

# **AN ESSAY ON HUMAN RIGHTS AND THE MARKET FOR SOCIAL CONTRACTS**

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In this paper, I discuss an economic theory of human rights. Interpreting the social contract as a market good, a vector of rights that cannot be unbundled, I construct a competitive model in which citizens demand and states supply social contracts. An international market for social contracts matches citizens with states and determines the optimal social contracts. Human rights are the set of rights common to all equilibrium social contracts under perfectly competitive conditions. I explain that in reality, states may renege on their promises to citizens and may interfere with the market for social contracts. Thus, I argue for limits on state sovereignty and suggest that the international authority enforce social contracts and enhance the efficiency of the market for social contracts.

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## 1. INTRODUCTION

Although the notion of human rights can be traced to Greek philosophy, classical Roman law, and Judeo-Christian scripture, it was not until the haunting experiences of World War II and the Holocaust that the international community recognized the importance of human rights with the adoption of the Universal Declaration of Human Rights in 1948. Since issues of human rights intersect with a number of fields in economics including development economics, law and economics, and political economy, it is worth raising the following questions. What are human rights, and how are they determined? What are the borders of state sovereignty? What is the proper role of the international community? In this paper, I take an economic approach to explore these themes.

To begin, I theorize the existence of an international competitive market for social contracts or bundles of rights. The market matches citizens that demand rights with states that supply rights to determine the equilibrium social contracts. In this competitive framework, human rights are the set of rights common to all social contracts. The optimality of the market depends on perfect competition, which requires a number of assumptions about migration costs, freedom of exit, information, and state market power. In practice, states may renege on their promises to citizens and may interfere with the market for social contracts. Additionally, geographic and other factors unrelated to state actions may reduce the efficiency of the market. In light of these problems, the economic theory provides justification for bounds on state sovereignty and suggests that the international authority promote three objectives: (a) to enforce the social contract between state and citizen taking action with respect to states that fail to fulfill promises; (b) to enhance the efficiency of the market for social contracts taking action with

respect to states that interfere with the market; and (c) to enhance the efficiency of the market for social contracts taking action to ameliorate other market imperfections.

The human rights theory in this paper contrasts markedly with other theories. The most prevalent view of human rights stems from the natural law tradition, which posits that there exists a set of immutable laws of nature that imply certain individual rights (Hayden, 2001; Henkin et al., 1999; Kunz, 1961). In contrast with the market based approach, the natural law approach "essentializes" rights and fails to take into account feasibility and diverse economic, social, and technological circumstances. Consistent with the economic approach to the social contract, Robert Nozick underscores the importance of competition among diverse communities for citizens (Nozick, 1974). However, he applies the theory only to communities within a state, relies on natural rights theory, and is committed to proving the optimality of the minimal state. John Rawls establishes the boundaries of state sovereignty with reference to an ideal benchmark, as the theory in this paper does, but so-called Rawlsian primary goods are neither universal across peoples nor determined in a market context (Rawls, 1971, 1993).

A considerable number of studies in economics address human rights issues, typically with respect to development or international law, but rely primarily on natural rights theory (e.g. De Kadt, 1980; Fielding, 2002; Gauri, 2004; Neumayer, 2002; Rogge, 2001; Streeten, 1980). Economists have articulated justifications for specific rights based on economic efficiency (e.g. Mialon, 2005; Mialon and Mialon, 2008), but general economic theories of human rights are relatively scarce. Some economists have interpreted human rights as property rights subject to Coasian bargaining (Rubin, 1982; Veseth, 1982). Others have theorized that the constitution is a contract or collection of decision-making rules arising from market-like conditions that specify individual rights (Buchanan, 1975; Buchanan and Tullock, 1962; Mueller, 1991; Tullock, 1971).

Nevertheless, they do not apply these notions to universal human rights and do not imagine the existence of an international market that determines the social contract or constitution. It turns out that the theory in this paper has more in common with models of Tiebout sorting and hedonic prices (Carruthers and Vining, 1982; Hirschman, 1970; Rosen, 1974). In addition, Amartya Sen and Martha Nussbaum advance a theory of human rights, which emphasizes that individuals have certain fundamental capabilities that make life uniquely human (Fukuda-Parr, 2003; Nussbaum, 2003; Osmani, 2005; Sen, 2005). Not only does this approach essentialize rights, but it also requires a definition of humanity, an inherently problematic task.

## **2. AN ECONOMIC THEORY OF HUMAN RIGHTS**

To begin, I postulate the existence of a competitive international market for the social contract, a bundle of rights and duties that characterizes key aspects of living in a nation. As such, the social contract is a set of promises of the state to the citizen as well as promises of the citizen to the state. For example, it might include economic, political, and social rights and duties; religious rights; legal rights; the right to a minimum level of consumption; access to a certain standard of education and health care; the duty to perform military and other national service. Denote the social contract as  $r = (r_1, \dots, r_N)$ , where  $r_n$  represents the "amount" of each of the rights, duties, and other state characteristics. The price function,  $p(r) = p(r_1, \dots, r_N)$ , gives the minimum price of any potential social contract. While the structure of the price function reveals the implicit or hedonic price associated with each of the rights, there is no explicit market for the individual rights. The social contract vector cannot be unbundled, since each citizen may only live in one state, and each state must offer citizens the same social contract.

## 2.1 DEMAND AND SUPPLY

Citizens demanding social contracts take  $p(r)$  as given, as they have no market power. Citizens may live in one nation and thus may purchase only one social contract. For the moment, it is assumed that transaction costs are zero, information is complete, and citizens are free to choose any feasible social contract. Citizens have preferences over the consumption good  $x$  as well as the rights in the social contract. That is, citizens value rights per se but do not value additionally which nation provides them; there is no intrinsic “love of country.” The utility is  $U(x, r) = U(x, r_1, \dots, r_N)$ . Each citizen’s objective is to choose the consumption good and a social contract from those available so as to maximize utility. Summing the demand for social contracts over all individual citizens yields the aggregate demand  $Q^D(r)$  for every social contract vector  $r$ .

States supplying social contracts also take  $p(r)$  as given, as they have no market power. Specializing in the provision of one type of social contract, each state offers the same contract to all potential citizens. Not only does a nation choose the content of the bundle of rights but also the number of citizens. Denote the number of social contracts produced by a nation as  $M(r_1, \dots, r_N)$ . States spend resources to fulfill the social contract. The cost function is  $C(M, r_1, \dots, r_N; \alpha)$ , where costs rise with the number of units produced and with the amount of each right.  $\alpha$  encompasses potential state heterogeneity in technology. Each state’s objective is to choose a social contract and number of units so as to maximize profits. It is straightforward to sum the supply of social contracts over all nations. This yields the aggregate supply  $Q^S(r)$  for every social contract vector  $r$ .

## 2.2 THE MARKET MECHANISM

There is an international competitive market for social contracts in which states and citizens match with one another. There is no strategic interaction between citizens and states. The terms of the social contract—the bundle of rights, duties, and other characteristics associated with each nation—are determined in equilibrium. The equilibrium price function  $p^*(r)$  is that which satisfies  $Q^D(r) = Q^S(r)$  for all  $r$ . Thus, in equilibrium, demand equals supply for every possible social contract at price function  $p^*(r)$ . There are three possibilities. First, all states may have the same technology  $\alpha$ . In equilibrium, heterogeneity in consumer preferences entirely governs the number of types of social contracts. Thus, if there are two types of consumers, there are two types of social contracts. States are indifferent as to which type of contract to produce or, equivalently, which type of consumer to serve. Second, all consumers may have the same preferences and income. Heterogeneity in state technology governs the number of types of social contracts. If there are two types of states, there are two types of social contracts. Citizens are indifferent as to which type of contract to choose. Third, there may be citizen and state heterogeneity. In this case, there are multiple types of social contracts. Of course, if all citizens and states are identical, there will be one social contract.

Therefore, the equilibrium set of social contracts and the equilibrium price function are functions of citizen preferences, income endowments, and state technology. The content and variability of social contracts are both worked out in the market. In theory, democracies may coexist with non-democracies; capitalist states may coexist with socialist states. Some states may sponsor religion, while others may strictly separate religion and politics. Nonetheless, some rights, duties, or other characteristics may have greater prevalence than others. For example,

most or all states may have social programs to assist the poor; may offer free primary education; and may have some form of representative democracy.

### 2.3 ENDOGENOUS HUMAN RIGHTS

The market based theory of social contracts sheds light on the issue of human rights. Most equilibrium social contracts may ensure that citizens enjoy at least a minimum level of education, income, and health. They may contain specific cultural, political, and legal rights. Indeed, certain rights may be shared by *all* equilibrium social contracts. I define human rights as the set of rights that is common to all equilibrium social contracts. Thus, human rights are endogenous. I characterize human rights in the following way. Given that  $p^*(r)$  satisfies  $Q^D(r) = Q^S(r)$  for all  $r$ , the equilibrium set of  $Z$  social contracts is  $R = (R^1, \dots, R^Z)$ , where  $R^z$  represents the  $z$ th social contract that emerges in equilibrium. Accordingly,  $R_n^z$  corresponds to the amount of right  $n$  associated with equilibrium social contract  $z$ . The minimum amount of right  $n$  provided in equilibrium is  $H_n = \min\{R_n^1, \dots, R_n^Z\}$ . The set of endogenous human rights, therefore, is  $H = (\min\{R_1^1, \dots, R_1^Z\}, \dots, \min\{R_N^1, \dots, R_N^Z\})$ .

This perspective on human rights has several key features. First, it is the market that determines the set of human rights, not any one person or group. In this way, the market approach does not essentialize human rights, as many existing theories do. Second, competitive forces shape human rights. For example, citizens do not select countries that do not offer an adequate bundle of rights, while they select countries that do. Migration and other responses to the terms of the social contract provide incentives to craft the social contract efficiently. Third, the market takes into account diverse economic, social, and technological circumstances in the determination of the set of human rights. The evolution of technology may make new rights

available and existing rights more affordable. Likewise, the set of endogenous human rights is dependent on historical conditions and may evolve as conditions evolve.

### **3. SOURCES OF MARKET IMPERFECTIONS**

The market for social contracts operates efficiently under ideal conditions. The vitality of the market depends crucially on perfect competition. This entails a number of assumptions about migration costs, freedom of exit, education, information, state market power, and nationalism. In practice, these assumptions may not hold. Not only may states renege on their promises to citizens, they may interfere with the market for social contracts to reduce freedom of choice and to enhance their market power. Additionally, geographic impediments and other factors unrelated to state actions may degrade the efficiency of the market. In this section, I examine the sources of market imperfections.

#### **3.1 MIGRATION COSTS AND FREEDOM OF EXIT**

Migration costs are types of transaction costs that erode the intensity of competition in the market for social contracts. Migration costs are either geographic or technological. Oceans, rivers, mountains, and other terrain as well as geographic distance may impede potential matches between states and citizens. Also, the availability and affordability of transportation technology, e.g. planes, boats, and cars, may constrain the set of states from which citizens may choose. Consequently, migration costs may give some degree of regional market power to states thus altering the set of equilibrium social contracts such that rights are lower than they otherwise would be. This implies states that are more isolated geographically (separated by water, rough terrain, or expansive territory) are more likely to have social contracts with fewer rights. Another

implication is that advances in transportation technology may serve to enhance competition and raise the level of rights.

States may limit the freedom of exit, including the right to migrate or travel to other countries. Modest restrictions on mobility may have a legitimate place in the social contract. For instance, some citizens might accept publicly-subsidized education on the condition that they work domestically for a specified period of time. However, some limitations on migration or travel are not designed to promote social welfare but to strengthen the state's power over citizens. States may use laws, intimidation, or fear to prevent citizens from leaving and to compel them to accept a social contract. Moreover, states may utilize restrictions on mobility to reduce the choices of citizens, facilitate the expropriation of labor for military and industrial purposes, and to amplify psychological influence over citizens. These policies hamper the ability that citizens have to choose an alternative social contract and dampen competitive pressures on the state to provide certain rights.

### **3.2 EDUCATION AND INFORMATION**

States may not provide citizens with an adequate quantity and quality of education, thereby degrading the efficiency of the market for social contracts. Among numerous other benefits, education raises the capability to participate effectively in the market. It enables citizens to understand and utilize information about opportunities in other nations and determine which nation matches their preferences. State efforts to bias school curricula or deny schooling altogether may, hence, disrupt the market for social contracts. Additionally, while some measure of nationalist instruction may be socially valuable, the state might exploit public control of the classroom to severely distort citizens' capability to function, so as to enhance its market power and limit citizens' choices.

Furthermore, states may distort or restrict the information to which citizens have access. Information is a key ingredient in the market for social contracts. Citizens rely on information about opportunities in other countries to know what to expect from their own government and what their government may expect from them. Information also helps people to make sound decisions about what rights to demand and whether to immigrate. By restricting or manipulating information through censorship or outright fabrication, states may reduce competitive pressures to provide a certain level of rights and, in this way, alter the choices that citizens may make. These state actions compromise the efficiency of the market for social contracts.

### **3.3 MARKET POWER**

While some of the previously enumerated factors may relate to state market power, states may take other actions to enhance their market power in ways that evoke traditional antitrust themes. The benchmark model supposes that there are a large number of states that take prices as given. However, in actuality, the number of states may be relatively small. States have incentives to expand in geographic size. To this end, they may colonize, annex, or forcibly seize additional territories. Not only does this expansion allow states to control additional resources, but it also confers power in the market for social contracts by eliminating competitors and limiting the choices of citizens. For the same reasons, states that are close substitutes in the market for social contracts might peacefully merge with one another, either by treaty or tacit agreement. While some cases of state mergers may improve efficiency through cost-saving economies of scale in the provision of rights, other cases might actually harm citizen welfare through abuses of market power. Likewise, some states may actively collude to jointly decrease the rights provided to citizens, to restrict the freedom of migration, or to limit education and information to citizens.

### 3.4 NATIONALISM

States may also strategically promote nationalism. In other words, states may induce or coerce citizens to invest in nation-specific human, social, or cultural capital, i.e. nationalism. This may entail cultivating a love of country among citizens, developing cultural traditions, teaching a particular language, fostering an ethnic affinity, or promoting country-specific skills. Some nation-specific investments may be socially efficient. After all, just like a company, every state has its own symbols, songs, poems, and foundational stories. Nevertheless, other nation-specific investments may not be innocuous. Nationalism is inefficient when its principal intent is to increase a state's market power in the market for social contracts. Some countries may brainwash citizens or make them invest in non-substitutable, nation-specific capital solely to reduce the likelihood that they leave or choose an alternative social contract. Such investments, e.g. forcing citizens to learn an esoteric language or encouraging ethnic aversion of outsiders, may raise the degree of economic, social, or linguistic isolation. Hence, nation-specific capital may create artificial migration costs that may undermine the competitive nature of the market for social contracts.

## 4. THE ROLE OF INTERNATIONAL POLICY

### 4.1 HUMAN RIGHTS VIOLATIONS

Given that the market for social contracts may not operate under perfectly competitive conditions, it is possible that human rights violations may occur. In the context of the model, a human rights violation is defined as  $\hat{R}_n^j < H_n$ , where  $\hat{R}_n^j$  represents the amount of right  $n$  actually provided by state  $j$ , and  $H_n = \min\{R_n^1, \dots, R_n^Z\}$ , the endogenous human right. Therefore, a human rights violation occurs when the level of a particular right provided by a state is less than

the minimum level of a right determined in the market for social contracts under ideal competitive conditions. Such human rights violations may arise solely from the failure to satisfy the promises of the social contract, i.e.  $\hat{R}_n^j < H_n \leq R_n^j$ , or may arise from imperfections in the market for social contracts itself, i.e.  $\hat{R}_n^j \leq R_n^j < H_n$ .

## 4.2 INTERNATIONAL POLICY

From the Peace of Westphalia to the birth of the United Nations, sovereign states have been the primary actors of the international system, and to this day, sovereignty remains a principal cornerstone of international relations theory and practice (Brown, 2002). Nevertheless, in light of the fact that states may breach the social contract or interfere with the market for social contracts resulting in human rights violations, the economic theory in this paper may provide justification for bounds on state sovereignty. The theory implies that the international authority should promote three main objectives: (a) to enforce the social contract between state and citizen taking action with respect to states that fail to fulfill promises; (b) to enhance the efficiency of the market for social contracts taking action with respect to states that interfere with the market; and (c) to enhance the efficiency of the market for social contracts taking action to ameliorate other market imperfections.

The first objective establishes the international authority's role as enforcer of social contracts. This may involve procedures of arbitration to resolve disputes and remedy abuses of the social contract. Presumably, states that violate the social contract would face penalties of some type depending on the intent and extent of the offense. Humanitarian intervention may be legitimized on the basis of enforcing the social contract. The second and third objectives establish the international authority's role as guardian of the market for social contracts. For the

same reason that a national authority may use antitrust law to regulate the actions of private companies, the international authority may regulate the actions of states to maintain competitiveness in the market for social contracts. Thus, it may prevent states from disrupting the market. For example, the international authority may disallow socially harmful mergers between states or impede military action intended to raise market power. It may also intervene directly or sanction states that undermine the market. This might entail compelling states to ease restrictions on migration, forbidding certain nation-specific investments, and requiring the provision of adequate information. Moreover, to complement its efforts to curb harmful state actions, the international authority may also improve the underlying conditions of the market, including the implementation of policies to reduce migration costs and to facilitate the spread of information, technology, and education.

## **5. CONCLUSION**

In this paper, a competitive international market for social contracts determines the set of endogenous human rights. Considering that a number of factors may reduce the competitiveness of the market, the international authority should thus take actions to enhance the efficiency of the market for social contracts. Future research may be able to further develop the antitrust approach to human rights law, explore the economics of nationalism, and empirically examine some of the predictions of the model, e.g. that rights are lower in countries where migration costs are higher.

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