and medical service providers may be argued to have nothing in common with contracts between, say, health ministries and associations engaged in substance use prevention, or with contracts between drug-using pregnant women and social workers. The latter two are extremely asymmetric, whereas in the first case both parties may serve their own interests, and those of public auditors on the sidelines. Alternatively, critical sociologists might deny the reality of the contract even in the more obvious cases: for example, in management by results within public administration, arguing that it is nothing more than disguised neo-centralism. The critic might point out that in fact the core ministerial power – usually the ministry of finance coupled with the prime minister's office – actually determines the use of public money in more detail rather than less, through 'negotiations' with service producers such as universities, hospital administrations or school boards. This is a major genre in critiques of New Public Management. Finally, sociologists might claim that the contractual form of governance is only an ideological veil over relationships of domination generated by global corporate interests.

However, in recent decades we have been taught that effective critical sociological elucidations are likely to be much more complicated and elusive than any of those three attempts. It is not enough to prove false what appears to be, to lift the masks of domination and unveil particularistic hierarchies behind universality. The work of Bourdieu on the 'alchemic operations of habitus' that transform hidden structures of cultural capital into visible signs of domination is exemplary here. Still closer to my theme, the work on power and justification by Boltanski and Thévenot (2007[1991]) has opened up important insights to the classical question: why do the dominated accept their position?

## **Contractual power: a fourth dimension**

In his seminal essay 'The three-dimensional concept of power', Steven Lukes (2005[1974]) characterized power as an example of 'essentially contested concepts', using the famous expression by the philosopher W.B. Gallie (1956). Unlike arguments about facts, arguments about power cannot be settled without more or less explicit agreement on the appropriate use of the term. An argument such as 'income inequality has increased' can be evaluated in factual terms, albeit subject to subtle methodological disputes. Agreement between those who agree on appropriate technical definitions can be reached. In contrast, power is an essentially contested concept because such an agreement cannot always be assumed or found. Different meanings of power belong to different wider theoretical constructs of the social. Different definitions matter politically, and they are subject to ardent disputes because they involve an evaluative element. They imply values, ideals, moral stands and points of view, and therefore lead to different diagnoses of social reality. Still, we need these concepts and believe that we mean something when we use them, in social science and even more so in everyday life.

Lukes attempted to overcome the ideological opposition between power elite theorists (such as C.W. Mills, 1956 or Floyd Hunter, 1953) and pluralists such as Robert Dahl (1961). Pluralists argued that whenever we talk about power it should be done with empirical evidence of its actual use in decision-making. In this decisional sense, power is episodic and manifested as action. Power elitists claimed that non-decisions, for example exclusion of certain issues from policy agendas, are also uses of power, albeit invisible and structural rather than manifest and episodic. Today we would call this agenda-setting power. Both conceptual approaches are essentially contested: it is impossible to arrive at a general definition of their relationship or to justify one over the other, and whichever we choose has an effect on our judgements of the state of democracy, participation and access to resources in society. They imply a different diagnosis of society, liberal in the episodic model and reformist in the invisible or structural model of power analysis.

Lukes proposed his three-dimensional concept of power as a radical alternative to the two. While both the decisional and the non-decisional model have their advantages, they fail to answer the classical question: why do the dominated agree to be ruled, even against their interests? The answer is that there is a third dimension of power, visible in many ways but not visible as power. This dimension is exercised unconsciously without any apparent action by the weight of institutions, by loosely defined groups rather than individuals and organizations. The function of this third dimension of power is to produce consent. In the 2005 elaboration of his view, Lukes explicitly associates his third dimension in relation to Michel Foucault's notion of productive power, which for Lukes represents not only a radical but a very radical view. Referring to Gramsci's idea of the necessary incompleteness of any hegemony, he criticizes Foucault for seeing domination everywhere without fractures and openings for resistance (Lukes, 2005[1974]).

The Foucauldian concept of productive power answers to the classical question about compliance by emphasizing the effects of power on its subjects. Willing subjects need not be, and usually are not, aware of the operations of power in which they participate. Their compliance is a product of micro-physical operations where power reaches, through capillary forms of existence, their discourses, attitudes, bodies, learning processes and everyday lives. The power of the powerful extends across issues and contexts, bearing unintended as well as intended consequences, even without active intervention (Lukes, 2005[1974]). In this way, power is coextensive with the social body. It depersonalizes both those who possess it and those who are dominated by it. In the Foucauldian sense, the third dimension de-identifies the acts themselves in which this domination occurs as acts of power.

Now, it appears that the contractual forms of governance aim to steer away from all of these features of productive power. In contrast with its immanent invisibility, contractual governance stresses transparency: i.e. maximum identifiability of the actors of power transactions. Contractual governance aims at accountability: i.e. limitation of the actions of power to explicit and legitimated domains of authority. It aims explicitly to achieve maximum quality or reliability of mutual performance and delivery of what has been agreed. Above all, it underscores the maximum awareness and voluntary commitment of partners to the terms of the transactions. In this sense, contractual governance represents a fourth dimension, if not altogether a fourth type of power in addition, or even in contrast with, the three dimensions identified by Lukes.

My first example is from public administration: the rapidly developing quality assurance techniques of medical care are not designed to produce either patients or doctors as docile subjects to power. These techniques – benchmarking or competitive comparison, auditing, certification, or standard tariffication – are not put in place to affirm and reinforce the power of administrative authorities over patients or doctors, or both. On the contrary: their function, in the opinion of experts, is to give the service-providing systems all the information necessary to operate in a transparent and reasonable way in a system where patients are consumers in a market with many competing service providers. Relying on competition and traditional medical ethics alone entails a big risk of overprescription of examinations, tests and treatments, unless these decisions can be made in conditions where their consequences and grounds are clear and well-defined. Transparency and accountability are intended to help participants to act as sensible contractors, and therefore as agents (Meyer, 1990; Ogien, forthcoming 2010).

My second example comes from our own research on a substance abuse prevention programme in Helsinki in the early 2000s (Sulkunen et al., 2004). The project was designed to provide a ‘safety net’ for youth by engaging schoolteachers, parents’ associations, sports clubs, the local parish, social workers, the police and even business enterprises such as video firms to promote the welfare of young people and thus reduce their likelihood to try drugs, tobacco and alcohol. The city of 700,000 inhabitants hired eight project workers in area offices to contact local partners and invite them to sign a contract in which they, in abstract terms, committed themselves to the goals of the project. The project workers were unwilling to advise parents on difficult moral issues such as whether they should smoke in the presence of children, or whether they should offer teenagers a glass of wine at home, or how they or teachers should react if they found out about cannabis use or drinking parties. They used metaphors such as ‘We are the spoon – citizens make the sauce’ to describe their role in the construction of ‘community spirit’. As one of them said, the best ethical standpoint in such questions was ‘not to take a stand at all’, in order to avoid alienating especially vulnerable families from the project.

Again, the attempt to engage the community actors in the prevention work was not to produce consenting subjects to domination; on the contrary, the project carefully and explicitly aimed to avoid control and engage participants as agents in their own terms in a contract of partnership and make them aware of this commitment.

My third example comes from a study of pregnant drug users, who are asked to sign a contract which limits their substance use to prescribed drugs and hands control over the child to social workers in case they fail. Here the purpose of the contract was to ‘empower’ the mothers by giving them a strong motivation to stay clean in the interest of the child’s health and welfare, and in their own interest to nurse the child (Leppo and Perälä, 2009).

## **A contract society?**

Next we must ask what kind of contracts these are, and what their functions are in terms of power and governance. One central idea about ‘society’, as we have received it from classical sociology, is that it cannot possibly be based on a plan, neither can it be founded on a social contract. By and large, every branch of sociological theory has accepted this view. It has become so taken for granted that nobody has questioned it, in

spite of the fact that social contract theories have a much longer history behind them than modern sociology. In Durkheim's famous words:

The conception of the social contract is today therefore very difficult to defend, because it bears no relation to the facts ... not only are there no societies that have had such an origin, but there are none whose present structure bears the slightest trace of a contractual organization. Thus it is neither a fact derived from history nor a trend that emerges from historical development. (1984[1893]: 151)

It must be stressed that Durkheim argued more against Herbert Spencer than against the classical social contract theories of the 17th and 18th centuries. For them, the nexus of social integration had been the state, which needed the legitimating contract with the citizens. Whatever 'society' meant for modern sociology, it was not the same as the state. This was even less the case for Spencer. He conceived voluntary cooperation and contracts as the only possible pattern of social integration in differentiated industrial societies (e.g. Spencer, 1996[1891]). He contrasted them with militant societies, based on military excellence, status, hierarchies and discipline. Spencer combined his organic model of industrial society with a *laissez-faire* liberalism so radical that it makes Milton Friedman, Ronald Reagan or Margaret Thatcher seem like wimps. Any state interference into society, including public education, would introduce 'militant' elements into its structure, disrupt its voluntary contractual foundation and result in a loss of adaptability, innovation, freedom, satisfaction of needs and equality (Peel, 1992). Even Friedrich van Hayek, the defender of the free market, had reservations about the 'movement from status to contract' in progressive societies; for him the Spencerian freedom of contract is not and cannot be uniformly applied in any society since there are contracts – for example, for criminal purposes, gambling, limitations of trade – that are not and should not be enforced. Social order must be founded on the rule of general law instead of particularistic principles, and freedom of contract is subject to this more general principle in free society (van Hayek, 1978[1960]).

At least in appearance, the social bond has taken on characteristics of the contract, not necessarily with the 'prince', or with the government, as in the classical contract theory of Hobbes, Rousseau and others (Lesnoff, 1986), but with semi-autonomous bureaucracies within the state, with other institutions, and even with our fellow humans. In many occasions we take this for granted and consider it to be just: it seems that this is the only respectable way that we are willing to submit ourselves to power.

Is this serious or just an illusion? To answer this question we must do two things: first, we must theorize it, i.e. explain why this phenomenon arises from a deeper logic of social structure; and second, we must see if we can explain by it something that otherwise is difficult to understand.

## **A model of justification**

Here we must go back to the classical question in theories of power. How and why do societies, also those in which the values of equality and individualism are widely shared, manage to deal with inequalities in power, opportunities, chances of life and the degree to

which participants are free to exercise reflexivity, mobility and choice? Luc Boltanski's and Laurent Thévenot (2007[1991]) have developed a model of justification which usefully singles out the essential conditions that must be met for social order to be maintained. Not all social orders are alike in this respect – the foundations and techniques of justification in today's consumer capitalism are different from those in theocratic, aristocratic or despotic societies, and they are different from those prevailing in early industrial capitalism. To simplify a little, the model includes three elements that distinguish different regimes of justification.

1. What are the principles of the social bond that connect people as members of society and of subgroups (the principles of belonging and differentiation)?
2. What is the meaning of dignity and the order of human worth (*grandeur*)?
3. How can the common good be recognized?

Different regimes of justification can be distinguished according to the order of worth such as closeness to the divine world, domestic hierarchies of domination and subordination, esteem by others or capacity to act as a participant in market exchange. The criteria of the common good and the principles of the social bond are adapted to such regimes.

First, regarding the social bond element, it is commonly agreed that in the modern industrial societies of the late 19th and early 20th centuries, the nation was the framework of belonging to a society. The principles of differentiation that define the internal structure of modern society have been as of old, and still are the object of class theory understood in a wide sense. Second, the principles of dignity and worth undoubtedly have been associated with the freedoms and well-being of the individual. Third, the common good has been widely understood in terms of progress in these principles of dignity and worth since the late 18th century, until the breakthrough of consumer capitalism in the last decades of the 20th century (Sulkunen, 2009).

The advantage of this model is that, unlike many older theories of power, it does not assume that domination or submission (or both) are necessarily based on interests; neither does it assume that grounds of justification need be understood by all parties in the same way. In modern societies since the late 19th century, the borders and legitimacy of nations and classes have been the objects of enormous struggle; the meaning and extent of individual autonomy have been, and are today, contested in many ways; and the title to progress has been claimed by opposing political movements of Left and Right (Touraine, 1984). Friedrich van Hayek, the notorious defender of inequality, believed that its function in progressive society is to benefit the masses universally. His critique of socialism admitted that universal welfare is its goal as much as it is the goal of free societies. He deemed wrong only the socialist methods of sustaining progress – in his view, the grounds for justification were much the same (van Hayek, 1978[1960]).

## A short history of individual autonomy

The most commonly accepted, and at the same time the most obstreperous, narrative about contemporary society is the myth of ready-made modernity. This myth includes individualism, post-traditionalism, secularization, differentiation, loss of communitarian

ties, parliamentary democracy and growth of scientific knowledge. These are not unreasonable assumptions to characterize our contemporary reality. What is unreasonable in the myth is neglect of the very recent historical reality in which these characteristics have come into their fullness of being. I argue elsewhere (Sulkunen, 2009) that the contemporary predicament about contracts is not a break away from modern society as we know it from the classical theories of sociology, but a consistent outcome of modernization itself. The transformation into a contract society of the modern ideals of the nation, of progress as the common good, and individual autonomy as the order of dignity and worth, should be seen as a process of their qualitative saturation rather than either as a rupture operated by external forces, or as a continuous maturation of modernity. It was the incompleteness of this order, rather than its attainment, that motivated the sense of progress towards the common good still very late in the past century.

In particular, the idea of citizens as autonomous contract-making individuals has not emerged from capitalism all by itself. It has been the topic of struggles over lifestyle and freedoms for two and a half centuries of capitalist development. Even the labour contract, the cornerstone of wage labour society, did not reach maturity until labour legislation was gradually established in the current OECD countries in the three or four decades after the First World War. Today we take the sovereignty of the labourer-consumer-citizen so much for granted that it is difficult to conceive how seriously incomplete the state-driven project of universal individual autonomy was in other respects still at the end of the 1960s – even in Nordic countries, which nevertheless were its vanguards among Western European states. The paternalism of states' cultural and moral policies and in their authoritative structures reflected the paternalism of the old bourgeois family. Their civilizing efforts in educating the masses were experienced as humiliating and bigoted against the working class, the peasantry and women. Even the right to work was still a matter of negotiation and struggle for women in the 1960s (Hirdman, 1989; Julkunen, 1994).

The worldwide uprising of students in 1968 and the political activism that ensued was one of the symbolic turning points in individualistic development. The Nordic 1968 was both literally and metaphorically 'a revolt against the father', in Gerard Mendel's (1968) words and, I would add, a revolt against a discriminating father. It was a revolt against the father in the literal sense because it was generational. It was a revolt against the father in the metaphorical sense, because it went against all forms of paternalistic structures of domination. The revolt took the form of 'liberalism' in cultural policy, sexual policy, alcohol policy, even in drug policy, in a wave of reforms that were brought to completion only by the mid-1980s. The reinvention of the social contract – in the sense I have outlined above – is a logical and inevitable outcome of this revolt.

In another way 1968 was also important for individual autonomy at the very heart of the capitalist market institution: the business firm. In their study of labour relations, Boltanski and Chiapello (2005) show that working life was in crisis in the late 1960s and early 1970s. Bureaucratic management practices were felt to be offensive and paternalistic, and resulted in poor performance, frequent labour conflicts and excessive absenteeism. In reaction, work organizations were reformed in order to give more room for autonomy, creativity, self-responsibility and internal control. Profit centres were created, cost awareness was increased and management training was directed towards



a more democratic and less bureaucratic course. Manuel Castells (1996) has argued that the information technology (IT) revolution would not have been possible at all without the replacement of hierarchical management systems by the horizontal coordination of the network epitomized by Silicon Valley.

In short, individual autonomy as the order of dignity and worth was only established as the universal norm towards the end of the 20th century. Even now, our capacity to appear as agents is always vulnerable and open to threat.

## **Ambivalence of agency**

In terms of power and justification, the contract form corresponds to agency as the principle of worth in the contemporary moral order. This can be said, even though I shall point out below that the actual contracts through which power is used do not always respond to the need for recognition of agency. Partners enter contracts voluntarily and consciously: this is what the contract form is designed to stress, even in situations where free will and adequate awareness may be questioned. In this way, contractual power resonates with the individual sense of autonomy that, albeit recently gained, we take for granted as a measure of human dignity. It is easier to accept living even in difficult conditions, if it can be thought that a conscious free choice is present, or at least has been made somewhere along the way. It is easier to legitimate one's fortune if it can be made to appear to have resulted from one's meritorious conscious and chosen action.

To return to our three examples above, it helps both the patient and the doctor to negotiate over treatment if their choice is based on knowledge of a quality assured procedure. Neither can make autonomous and conscious decisions based on their personal knowledge alone, private or professional, in matters that often are too complicated for either individual to weigh and consider all consequences. A contract based on a pre-existing quality procedure makes responsibility transparent. Patients who do not consent to the doctor's recommendation take on responsibility for themselves; doctors who deviate from standard procedures can make explicit their reasons for doing so.

In the case of the substance use prevention programme, the prevention workers do not have the moral authority to dictate principles of parenting to their partners. Were they to pretend so, they would run the risk of perhaps losing the cooperation of the vulnerable groups most in need of their support. Both the prevention workers and their partners safeguard their autonomy and sense of agency by stressing the voluntary nature of their cooperation. Finally, drug-using mothers are seduced to accept responsibility, not simply forced to quit, because their collaboration is important also after the child is born.

To be, and to be reputed to be, an agent of one's fate, it is not sufficient to establish one's autonomy in the negative sense, as not being objects of coercion or dependent on someone else's will. Free choice is a necessary prerequisite for experiencing oneself as a subject, but agency also involves a sense of duty – a commitment to a cause – and proficiency to know how to strive for one's goals; often social relationships of help and support make such agency possible. In short, to have the capacity of agency is to have a self defined well enough to recognize its limits and interfaces with others, including relations of domination. To use the expression of the French semiotician Eric Landowski (2005), will, duty, proficiency and ability are modal competencies. No act is the act of an agent

unless it is conceived in modal terms. It may respond to an obligation or responsibility, or it might be a sign of competence or know-how. Its subjective nature might be put to relief by the free will of its agent, strong enough to resist temptations not to act. Or an act might result from outside help that makes it possible despite difficulties, thus underscoring the social relationship between the actor and the cooperators. Therefore duties, will, competences and abilities are called modal dimensions in semiotic theory (Sulkunen and Törrönen, 1997).

Acts might be evaluated as failing to meet a responsibility, to show competence or will or as failure to cooperate. For example, this is the case in images of addiction: addicted people arouse anger, disgust or pity because they have lost their willpower to resist temptation, their sense of responsibility towards others, their competence to enjoy the object of their addiction, and even their ability to accept help from others. They are seen as people who have lost the capacity to be agents (Sulkunen, 2007). In other words, agents need to understand their own actions in modal terms, and they must be interpreted in those terms by others (Landowski, 2005).

Agency is therefore a double relationship: meanings – or as I prefer, images – attached to behaviour by the actor and by others. This double relationship makes it vulnerable and a field of struggle. Bourdieu's well-known ambivalence about the concept of *habitus* is a significant articulation of the uncertainty of the order of dignity and worth in modern society. *Habitus* is neither completely determined by the situation, nor completely the result of arbitrary choice. Often this has been seen by critics as an invitation to circular reasoning. If behaviour cannot be explained by the conditions that lead to it, it can always be seen as the result of conscious free choice, and vice versa. If we are not pleased with an account of action as the result of subjective choice, we can always seek out an objective condition to explain it. However, *habitus* should be understood not as a model to explain behaviour, but to express the ambivalences and vulnerabilities of autonomous agency itself. People who experience life as if they were prey to accidental adaptation to their situation may be exposed to extreme loss of dignity, not only because their life is unpredictable, but also because they have no sense of why they act in – or rather react to – circumstances as they come. Even the *amour fati* of working-class culture is an aesthetic choice, not meaningless adaptation to what is necessary (Bourdieu, 1984[1979]). Few people would appreciate their actions being interpreted in that way by others – therefore they will attempt to escape this painful insecurity and imagine for themselves a mission associated with values. Possessing such values, people become strategists planning ahead. They can no longer be treated as objects in their interactions, but as partners who must be persuaded to enter into a contract rather than forced to obey orders. Manipulation must be replaced – at least in appearance – by seduction. Participants are agents, instead of being programmed by others (Landowski, 2005).

From the viewpoint of justification, the haunting ambivalences of *habitus* articulate the risk that while we believe that we are making autonomous strategic moves, nevertheless we might be reputed to adapt and act as if programmed from the outside, and vice versa: when we believe that we are acting in a disinterested way, we might be perceived to be orchestrating our own hidden agendas (strategies). The mutual struggle over interpretations is the essence of the social bond in the contemporary world. This is what makes the contractual form of governance necessary in the regime of justification where

agency is the foundation of human worth. Next, we must see if contractual power can explain something in contemporary society that otherwise could be difficult to understand.

## **The illusions of the contract**

Taken literally, the generalized form of the contract is an illusion. From the legal viewpoint, contracts between welfare clients and the social office probably are worthless. The same is true of contracts between authorities and citizens, such as between school authorities and parents or even children, between convicts and prison authorities, between employers and employees ('negotiable' salary systems), and hospital authorities and medical service providers. The example of doctors and patients negotiating over a medical procedure is illusory in the sense that the patient – and often also the doctor – has very little real choice, either in terms of resources or knowledge. Even more symbolic are the contracts of the type in my second example common in youth work, community action and preventive social work in general. Partners have no sanctions to inflict, their incentives are weak, and outcomes of their participation often impossible to measure (e.g. to be used as a basis for rewards or extra resources). The assets for entering such contracts are unevenly distributed. Finally, in the third example, assumptions of autonomy in institutions for drug-using mothers are often unrealistic, and in fact tilt the power balance even more in favour of social workers (Leppo and Perälä, 2009).

Nevertheless, illusions are important and have consequences in social life. Capitalism itself is based on a fundamental illusion. As Marx showed, the appearance of equivalent exchange between labour and capital conceals the substance, which is a relationship of exploitation. The alchemic operations of cultural capital in Bourdieu's (1984[1979]) theory constitute another example. Apparently free, original, individual taste turns out to reproduce collective relations of domination. The illusion of the contract also has explanatory power. Here I shall take up two major phenomena of the contemporary order of justification: the first concerning the common good; and the second concerning principles of belonging and differentiation.

### *The common good*

Our three major examples of contractual power – medical care, preventive social work and dealing with drug-using mothers – share one feature. The 'system' that places the partners into contractual relationships presents itself and its representatives as largely ethically neutral, as regards the particular content of life that they encounter and with which they deal. Quality assurance in medical care explicitly aims at similar treatment of similar cases according to verified probabilities of success. In the optimal case, hospital administrators themselves are not allowed to take a stand on whose life will be saved and at what cost. Doctors are not expected to account for personal and other particularistic considerations in their prescriptions or referrals, and the consent of patients is sought on the basis of maximum information and understanding of the situation. Deviations from these ideals occur, of course, but the contractual form is there to eliminate, not to accentuate, them.

In the example of preventive social work and treatment of pregnant drug users, the contractual form also highlights the ethical neutrality of public power by evoking the free-willed consent of the partners. Parents' associations or sports clubs are asked to define for themselves how they wish to protect the young. Social workers in the maternity clinic are disposed to save the child, not the mothers, by committing the mothers to treatment.

However, ethical neutrality does not mean ethical indifference. New Public Management practices, citizen participation programmes and user involvement techniques are based on abstract targets defined in terms of consequences from behaviours that they try to prevent or correct. In medical care, quality assurance programmes aim at cost efficiency and universality. Value for money means value for many. Perhaps bad treatment decisions mean bad results for the patient, but what is more important is that it has consequences for others who could use the same resources for better outcomes. Also in preventive social work the ethical concern is with the abstract target – the welfare and non-substance use of youth – although the project is neutral as to the methods of achieving the target. Similarly, maternity clinics aim to save the child and minimize the consequent health and other problems in its later life, by committing the mother to this goal. Her drug use itself, in this context, is of lesser importance.

In general, contractual power gives priority to consequences of actions over actions themselves. This is a logical result of the emphasis on agency. In modern society, where the liberation of individuals from traditional ties is the goal, universality becomes the norm of the common good. With saturation of the modern process, priorities change. Autonomy that is almost universally gained is transformed from a right to a duty. The sense of justice will be transformed from considerations of deviance to considerations of the negative freedom of the other. We are no longer asked to respect the other's positive right or duty to be like us; we are asked to respect their negative right not to be constrained by our actions. We are at liberty to do whatever we like with our lives, as long as we are not taxing the liberty of others to do likewise, and vice versa: we are not necessarily judging badly those who practice non-normative sexuality, but our moral sentiments arise if they are not acting fairly towards their partners. Polluters, risk-takers and drug dealers are a problem, not because they manifest their freedom of choice, but because they do it at others' expense. Criminologists talk about the victim's viewpoint, which means the replacement of emphasis from reforming the perpetrator to rendering justice to the innocent victim (Garland, 2001). Penal consequences tend to become more severe, since perpetrators not only violate other's rights, but also neglect their responsibility to assume agency and self-control over their desires or emotions.

### *Principles of belonging and differentiation*

Modern structures of power are typically inclusive. They subsume everybody who belongs to the community of citizens under the same authority with similar rights and duties. Deviants will be reformed, even against their will, to conform to the norm.

With contractual power, the principle of inclusion changes: if citizens do not claim the role of agency, it is imposed on them in the form of contracts, rehabilitation plans and performance indicators. The government will only engage in projects with those who are able to demonstrate their commitment and meet its requirements. The other side of the

contract alliance is that those who are unable to assume their role as partners will be excluded. Our example of pregnant drug users is a case in point. In the interest of consequences for the child – and society – the mother's rights may be severed radically. Programmes for released prisoners, small children, marginalized youth or the long-term unemployed show that whenever individuals' will and competence to assume the capacity of agency are in doubt, the more intensively it will be required of them. However, it is a dangerous delusion to assume that the contractual form alone guarantees commitment and integration of populations already destined to exclusion. On the contrary, in our studies it became amply clear (as was to be expected) that the contractual form in many citizen–state interactions actually reinforces the vicious circles of non-participation (Määttä and Kalliomaa-Puha, 2005). In the other two examples, the mechanisms of exclusion may be less radical, but the consequences as drastic. Patients' inability to cooperate may lead to severe injuries or even premature death. Parents' refusal to be partners in community contracts of substance abuse prevention is likely to exclude them from important social networks and lead to a cycle of intensifying controls and interventions by officials.

## Conclusion

In this article I have sketched my explanation of the contractual mode of power as a result of the saturated modern process, and showed how it explains two things: the priority that it gives to negative rights, and its exclusive, even abjecting nature (Young, 1999). The test is positive: yes, we do need to take contractual power seriously, we do need many further empirical studies of contractual governance, and we should use these concepts to understand the results in a consistent way.

Power is an essentially contested concept because observing its presence (or arguing for its absence) is an evaluative act of designation. This concerns all dimensions and types of power, but even more specifically, it is true of contractual power. It presents itself explicitly as non-domination by stressing agency and conscious, willing consent. According to my analysis above, it results from the extension of the modern principle of universal autonomy of all members of society as labourers, consumers, legal subjects and political citizens. To consider this mode of governance as a form of power implies a willingness to see in it effects that contradict its functions in the contemporary order of justification.

The tendency towards exclusion, the second of its effects analysed above, is obviously one of these effects. The universal autonomy of citizens is no longer a principle of justification that determines the content of the common good, as it did in the much debated postwar 'consensus' (Pierson, 1991). It was neither agreement on policy, nor unchallenged class hegemony, but a common understanding of human dignity and worth by which policy was assessed and criticized. Today, autonomy, or rather agency at large, is itself a principle of inclusion and differentiation, and therefore a matter of domination and struggle. This struggle is intense because agency itself is a matter of interpretation. We are not only what we choose but also what we are perceived to be, and in contemporary society we are judged principally by the standard of being the subjects of our own destinies. To be, and to be reputed to be, acting as agents rather than just reacting to external conditions not only determines human worth, but is also the basis for allocating rights and benefits as members of society.

As the examples above show, in many ways the contract is an illusion, but it is an illusion with the force of reality. The truth of the contract is to conceal the truth. It is like Bourdieu's *habitus*, which has the alchemic capacity to transform invisible structures of cultural capital to visible structures of class and domination (Bourdieu, 1984[1979]). It disguises social relationships as voluntary agreements, while in reality they are products of circumstances that agents can do very little about, and they even know it. Instead of futile jargon, managerial fad or a neo-liberal ideological tide, contractual power is a response to the sovereignty claims of the labourer-consumer-citizen. Engagement in the social bond as if by mutual commitment is an essential, if not the only possible, technique of power in a regime of justification where agency is not only the measure of human dignity and worth, but also a principle of belonging and differential distribution of rewards.

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