

# MOTIVATION AGENDA FOR SOCIAL EMPOWERMENT AND RESPECT FOR PEOPLE DURING THE DRAFTING OF CONSTRUCTION CONTRACTS

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Collaboration is a key element of the UK Government's current construction strategy. Contracts in the UK are evolving to incorporate an increasing number of collaborative features. In construction literature, there are calls for a more robust approach to the selection of such features relating to overall clients' performance requirements, with clients wishing to improve the overall performance of supply chains. The output of the supply chain is dependent on their workforce, with a key element of performance relating to motivation. There is work in psychology that provides an element of generalisation to human motivation, which establishes enablers of intrinsic motivation that improves workplace vitality, health and wellbeing. The aim of this paper is to provide a framework to assist practitioners make decisions that enable intrinsic motivation. The work establishes the basis of the hierarchy from robust work in psychology (self-determination theory); and relates the hierarchy to suites of contracts operating in the UK including the JCT, NEC, FIDIC and ACA suites. Document and summative content analysis evaluates different contractual mechanisms. The research establishes a critical approach to the incorporation of collaborative features in contracts that links to autonomy, competence and relatedness. Further research should be undertaken to explore construction contracts as enablers for social empowerment and respect for people.

Keywords: motivation, contracts

## INTRODUCTION

A number of construction industry standards, reports and strategies over the last 30 years place emphasis on contracts to enable teams to meet client deliverables (Egan, 1998; Egan, 2002; Latham, 1994; Cabinet Office, 2011; Cabinet Office, 2012a; Construction Client's Group, 2013). Legal practitioners find themselves with the interdisciplinary question of how to create contractual and legal frameworks that intrinsically motivate people. The changing nature of construction contracts is evident in practice; for example, the JCT adopt a more user-friendly contract drafting style in 2005 and collaborative clauses in 2009. The question emerges is whether the changes in the contracts enable practitioners to meet client deliverables. For example, when Cicmil and Marshall (2005) relate motivation to the construction industry, they find

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that collaborative features can be insufficient to ensure team integration; and encourage further research into collaborative procedures as a social object.

The changing nature of construction contracts is also seen in the emergence of target contracts (RICS and Davis Langdon, 2012; nbs, 2013). With target contracts, there is often financial incentivisation or consequences depending on a project's final account. There is scepticism in literature towards the capacity of incentivisation to achieve performance. With Hughes *et al.* (2009, p. 528), identifying that incentivisation can have a detrimental effect on performance requirements including programme and quality. Where construction contracts focus on incentivising task performance, there is a risk of reducing emphasis on contextual performance, which relates to behaviours that support an environment in which the technical core operates (Griffin, *et al.*, 2000, p. 518; Motowidlo and Scooter, 1994); for example equality and participant satisfaction (Chan and Chan, 2004; Bing, *et al.*, 2005).

In summary, there is a requirement for contractual structures to enable collaboration; and a requirement in practice for critical thinking during the drafting of contracts concerning collaborative clauses. The aim of this paper is to provide an analytical framework to assist practitioners to form legal structures that enable intrinsic motivation. The work is different from many others in the field in that it promotes a research agenda linking robust theory in psychology to construction contracts. The work is socio-legal research that explores the effect of contract law on the social entity of construction practice. There is limited attempt in the work to provide legal doctrines.

## CONTEXTUAL INFORMATION

Ryan (1995, p. 401; Ryan and Deci, 2000, p. 61) employs well-established theories in psychology to create “*a taxonomy of human motivation*” as part of self-determination theory. The taxonomy provides regulatory styles for external human motivation, namely 'external regulation'; 'introjection'; 'identification'; and 'integration' (see Table 1). Construction contracts enable a particular or a mixture of regularity styles.

**TABLE 3: TAXONOMY OF HUMAN MOTIVATION - EXTRINSIC MOTIVATION**

| Regularity Style | External Regulation                          | Introjection                          | Identification                | Integration                     |
|------------------|--|---------------------------------------|-------------------------------|---------------------------------|
| Process          | Compliance /reactance                        | Guilt anxiety avoidance               | Conscious valuing of activity | Awareness                       |
|                  | Salience of extrinsic rewards or punishments | Self-Esteem maintenance               | Self-endorsement of goals     | Hierarchical synthesis of goals |
|                  | Punishment avoidance                         | Ego involvement                       |                               | Congruence                      |
|                  |  | Focus on approval from self or others |                               |                                 |

Source: Based on Ryan (1995) and Ryan and Deci (2000)

Self-determination theory develops from 1990s studies. Earlier work uses students from the United States of America. Later work relates to adults and workplace motivation (Gagne and Deci, 2005; Baard, *et al.*, 2004; Deci, *et al.*, 1989; Moran, *et al.*, 2012; Ankli and Palliam, 2012; Fernet, *et al.*, 2013; Kasser and Ryan, 1996) and evaluates practice (Stone, *et al.*, 2008; Flynn, 2011). In addition, there is intercultural work, outside North America, for example in Russia; South American; Asia; and Europe (Ryan, *et al.*, 1999; DeVoe and Iyengar, 2004).

**EXTERNAL REGULATION** - relates to a salience of extrinsic rewards or punishment and relies on compliance and reactance (Ryan and Deci, 2000, p. 61). A number of studies identify the negative effect of financial incentivisation on motivation and vitality (Deci, 1973; Deci, *et al.*, 2001). Vitality is the energy that is available to oneself that is both exhilarating and empowering “*that allows people to act autonomously and persist more at important activities*” (Deci and Ryan, 2008). A focus on intrinsic (in contrast to extrinsic) aspirations has positive effects on vitality and health (Kasser and Ryan, 1996; Ryan, *et al.*, 1999; Deci, *et al.*, 1999a; Fernet, *et al.*, 2013).

**INTROJECTION** - relates to ego involvement and the focus of approval from self and others (Ryan and Deci, 2000, p. 61). Parkin, *et al.*, (2009) identify relationships, responsibility and recognition as areas of motivation that relate to introjection. Feedback that is ego related or controlling has a negative effect on vitality (Nix, *et al.*, 1999, p. 276; Ryan, 1982; Plant and Ryan, 1985; Deci, *et al.*, 2001; Ryan and Deci, 2006). Following work in psychology it is not surprising Hughes, *et al.*, (2009, p. 528) find performance measurement to have a negative effect on other requirements; for example where task performance measures do not consider contextual performance.

**IDENTIFICATION** - relates to the conscious valuing of activity through self-endorsed goals along with its associated autonomy (Ryan and Deci, 2000). Where people find a sense of autonomy, they find intrinsic motivation (Nix, *et al.*, 1999). This regularity style seeks to improve prosocial motivation, which relates to a person’s willingness to benefit others. Improvements to performance and persistence is available through interpersonal contact, between those undertaking the work and those obtaining the benefit; the improvement occurs where people undertaking the work perceive the value of the deliverable (Grant, *et al.*, 2007).

**INTEGRATION** - relates to hierarchical synthesis of goals (Ryan and Deci, 2000). Ryan (1995) relates integrated regulatory style to psychological needs of autonomy, competence and relatedness. The involvement of people in decisions relating to them improves performance and mental health and vitality (Deci, 1973; Baard, *et al.*, 2004; Campion, *et al.*, 1993; Nix, *et al.*, 1999); it also reduces the negative effect of external regulation (Moran, *et al.*, 2012). The use of money as management tool relates to integration when ensuring employees achieve their needs; needs hierarchies include security of employment (Maslow 1970). In addition, people find intrinsic motivation through something internal, such as enjoyment, or a calling (Elangovan, *et al.*, 2009). Therefore, corporate social responsibility is a way for organisations to enable intrinsic motivation through relatedness (Skudiene and Auruskeviciene, 2012).

Literature this paper explores (so far) relates to the motivation of people (or practitioners). There is a body of knowledge concerning transactional cost theory, which indicates that organisational partners have a tendency to act opportunistically (Faems, *et al.*, 2008). Therefore, the work suggests the only way to motivate the supply chain is through financial incentivisation, which is a under socialised view on human action (Faems, *et al.*, 2008); organisations operate for other reasons than financial incentivisation; a perfect example being charities and co-operatives. Supporting this there is a body of knowledge that identifies organisations operate with relational perspectives (McDermott, *et al.*, 2005; Faems, *et al.*, 2008; Palaneeswaran, *et al.*, 2003). Therefore, in order to create contextual and intrinsic motivation there is

also a requirement to consider the type of organisation that projects are let, avoiding organisations that place excessive emphasis on financial objectives.

## METHOD

The aim of the research serves the requirements of interdisciplinary professional practice, which aligns the work to socio-legal research. This paper forms part of a much larger study that is undertaken pragmatically to answer a real world issue in construction practice. This paper explores empirical and robust work in psychology to establish regularity styles; and relates the styles to motivation and construction contracts. Summative content analysis determines the prescriptive nature of the contracts and document analysis relates the regularity styles to contractual mechanisms. The paper sets out a future research agenda; there is limited attempt to offer overall summaries of the contracts regularity styles. The work explores JCT and NEC contracts due to their popularity in the UK; ACA PPC 2000 as a relatively popular multiparty agreement; and FIDIC as a popular international contract.

## DATA

**TABLE 4: EXTERNAL REGULATION IN CONTRACTS**

| <b>Contract</b>           | <b>Incentivisation</b> | <b>Pages</b> | <b>Word count</b> |
|---------------------------|------------------------|--------------|-------------------|
| Framework (JCT, 2011b)    | Yes cl.17              | 31           | 7,448             |
| CE (JCT, 2011a)           | Yes cl.7.30            | 69           | 19,309            |
| PPC (ACA, 2008)           | Yes cl.13              | 71           | 28,123            |
| ECC Opt A (NEC3, 2013)    | Yes cl.X6,X12.4,X20    | 76           | 38,170            |
| SBC/Q (JCT, 2005)         | Limited                | 114          | 54,299            |
| SBC/Q (JCT, 2011c)        | Yes sch.8              | 127          | 55,809            |
| Yellow Book (FIDIC, 1999) | Yes add. sub cl.8      | 130          | 56,373            |

**TABLE 5: IDENTIFICATION AND INTEGRATION IN CONTRACTS**

| <b>Contract</b>           | <b>Value engineering</b> | <b>Performance indicators</b> | <b>Collaborative working</b> | <b>Environment</b> |
|---------------------------|--------------------------|-------------------------------|------------------------------|--------------------|
| Framework (JCT, 2011b)    | Yes cl.17                | Yes cl.21                     | Yes cl.5, 9                  | Yes cl.16          |
| CE (JCT, 2011a)           | Yes cl.4.16              | Yes s.6                       | Yes cl.2.1                   | Yes cl.12.2        |
| PPC (ACA, 2008)           | Yes s.17                 | Yes s.23 ap.8                 | Yes cl.1.3                   | Yes cl.16          |
| ECC Opt A (NEC3, 2013)    | Yes cl. X12.2-3          | Yes, cl.X20                   | Yes cl.X12.3                 | Limited            |
| SBC/Q (JCT, 2005)         | Limited                  | Limited                       | Limited                      | Limited            |
| SBC/Q (JCT, 2011c)        | Yes sch.8                | Yes sch.8                     | Yes s.8                      | Yes s.8            |
| Yellow Book (FIDIC, 1999) | Yes cl.13.2              | Limited cl.5.4                | Yes cl.4.6                   | Yes cl.4.18        |

## **DISCUSSION AND LEGAL CONTEXT**

**EXTERNAL REGULATION** - Construction contracts at first glance appear to operate by way of external regulation; for example, where a contractor fails to complete on time there is the potential for the client to recover damages. However, damages are typically, with the exception of some torts, not punitive and seek to achieve 'restitutio in integrum' (Rookes v Barnard [1964] AC 1129 and Kuddus v Chief Constable of Leicestershire Constabulary [2001] UKHL 29). Therefore, penalties in construction contracts are not normal. External regulation (see Table 2) occurs in construction contracts as incentivisation that often focuses on task performance.

**INTROJECTION** - In construction there is a broad range of professionals that undertake activities with different personality types (Chynoweth, 2009). Different professionals will have different tendencies towards how they provide feedback (Keirse, 1998; Berens and Nardi, 2004). Therefore, to remove risks associating to controlling and ego related behaviour, training and development are a consideration in both contract drafting and administration. To maximise motivation, feedback needs to be informational in contrast to controlling or ego related. Similarly, practitioners may employ contractual documents either as a stimulus to good management (NEC3, 2013) or as a document to achieve their goals through manipulation of egos. For example, in construction it is common to see passive aggressive emails concerning contractual clauses.

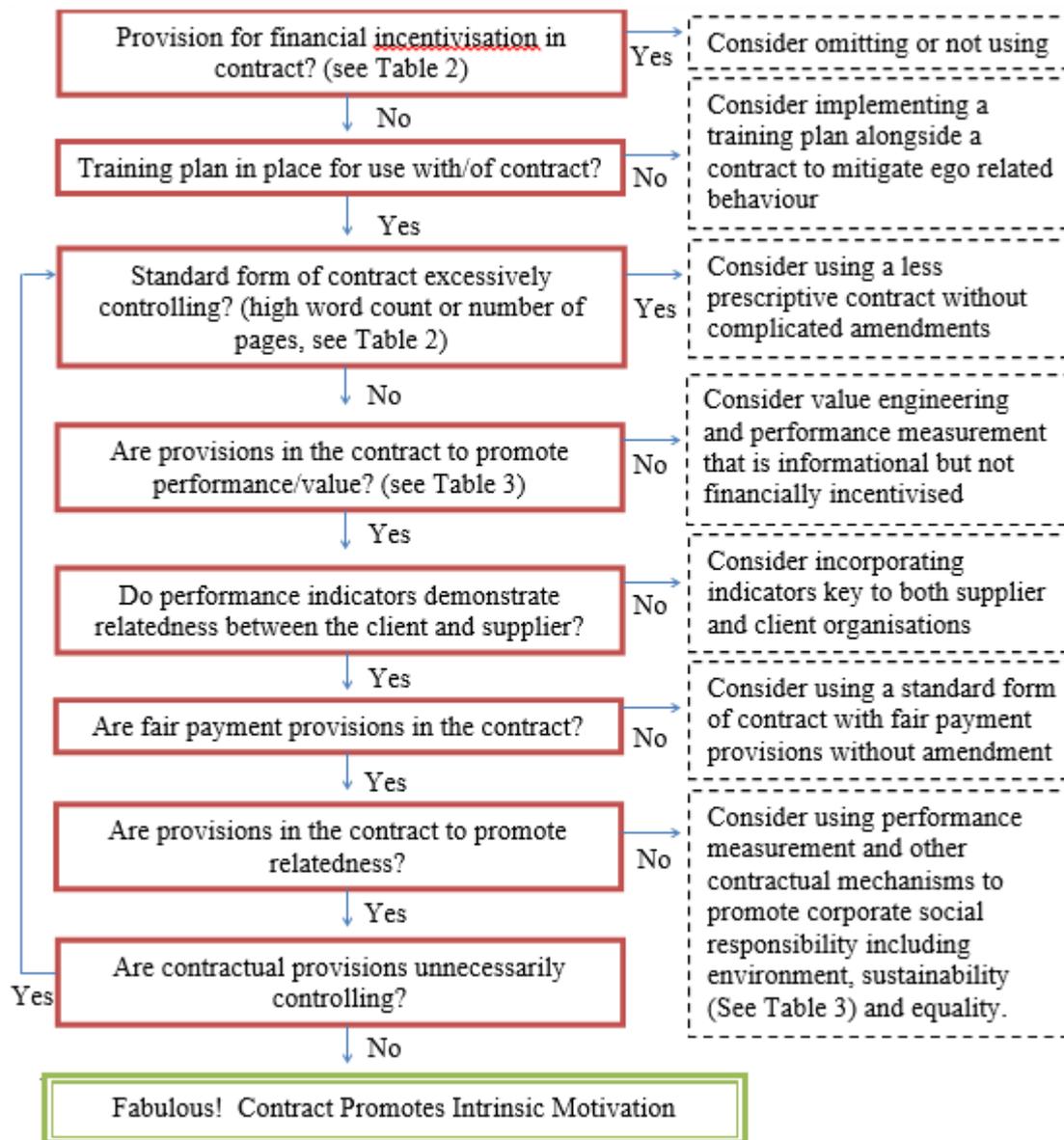
**IDENTIFICATION** - Table 3 identifies contractual mechanisms to promote identification with project and clients requirements. The tendency is for performance measurement to assist suppliers to identify with employer organisations (JCT, 2011c; JCT, 2011b; ACA, 2008). Performance measurement that links to incentivisation relates to external regulation (NEC3, 2013). Performance measurement may also provide information in two directions, between both the employer and supplier, therefore demonstrating relatedness (JCT, 2011a). The potential for relatedness extends to such things as health, safety, ethics and equality.

**INTEGRATION** - There is a drive for fair payment in UK, which is evident in construction contracts (UK Parliament, 1996; UK Parliament, 2009; Cabinet Office, 2011; Cabinet Office, 2012a). The drive results in standard forms of contracts incorporating fair payment provisions. There are also contractual mechanisms that promote relatedness (see sustainability and collaborative working Table 3). Contractual mechanisms however where overly prescriptive (or controlling) also reduce autonomy. The courts have met collaborative clauses with scepticism and confusion (Birse Construction Ltd v. St David Ltd [1999] EWHC 253 TCC; Costain Ltd and Ors v Bechtel Ltd and Anor [2005] EWHC 1018 TCC). The inclusion of the clauses exhibits controlling behaviour, which reduces intrinsic motivation. Table 2 compares the controlling nature of different contracts by number of words and pages.

## **CONCLUSIONS**

Robust work in psychology identifies that contractual behaviour in industry has the potential to inhibit intrinsic motivation and contextual performance. The work in psychology undertakes empirical work that defines what motivates people as organisms. The question emerges is whether what motivates people is something different from that which motivates supply chains. There is a logical connection between employees and controlling contractual behaviour, after all the employees implement the construction contracts. There is also a logical connection in capacity of

incentivisation to reduce contextual performance, especially as is the case with target contracts where incentivisation is limited to cost performance. In any case, the axiological debate emerges of whether motivation of practitioners should come through incentivisation, as is the case with external regulation.



**FIGURE 1: FRAMEWORK FOR CONTRACTS TO ENABLE INTRINSIC MOTIVATION**

This paper clearly identifies a link between relatedness and intrinsic motivation. The proposal is that further research should be undertaken to make contracts enablers for social empowerment and respect for people through relatedness, which will in turn achieve benefits of intrinsic motivation and corporate social responsibility. Figure 1 provides a framework for practitioners during the drafting and selection of contracts based on robust work in psychology. To keep the Framework simple the regulatory styles are not specifically indicated in the diagram, however it is easy to see how an understanding of the regulatory styles would be of assistance during contract drafting.

## FUTURE RESEARCH

The theoretical basis of this paper emerges from robust and empirical work in psychology. There is a requirement to undertake further research to allow the theory to promote best practice in construction contracts. The work recognises that different organisations will provide different levels of emphasis on financial and contextual performance; the work recommends that further research be undertaken concerning the types of organisations in construction, exploring the potential for organisations such as charities and co-operatives with greater emphasis on contextual performance. Table 4 sets out an agenda for future research.

**TABLE 4: CONTRACTS THAT ENABLE HUMAN MOTIVATION AGENDA FOR FUTURE RESEARCH**

| Regularity Style    | Recommendation   |
|---------------------|--|
| External Regulation | Undertake an empirical investigation to validate the motivational theory using construction professionals.   |
| Introjection        | Undertake further action learning research to develop training programmes and knowledge management to promote social empowerment and mitigate ego-involvement with construction contracts. |
| Identification      | Undertake further constructionist research to validate the link between relatedness (including respect for people) and performance.  |
| Integration         | Undertake black letter in combination with research from the social sciences to relate legal complexities of collaborative clauses to client requirements.                                 |

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