

Remarks for AALS Conference on Exploring the Boundaries of Contract Law  
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Does Contract Law Necessarily Crowd Out Non-Legal Institutions?

## Outline

The conventional view in the literature concerned with the link between legal institutions and economic development is that increasing the potency of legal sanctions for breach of contract will tend to promote economic development (Hadfield (forthcoming)). However, a number of scholars have developed provocative theoretical arguments suggesting that increasing the potency of contract law can negatively affect rates of compliance with contractual commitments by undermining, and eventually ‘crowding out,’ non-legal institutions that serve as substitutes for contract law. See, for example, Bohnet et al. (2001), Dixit (2004) or Posner (1996). One such theory holds that increasing the potency of contract law reduces actors’ ability to signal their trustworthiness by making and then fulfilling legally unenforceable commitments. A second theory posits that increasing the potency of contract law reduces the benefits that flow from being trustworthy – namely, access to a broader range of contracting opportunities – thereby reducing the incentive for actors to be or to become trustworthy. If valid, these theoretical claims present a significant challenge to the conventional wisdom and have important implications for the design of judicial and legal reforms. My remarks at the AALS conference will describe and then explore, at a theoretical level, the validity of claims that contract law can crowd out non-legal institutions. My central argument will be that it is possible to alter the content of contract doctrine in such a way as to avoid crowding out effects.

## References

Bohnet, Iris, Bruno S. Frey and Steffen Huck. 2001. “More Order with Less Law: On Contract Enforcement, Trust and Crowding.” *American Political Science Review* 95: 131-144.

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Posner, Eric A. 1996. “The Regulation of Groups: The Influence of Legal and Non-legal Sanctions on Collective Action” 63 *University of Chicago Law Review* 133-197.