

# SHORT-TERM, LONG-TERM, AND CONTINUING CONTRACTS\*

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January 2015

(revised August 2015)

## Abstract

Parties often regulate their relationships through “continuing” contracts that are neither long-term nor short-term but usually roll over. We study the trade-off between long-term, short-term, and continuing contracts in a two period model where gains from trade exist in the first period, and may or may not exist in the second period. A long-term contract that mandates trade in both periods is disadvantageous since renegotiation is required if there are no gains from trade in the second period. A short-term contract is disadvantageous since a new contract must be negotiated if gains from trade exist in the second period. A continuing contract can be better. In a continuing contract there is no obligation to trade in the second period but if there are gains from trade the parties will bargain “fairly” using the first period contract as a reference point. This can reduce the cost of negotiating the next contract. Continuing contracts are not a panacea, however, since fair bargaining may limit the use of outside options in the bargaining process and as a result parties will sometimes fail to trade when this is efficient.

Key Words: short-term, long-term, continuing contracts, fairness, good faith bargaining

JEL Codes: D23, D86, K12

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## I. INTRODUCTION

A large literature in economics and law has studied why parties write long-term contracts. A leading explanation is that such contracts are useful to support specific investments, and there is much empirical support for this<sup>1</sup>. In a way it has been more challenging for economists to explain why parties write short-term contracts, that is, contracts that are shorter than the likely term of their relationship. The conventional answer is that it is costly for the parties to anticipate the contingencies that will arise during the latter part of their relationship and to write down unambiguously how to deal with them. However, as Maskin and Tirole (1999) have shown, if parties are fully rational, ingenious mechanisms can be used to get the parties to reveal information as their relationship progresses, and to incorporate this information into an enforceable contract. If there is even a reasonable chance that the parties' relationship will endure it is hard to see why, under classical assumptions, such mechanisms would not be used. Thus the question remains: why do parties write short-term contracts?

The purpose of this paper is to investigate this question and in doing so also to study another question that as far as we know has received little attention from economists or lawyers. Why do parties often regulate their relationships through contracts that are neither explicitly long-term nor short-term, but rather are of indefinite duration in the sense that most of the time they roll over? Leading examples are rental contracts where the lease is typically renewed; month to month rental contracts with no lease; employment contracts where each party can (under some conditions) terminate the relationship, but where they usually do not – most of the time business

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<sup>1</sup> See Williamson (1975) and Klein et al. (1978). For empirical evidence, see Goldberg and Erickson (1987), Joskow (1987), Crocker and Masten (1988), Pirrong (1993), Brickley et al. (2006), and Bandiera (2007).

continues “as usual”. We call such contracts “continuing”, although other terms are surely possible<sup>2</sup>.

Before proceeding we should make it clear that we do not view continuing contracts as necessarily legally enforceable. A tenant is typically not obliged to renew the lease or even to attempt to do so, and the landlord may have no such requirement either. Similarly, in many employment contracts, a worker can quit or a firm can fire the worker. In this paper we will be interested less in what is legally required than in how people actually behave. We will focus on the idea that the parties are likely to apply notions of fairness, fair dealing, and good faith when they renegotiate continuing contracts even if they are not legally required to do so<sup>3</sup>. Moreover, the prior contract is likely to be a very important reference point for determining whether a renegotiation is seen as fair<sup>4</sup>. For example, consider a new rent or wage. Whether this is regarded as reasonable or not will be judged in light of the initial rent or wage: attention will be focused on the *change*. Of course, other factors can be important, such as market conditions, but the prior terms that the parties agreed to will have particular salience<sup>5</sup>. We will be interested in analyzing

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<sup>2</sup> We do not describe them as “indefinite-term contracts” since lawyers already use the term indefinite to describe preliminary agreements that may not be enforceable. See Bebchuk and Ben-Shahar (2001) and Schwartz and Scott (2007) for an analysis of such agreements.

<sup>3</sup> In some cases the courts will enforce an obligation to bargain in good faith if the parties include this in their contract. For example, Goldberg and Erickson (1987, footnote 29) describe a contract that was for three successive three-year terms. The contract stated that the parties could not terminate solely because the price was unsatisfactory without first engaging in good faith negotiation on the price. The meaning of good faith is somewhat ambiguous – it can mean as little that the parties are not dishonest, but it can also mean that they behave reasonably and are not opportunistic. The courts will sometimes enforce the broader interpretation. See Schwartz and Scott (2007), and SIGA Technologies, Inc. v. PharmAthene, Inc. (Del. May 24, 2013). In this paper we will use good faith in the broad sense that parties behave reasonably and are not opportunistic.

<sup>4</sup> Kahneman et al. (1986), a paper to which we return below, provides considerable support for the idea that past transactions serve as a reference point for future ones. See also Okun (1981). Rotemberg (2011) analyzes the optimal pricing policy for a firm that faces consumers who can be antagonized by prices that are higher than usual. Bar-Gill and Ben-Shahar (2003) argue that fairness is an important consideration when contracts are renegotiated and that previously agreed-upon terms will influence what is regarded as fair. See also Benjamin (2015).

<sup>5</sup> Some support for the idea that prior transactions serve as a reference point can also be found in the law. The Uniform Commercial Code, Article 2-305, deals with the case where parties have signed a contract but left the price open. Subsection 2, dealing with the case where the price is to be fixed by one party, includes the qualification that the price must be fixed in good faith. The commentary goes on to argue that ‘ in the normal case a “posted price” or

the consequences of fair dealing for the choice of an optimal contract. We will argue that using the prior contract as a reference point can have costs as well as benefits. On the one hand it can mean that there is less to argue about if not much has changed in the relationship. On the other hand, it may make it more difficult to take certain kinds of outside options into account, which may cause inefficiency.

We will consider a situation where parties have a choice between a long-term, a short-term, and a continuing contract. A short-term contract is one where the parties agree in advance that they will *not* be bound by considerations of fairness or good faith if they negotiate a future contract<sup>6</sup>. A continuing contract is one where the parties agree that they *will* be bound by such considerations<sup>7</sup>. We *define* this to mean that the parties will use the prior contract as a reference point in future negotiation. Of course, in practice the choice of contractual form may not be as clear-cut as this. For example, one of the authors of this paper has rented a vacation house for many years in a row. The relationship as it has developed is best thought of as continuing even though no language was ever used to that effect: on its face the contract looks short-term. This is a situation where a short-term contract was probably feasible only if one or both parties had no intention of renewing. Nonetheless it is useful to consider the choice of all three contracts – long-term, short-term, continuing – since economists have traditionally focused on long-term and short-term contracts. We will return to this issue of feasibility in the conclusions<sup>8</sup>.

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a future seller's or buyer's "given price," "*price in effect*," "market price," or the like satisfies the good faith requirement." (Italics added.) See Uniform Commercial Code 50 2014-2015.

<sup>6</sup> How common it is for parties to say in their contract that they will not be bound by considerations of fairness or good faith is debatable. However, by *failing* to mention good faith bargaining, the parties might achieve the same result. See footnote 3. Also calling a contract "fixed term" might be a way to create the expectation that no obligations are owed in the future.

<sup>7</sup> For example, the parties might specify that future bargaining must be in good faith.

<sup>8</sup> It is worth noting that Kahneman et al. (1986) find that past transactions do not form a reference point if the previous transaction was explicitly temporary, supporting the distinction we make between short-term and continuing contracts. Also Bewley (1999) finds that while wages in the primary sector (long-term employment) are

To analyze continuing contracts, we apply the contracts as reference points approach developed in Hart and Moore (2008). According to this approach one role of a contract is to get parties “on the same page”, so as to avoid future misunderstanding. Misunderstanding leads to aggrievement and shading (in the form of departures from consummate performance), and consequent deadweight losses. Hart and Moore (2008) show that, under these conditions, Maskin-Tirole-type mechanisms lose their force and simple contracts can be optimal<sup>9</sup>. So far the contracts as reference points approach has been used to study situations where the current contract is a reference point for contractual revision or renegotiation. We adapt this approach to allow for the prior contract to be a reference point.

We consider a very simple model where a buyer and a seller can trade zero or one widgets in each of two periods. Both parties are risk neutral, there are no non-contractible investments, and there are no wealth constraints. It is known that trade is efficient in the first period. If trade is always efficient in the second period a long-term contract mandating trade in both periods (specific performance) is optimal. If trade is always inefficient in the second period a short-term contract specifying trade in the first period is optimal. But suppose that there is uncertainty about whether there are gains from trade in the second period. In this case neither a long-term contract nor a short-term contract achieves the first-best. A long-term contract can be renegotiated if it is learned that trade is inefficient at the beginning of the second period, but since the parties will argue about how to divide the gains from renegotiation this is costly. (Throughout we will assume that argument is costly because it leads to aggrievement and shading.) In the case of a short-term contract, if trade is efficient in the second period, the parties

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downward rigid, wages in the secondary sector (short-term positions) are flexible downward, again supporting our distinction between short-term and continuing contracts.

<sup>9</sup> For some experimental evidence in support of the Hart-Moore theory, see Fehr et al. (2011), (2015). For some related field evidence, see Iyer and Schoar (2015).

must negotiate a new contract from scratch and this is costly because the parties will argue about how to divide the gains from trade.

A continuing contract may be a good compromise. To emphasize, a continuing contract is one where there is no obligation to trade in the second period but if there are gains from trade the parties will use the first period contract as a reference point. Using the first period contract as a reference point can reduce negotiation costs since there is less to argue about. For example, suppose that in the first period the buyer's value of trade is 20, the seller's cost is 10 and the price is 15. At the beginning of the second period the parties learn that the buyer's second period value has increased to 24 and the seller's second period cost is still 10; that is, surplus has increased by 4. Using the first period contract as a reference point means that argument will be confined to how the additional surplus of 4 will be split. This means that the new price will lie between 15 (the buyer gets all the incremental surplus) and 19 (the seller gets all the incremental surplus). In contrast if the parties bargain from scratch, as in a short-term contract, the argument will be over how to divide the surplus of 14: the price can be anywhere between 10 and 24.

Although the use of the prior contract as a reference point can reduce argument/bargaining costs and increase efficiency, this may not always be the case<sup>10</sup>. Consider the same situation as above, but suppose now that the seller has an outside option equal to 11 in period 2. We will argue that good faith *may* preclude this outside option from being used in the bargaining process. If the seller argues that she should be paid at least 21 in the second period this may be regarded as opportunistic or coercive since it cannot be justified on the basis of changes in value and cost within the relationship: it is not in the [15,19] range. Either the seller feels uncomfortable

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<sup>10</sup> Hart and Moore (2008, Section V) consider the case where other parties' contemporaneous contracts, as opposed to the buyer's and seller's own prior contract, are reference points for the current transaction. This can also be beneficial or costly depending on the circumstances.

suggesting a price of 21 or the buyer is unwilling to go along with it; or, if it were to happen, B's aggrievement and shading would be so great that the seller would be worse off accepting the new terms than if she simply quit and took her outside option. The result may be that the relationship ends and the seller takes her outside option even though this is inefficient.

We do not wish to argue that outside options can never be taken into account in the bargaining process. Whether they can or cannot will depend on the circumstances. In an influential study, Kahneman et al. (1986), using telephone surveys, posed hypothetical situations to people to elicit their standards of fairness. They found that people think that it can be fair for a firm to raise prices when its costs go up or to lower wages if it is losing money, but not fair for it to raise prices if its product becomes scarce or to lower wages if other workers are willing to work for less<sup>11</sup>. This is very supportive of our assumption that using changes in value or cost within the relationship to justify a price change is consistent with good faith bargaining whereas using outside options is not. At the same time Kahneman et al. suggest that appealing to outside options may be more acceptable if these outside options represent general market trends<sup>12</sup>. As they put it (p.730), "Some people will consider it unfair for a firm not to raise its wages when competitors are raising theirs. On the other hand, price increases that are not justified by increasing costs are judged less objectionable when competitors have led the way." We will

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<sup>11</sup> This is consistent with the arguments of Okun (1981). Okun emphasizes the importance of fairness in determining firms' pricing decisions in what he calls "customer markets" (see Okun, p.154). He distinguishes between price increases based on cost increases, which are generally accepted as fair, and those based on demand increases, which are generally regarded as unfair (see Okun, p.170).

<sup>12</sup> On this point see also <http://www.npr.org/blogs/money/2014/02/07/273060341/episode-516-why-paying-192-for-a-5-mile-car-ride-may-be-rational> . This podcast discusses whether Uber's strategy of surge pricing is fair, with the conclusion being that while this might be the case if the increase in price is linked to general market conditions it would not be so if the price increase depended on the characteristics of individual customers. Interestingly, a rival taxi service in New York, Gett, makes it a selling point that they *never* use surge pricing; see [#NYC #NoSurge pic.twitter.com/2pDxUo0jbt](https://twitter.com/2pDxUo0jbt) (retrieved 4/21/15 at 5:25pm). Another podcast describes how Coca Cola experimented with charging a higher price for coke when the weather was hot but abandoned this policy after consumers became angry: <http://www.npr.org/sections/money/2015/06/17/415287577/episode-633-the-birth-and-death-of-the-price-tag>.

therefore also consider the case where outside options *can* be used in bargaining<sup>13</sup>. By this we simply mean that in the above example the buyer will be willing to pay 21 to keep the seller in the relationship if the seller's outside option is 11<sup>14</sup>.

However, one of the implications of our analysis that should be stressed is that, to the extent that outside options cannot be fully incorporated in bargaining, fairness or good faith has costs as well as benefits, and that ex post inefficient allocations will sometimes occur in an optimal (continuing) contract<sup>15</sup>.

We should note a distinction between continuing contracts and another type of contract that is observed in practice: a renewable contract. A renewable contract is one that continues if both parties agree. However, the terms under which the contract will be renewed are typically specified in advance: they may be the same as the terms of the initial contract, or they may be the terms that one of the parties is offering new contractors<sup>16</sup>. In contrast, we are interested in cases where the terms of the new contract are left open and can be adjusted according to new events (a worker's wage may stay the same most of the time but every so often he or she will get a raise;

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<sup>13</sup> This case is, of course, very familiar to academic economists: an employee gets an outside offer and asks his or her employer to respond and the employer does. But whether such behavior occurs, or is acceptable, can vary over time and with the industry or sector or country concerned. For example, in the case of academic economists responding to outside options has been common in the U.S. for a long time, but was uncommon in the U.K. until fairly recently. For a dynamic analysis of the path of wages in a world where employers match outside options, see Harris and Holmstrom (1982).

<sup>14</sup>Note that, even if it is difficult or costly to use outside options in bargaining, alternative arrangements may be possible that substitute for this. For example, Weitzman (1984) and Oyer (2004) argue that firms may index wages to profit or share prices as a way to avoid inefficient quits or lay-offs. Our model assumes that verifiable variables that can form the basis of an index do not exist, although we return to the possibility of indexation in the conclusions.

<sup>15</sup> Herweg and Schmidt (2015) have also shown that inefficient allocations can arise when contracts are reference points if parties are loss-averse. They are concerned with a one period model where renegotiation takes place and do not study how a contract can be a reference point for transactions in future periods.

<sup>16</sup> See Lafontaine and Shaw (1999). They note that when franchisees' contracts are renewed this is usually done at the "then-current" contract terms. Masten (2009) provides evidence on the value of long-term, renewable contracts for the case of heterogeneous freight transactions.



rents will typically change at the end of a lease, etc.). We will show that under some conditions a continuing contract is superior to a renewable contract<sup>17</sup>.

There is a large theoretical literature on the determinants of contract length, and we can mention only a few contributions. Some papers assume a fixed cost of writing a (possibly contingent) contract and derive contract length as a function of the volatility of the environment; see, e.g., Gray (1978) and Dye (1985). Harris and Holmstrom (1987) consider actual duration in a model where new information arrives but as they recognize there is no reason why the initial contract should not have infinite duration. Diamond (1991) argues that short-term contracts might be used by some borrowers to signal that they are of high quality and are willing to expose themselves to the hazards of renegotiation; he does not consider continuing contracts. MacLeod and Malcomson (1993), Che and Hausch (1999), and Segal (1999) identify situations where “no contract” achieves as good an outcome as a sophisticated (incomplete) contract, which can be interpreted as saying that long-term contracts are sometimes not needed; however, they also do not explain why continuing contracts are used.

Finally, Guriev and Kvasov (2005) consider a situation where a seller makes a relationship specific investment and a buyer and seller can trade continuously over time. The buyer has an outside opportunity whose arrival time is stochastic; if it arrives it is efficient for the relationship to terminate. They show that it is optimal for parties to write what they call an evergreen contract – an indefinite contract which can be terminated by the buyer (at some cost) with notice.

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<sup>17</sup> Bozovic and Hadfield (2015) find that in innovative industries parties use contracts as a framework—in their words, “scaffolding”—for structuring future negotiation. In our model, in a continuing transaction, the first period contract can be regarded as scaffolding for the second period contract. In contrast, in a long-term or renewable contract, the initial contract is an attempt to “construct the whole building”.

However, they do not consider what we have called continuing contracts where future terms are left open.

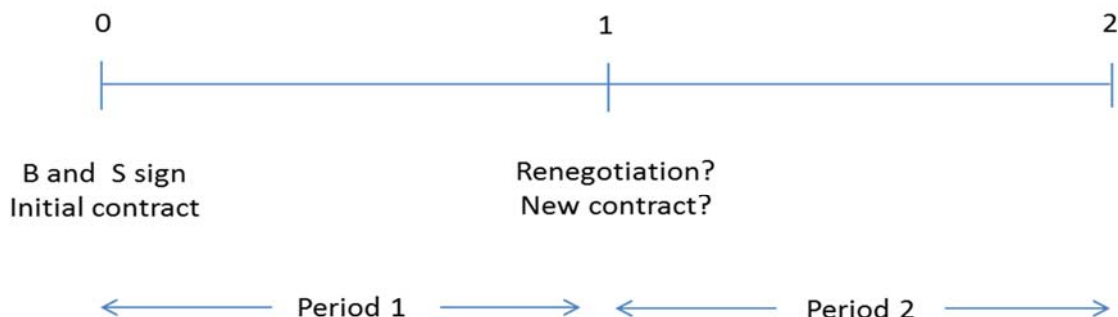
The paper is organized as follows. In Section 2 we present the model and analyze the trade-off between long-term, short-term, and continuing contracts for the case of no outside options. In Section 3 we bring in outside options and consider both the case where they can be used in bargaining and the case where they cannot. In Section 4 we extend the analysis to other sorts of contracts, in particular, renewable and exclusive contracts. Finally, Section 5 concludes.

## II. THE MODEL

We consider a buyer B and a seller S engaged in a two period, three date relationship. See Figure 1 for a time-line. In each period they can trade zero or one widgets.

At date 0, B and S sign an initial contract that may be long-term, short-term, or continuing. This contract is negotiated under competitive conditions at date 0 in the sense that there are many alternative sellers for B and so each seller receives her outside option for the two periods, which we denote by  $\bar{u}$ . (One can imagine that B auctions off the initial contract to the potential sellers.)

If the contract is long-term, it may be renegotiated at date 1. If the contract is short-term or continuing, a new contract between B and S may be negotiated at date 1 for the second period.



**Figure 1**

B's value  $v_1$  and S's cost  $c_1$  for the widget in period 1 are already known when the initial contract is written. We assume  $v_1 > c_1$ . At date 1, before the initial contract is renegotiated or a new contract is signed, B's value  $v_2$ , S's cost  $c_2$ , B's outside option  $r_B$ , and S's outside option  $r_S$  for period 2 are observed by both parties – there is symmetric information throughout (but  $v_2$ ,  $c_2$ ,  $r_B$  and  $r_S$  are not verifiable)<sup>18</sup>. Trade in period 2 is efficient if and only if  $v_2 - c_2 > r_B + r_S$ . At date 0, however,  $v_2$ ,  $c_2$ ,  $r_B$  and  $r_S$  are uncertain – they are drawn from a probability distribution  $F$  (which is common knowledge). Both parties are risk neutral, there are no wealth constraints, and without loss of generality we suppose no discounting. We assume that  $\bar{u}$  is in a range where the buyer wants to offer the seller a contract.

We do not model the market for buyers and sellers at date 1. This would require a general equilibrium analysis in which there are several buyers and sellers at both dates 0 and 1 and the availability of alternative partners at date 1 depends on contracts signed at date 0. The outside options  $r_B$  and  $r_S$  are a crude and short-cut way of representing market alternatives at date 1. We also do not model why the market is more competitive at date 0 than at date 1. In the background there may be some relationship-specific investments or other types of lock-in. Note,

<sup>18</sup> If  $v_2$ ,  $c_2$ ,  $r_B$  and  $r_S$  were verifiable contingent contracts could be written and the problems that we study in this paper would not arise. We discuss the observability-verifiability distinction further below.

however, that the existence and extent of lock-in is captured implicitly. If  $v_2 - c_2 > r_B + r_S$  with high probability, then this suggests significant lock-in. On the other hand, if  $v_2 - c_2 \leq r_B + r_S$  with high probability, this suggests insignificant lock-in.

For simplicity we assume that B has all the bargaining power in any negotiation or renegotiation at date 1.

Although bargaining at date 1 occurs under symmetric information it is not costless. We suppose that the parties have different feelings of entitlement concerning their payoff from bargaining and since at least one of them will be disappointed this leads to aggrievement and shading and consequently deadweight losses. We will explain the details of this below. In contrast there is no aggrievement or shading at date 0 since the terms of the initial contract are determined competitively and so “there is nothing to argue about” (see Hart and Moore (2008) for a further discussion).

It is convenient to focus in this section on the case where there are no outside options at date 1,  $r_B \equiv r_S \equiv 0$ . We introduce outside options in Section 3.

### Long-term contract

Suppose first that the parties write a long-term contract at date 0, specifying trade in both periods (a specific performance contract). Without loss of generality we can assume the same price in each period, which we denote  $p$ . At date 1 the parties will learn  $v_2$  and  $c_2$ . Obviously, if

$v_2 > c_2$  there are no gains from renegotiation. However, if  $v_2 < c_2$ , B and S *will* want to renegotiate<sup>19</sup>.

Recall that we assume that B has all the bargaining power. Thus B will offer S an amount  $(p - c_2)$  – her second period payoff under the existing contract – in return for not trading. However, following Hart and Moore (2008), we suppose that S feels entitled to more of the surplus from renegotiation – in fact she feels entitled to 100% of the surplus. (B also feels entitled to 100% of the surplus.)<sup>20</sup> In other words, S feels entitled to a payoff  $p - v_2$  (which would make B’s payoff  $v_2 - p$ , as under the specific performance contract). The difference between what S feels entitled to and what she receives,  $c_2 - v_2$ , represents S’s aggrievement,  $A$ . As in Hart and Moore (2008), we suppose that S takes out her aggrievement on B by shading and this reduces B’s payoff by  $\theta A = \theta(c_2 - v_2)$ , where  $0 < \theta < 1$  is an exogenous parameter. Shading does not affect S’s payoff<sup>21</sup>.

The bottom line is that, if  $v_2 < c_2$ , after renegotiation B’s second period payoff =  $c_2 - p - \theta(c_2 - v_2)$  and S’s second period payoff =  $p - c_2$ . The deadweight losses from renegotiation =  $\theta(c_2 - v_2)$ .

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<sup>19</sup> For simplicity we assume that the contract always has to be renegotiated to achieve no trade. This might not be the case, however, if  $v_2 < p < c_2$  since both parties want to walk away from the contract. Allowing for renegotiation only if  $v_2 > p$  or  $c_2 < p$  would complicate matters without significantly changing our results.

<sup>20</sup> Our results would not change significantly if each party felt entitled to a fraction  $\alpha$  of the surplus, where  $\frac{1}{2} < \alpha \leq 1$ .

<sup>21</sup> In Hart and Moore (2008), it is assumed that a party can shade only if trade takes place: the party hurts the other party during the trading process, e.g., a seller is less cooperative or helpful (but achieves this without violating the contract). Here we assume that S can shade in a renegotiation that leads to no trade (and for simplicity that the shading parameter  $\theta$  is the same). One way S could shade is by being difficult, disagreeable or unresponsive during the renegotiation process (e.g., S could drag things out by not answering B’s phone calls or emails promptly). Of course, such behavior could also affect S’s payoff, something we do not allow for here. Obviously, there are other reasons why renegotiation may lead to deadweight losses. We appeal to aggrievement and shading because we will use these ideas in what follows.

With these preliminaries out of the way, we can now turn to an optimal long-term contract. An optimal long-term contract maximizes B's expected payoff subject to S receiving at least  $\bar{u}$ . That is, it solves:

$$(2.1) \quad \text{Max } (v_1 - p) + \int_{v_2 > c_2} (v_2 - p) dF + \int_{v_2 \leq c_2} [c_2 - p - \theta(c_2 - v_2)] dF$$

S.T.

$$(2.2) \quad (p - c_1) + \int (p - c_2) dF \geq \bar{u}.$$

Obviously (2.2) holds with equality since (2.1) is decreasing in  $p$ . Letting  $U_B, U_S$  be B's and S's overall payoffs, respectively, and substituting (2.2) into (2.1) yields

$$(2.3) \quad U_B^{LT} = (v_1 - c_1) + \int_{v_2 > c_2} (v_2 - c_2) dF + \int_{v_2 \leq c_2} \theta(v_2 - c_2) dF - \bar{u},$$

$$U_S^{LT} = \bar{u}.$$

In other words, B's payoff equals social surplus net of shading costs minus  $\bar{u}$ .

We should emphasize that we have considered only a very particular kind of long-term contract. More general long-term contracts would allow one or both parties to breach by paying (possibly zero) damages. We will return to this issue later, but simply note at this point that our results do not change significantly if more general contracts are allowed.

### Short-term contract

We consider next the case where B and S sign a contract that specifies trade only for period 1 *with no commitment, promise, or understanding that the parties will be bound by considerations of fairness or good faith if they negotiate a future contract.*

Obviously, if  $v_2 \leq c_2$ , no trade will occur in period 2. If  $v_2 > c_2$ , the parties will renegotiate from scratch since no promises have been made: the reference point is no trade. The implication of this is that B offers S a payoff equal to zero, but S feels entitled to 100% of the gains from trade,  $v_2 - c_2$ . Thus S's aggrievement is  $A = v_2 - c_2$ , shading =  $\theta(v_2 - c_2)$ , and B's net payoff =  $(1 - \theta)(v_2 - c_2)$  while S's payoff is zero.

Let  $p_1$  be the first period price. An optimal short-term contract solves:

$$(2.4) \quad \text{Max } (v_1 - p_1) + \int_{v_2 > c_2} (1 - \theta)(v_2 - c_2) dF$$

S.T.

$$(2.5) \quad (p_1 - c_1) \geq \bar{u}.$$

Again (2.5) holds with equality since B can always gain from reducing  $p_1$ . Hence

$$(2.6) \quad U_B^{ST} = (v_1 - c_1) + \int_{v_2 > c_2} (1 - \theta)(v_2 - c_2) dF - \bar{u},$$

$$U_S^{ST} = \bar{u}.$$

As above, B's payoff equals social surplus net of shading costs minus  $\bar{u}$ .

## Continuing contract

We now turn to what we call a continuing contract. A continuing contract is a contract that specifies trade in the first period, does not commit the parties to trade in the second period, but includes some commitment, promise, or understanding that the parties will be bound by considerations of fairness or good faith if they do negotiate a future contract.

We formalize the idea of fairness or good faith as follows. At date 1, if  $v_2 \leq c_2$ , the parties walk away and surplus is zero<sup>22</sup>. However, if  $v_2 > c_2$ , they bargain using the period 1 contract as a reference point. If conditions have not changed much, that is,  $v_2 \approx v_1, c_2 \approx c_1$ , then good faith means that the price should not change much. (There is an exception to this, noted below, if  $p_1 < c_1$  or  $p_1 > v_1$ .) On the other hand, if  $v_2$  or  $c_2$  do change relative to  $v_1, c_1$ , then good faith means that the price can change but only commensurate with the changes in  $v$  and  $c$ .

To be precise, suppose  $v_2 > c_2$ , and let  $\Delta G = (v_2 - c_2) - (v_1 - c_1)$ . We distinguish between the cases  $\Delta G \geq 0$  and  $\Delta G < 0$ . Previously we assumed that each party feels entitled to 100% of any change in surplus. However, that was for the case where the change was always positive. We now assume that B and S's self-serving biases are such that each party feels entitled to any *increase* in surplus but feels that the other should suffer any *decrease* in surplus. However, both regard the initial contract as a reference point.

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<sup>22</sup> We are ruling out the possibility that one or other party might feel aggrieved and shade in the event that trade does not occur given that it could have; for example, if S's cost is low she might be angry with B that his value is even lower. One justification, consistent with Hart and Moore (2008), is that it is difficult for a party to hurt another party who walks away: shading can occur only if trade takes place or if a renegotiation is required. (Of course, particularly these days, you can hurt someone by bad-mouthing them or posting negative comments on a website, but the damage may be less than if you are in a relationship with them.) Note also that one interpretation of good faith bargaining that the courts have used would require a party to show that they are justified in quitting, and thus unilateral quitting would not be costless (see footnote 3 and the references therein). This is an interesting possibility but we do not pursue it here.



Before continuing, we should note that our assumption that the parties focus on changes in surplus rather than changes in  $v, c$  independently is only one of several possibilities. It would also be plausible to assume that B attributes increases in  $v$  (resp.,  $c$ ) to B's (resp., S's) actions or talent and decreases in  $v$  (resp.,  $c$ ) to luck; and vice versa for S. This would change some details but not the thrust of the analysis. The important thing is that it is changes in  $v, c$  not absolute values that matter in a continuing contract.

It is also worth discussing a little further what we have in mind when we assume that changes in  $v, c$  can be observed by both parties but are not verifiable and so cannot be part of an indexed contract. Imagine that  $c$  rises. S knows this and can perhaps produce an argument or evidence to B that will persuade him that this is indeed the case. However, if the parties wrote an ex ante contract that said that price will rise if S produces evidence that  $c$  has risen, then this could lead to abuse: S could produce something that looks like evidence but isn't really. In other words, the observability but nonverifiability of evidence can justify the assumption that changes in  $v, c$  are observable but not verifiable.

Let us return to the case where each party feels entitled to increases but not decreases in surplus. Then B regards  $\underline{p}$  as a reasonable price where

$$(2.7) \quad \underline{p} - c_2 = p_1 - c_1 + \text{Min}(\Delta G, 0).$$

That is, B believes that S's period 2 payoff should equal her period 1 payoff if  $\Delta G \geq 0$  and fall by  $-\Delta G$  if  $\Delta G < 0$ . However, B recognizes that he cannot offer a price below  $c_2$  ( $\underline{p} < c_2$  if  $p_1 < c_1$  and  $\Delta G > 0$ ) and, of course, B would never offer a price in excess of  $v_2$  ( $\underline{p} > v_2$  if  $p_1 > v_1$  and  $\Delta G < 0$ ). Thus B will adjust  $\underline{p}$  so that it lies in the  $[c_2, v_2]$  range and offers S

$$(2.8) \quad \hat{p} = \text{Min} \left( v_2, \text{Max} \left( \underline{p}, c_2 \right) \right).$$

By a parallel argument, S regards  $\bar{p}$  as a reasonable price where

$$(2.9) \quad \bar{p} - c_2 = p_1 - c_1 + \text{Max}(\Delta G, 0).$$

That is, S thinks that her payoff should rise by  $\Delta G$  if  $\Delta G \geq 0$  and stay the same if  $\Delta G < 0$ .

However, S recognizes that price must lie between  $c_2$  and  $v_2$  and so feels entitled to

$$(2.10) \quad \tilde{p} = \text{Min} \left( v_2, \text{Max}(\bar{p}, c_2) \right).$$

It follows that S's aggrivement is given by  $A = \tilde{p} - \hat{p}$  and she shades by  $\theta A$ . Hence B's and

S's period 2 payoffs are given by

$$(2.11) \quad U_B^2 = v_2 - \hat{p} - \theta(\tilde{p} - \hat{p}),$$

$$(2.12) \quad U_S^2 = \hat{p} - c_2,$$

respectively.

Given the above, an optimal continuing contract solves:

$$(2.13) \quad \text{Max} (v_1 - p_1) + \int_{v_2 > c_2} (v_2 - \hat{p} - \theta(\tilde{p} - \hat{p})) dF$$

S.T.

$$(2.14) \quad (p_1 - c_1) + \int_{v_2 > c_2} (\hat{p} - c_2) dF \geq \bar{u}.$$

It is easy to see that (2.14) holds with equality: if not, reducing  $p_1$  a little reduces  $\hat{p}$  and  $\tilde{p}$  and hence raises  $v_2 - (1 - \theta)\hat{p} - \theta\tilde{p}$ , which increases (2.13)<sup>23</sup>. Substituting (2.14) into (2.13) we can write the parties' payoffs as

$$(2.15) \quad U_B^C = (v_1 - c_1) + \int_{v_2 > c_2} [v_2 - c_2 - \theta(\tilde{p} - \hat{p})] dF - \bar{u},$$

$$U_S^C = \bar{u}.$$

Note that  $p_1$  affects  $(\tilde{p} - \hat{p})$  and so is still present in (2.15). Thus in contrast to a short-term or long-term contract it is not the case that  $U_B^C$  changes one to one with  $\bar{u}$ .

At this point an example may help. Suppose that  $v_1 = 20$ ,  $c_1 = 10$  and  $p_1 = 15$ . Assume that at date 1 it is learned that  $v_2 = 24$ ,  $c_2 = 10$  (surplus goes up by 4). Then with a continuing contract B will regard 15 as the appropriate price (this gives all the additional surplus to B), while S will regard 19 as the appropriate price (this gives all the additional surplus to S). B will offer 15 but S will be aggrieved by 4 and will shade by  $4\theta$ .

Suppose instead that it is learned that  $v_2 = 24$ ,  $c_2 = 20$  (surplus goes down by 6). Now B regards 19 as the right price since this makes S bear the full decrease in surplus. However, S will not trade at 19 and so B adjusts his notion of entitlement so that 20 becomes a reasonable price. S regards 25 as a reasonable price by a similar argument, but since B will not trade at this price she adjusts her entitlement to 24. Thus B will offer 20 but S will be aggrieved by 4 and will shade by  $4\theta$ .

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<sup>23</sup> Note that  $p_1$  plays two roles. It acts as a reference point for the period 2 price and it also serves to distribute surplus. We are ruling out the possibility that a lump sum transfer can be used to distribute surplus independently of the first period price. Our assumption is that, if this were attempted, the parties would "see through it" and use the average of the two as a reference point.

We now turn to a comparison of long-term, short-term, and continuing contracts. In the case of no outside options it is easy to show that a continuing contract is always at least as good for B as a short-term contract (S is indifferent since she always gets  $\bar{u}$ ).

Proposition 1. With no outside options,  $U_B^C \geq U_B^{ST}$ .

Proof: Consider an optimal continuing contract. We know from (2.15) that

$$(2.16) \quad U_B^C = (v_1 - c_1) + \int_{v_2 > c_2} [v_2 - c_2 - \theta(\tilde{p} - \hat{p})] dF - \bar{u}$$

$$\geq (v_1 - c_1) + \int_{v_2 > c_2} (1 - \theta)(v_2 - c_2) dF - \bar{u} = U_B^{ST},$$

where the inequality follows from the fact that  $\tilde{p} - \hat{p} \leq v_2 - c_2$ . Q.E.D.

In other words, in this very simple setting, good faith is always a plus: it reduces aggrievement and shading since, with the first period contract as a reference point, there is less to argue about in period 2. (In the above example there was strictly less to argue about in the first case when surplus went up and the same amount to argue about in the second case when surplus went down.)

In order to compare a continuing contract with a long-term contract, it is useful to proceed as follows. Write the distribution function of  $(v_2, c_2)$  conditional on  $v_2 > c_2$  as  $F_1$  and the distribution function of  $(v_2, c_2)$  conditional on  $v_2 \leq c_2$  as  $F_2$ . That is,

$$(2.17) \quad F = \pi F_1 + (1 - \pi) F_2,$$

where  $\pi = \text{prob}(v_2 > c_2)$ . In Proposition 2(i) we keep  $F_1$  and  $F_2$  fixed and vary  $\pi$ . In Proposition 2(ii) we keep  $\pi$  and  $F_2$  fixed and vary  $F_1$ .

## Proposition 2

- (i) Fix  $F_1$  and  $F_2$ . For  $\pi$  close to 0 a continuing contract is superior to a long-term contract, whereas for  $\pi$  close to 1 a long-term contract is superior to a continuing contract.
- (ii) Fix  $0 < \pi < 1$  and  $F_2$ . Suppose  $Prob(|v_2 - c_2 - (v_1 - c_1)| \leq \varepsilon | v_2 > c_2) = 1$  for some  $\varepsilon > 0$ . Then if  $\varepsilon$  is small enough a continuing contract is optimal.

## Proof

Result (i) is obvious. If  $\pi$  equals zero a long-term contract is always renegotiated and hence exhibits shading, while a continuing contract yields the efficient outcome – no trade – with no shading. By continuity the ranking of the contracts stays the same for  $\pi$  close to zero. The opposite argument applies for  $\pi = 1$ .

To prove (ii), note that a continuing contract achieves the first-best if  $\varepsilon = 0$ . The reason is that either  $v_2 < c_2$  and the parties walk away or  $v_2 > c_2$  and there is nothing to argue about in period 2: B and S agree that the division of surplus should stay the same (or if  $p_1 > v_1$  that price should equal  $v_2$ ). Also  $p_1$  can be adjusted so that S receives  $\bar{u}$  and B obtains all the surplus.

In contrast a long-term contract does not achieve the first-best since renegotiation and shading occur if  $v_2 < c_2$ .

Again by continuity the ranking of the contracts is preserved for  $\varepsilon$  close to zero. Q.E.D.

Proposition 2(i) says that a continuing contract is superior to a long-term contract if trade is unlikely to be efficient in the second period; while a long-term contract is superior to a continuing contract if trade is likely to be efficient in the second period. This is, of course, rather obvious. Proposition 2(ii) is more subtle. It says that a continuing contract will be optimal if conditional on trade being efficient in the second period surplus does not change very much relative to the first period (a leading case of this is, of course, where  $v_2 \approx v_1, c_2 \approx c_1$ ). To put it in everyday language a continuing contract works well if it is known in advance that either business will remain as usual or a big change will occur that will make it efficient for the relationship to break up<sup>24</sup>. Under these conditions a continuing contract is better than either a short-term contract or a long-term contract<sup>25</sup>.

A simple example may clarify matters. Suppose  $v_1 = 20, c_1 = 10$ ; and with probability  $\frac{1}{2}$   $v_2 = 20, c_2 = 10$ , while with probability  $\frac{1}{2}$   $v_2 < c_2$ . Then a continuing contract achieves the first-best, whereas neither a long-term contract nor a short-term contract does.

### III. OUTSIDE OPTIONS

In this section we allow for the possibility that  $r_B, r_S \neq 0$ . This does not significantly change the analysis of long-term and short-term contracts. It also does not greatly change the analysis of continuing contracts to the extent that appealing to outside options in the bargaining process is

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<sup>24</sup> As noted earlier in this section, our assumption that the parties focus on changes in surplus rather than changes in  $v, c$  independently is not incontrovertible. A more restricted version of Proposition 2(ii) applies to the case where entitlements can depend on changes in  $v, c$ : we must now assume  $v_2 \approx v_1, c_2 \approx c_1$ .

<sup>25</sup> A qualification should be noted. We have assumed that  $v_1, c_1$  are known for sure. But suppose, say, that the buyer is uncertain about the suitability of the seller's product. Then  $v_1$  represents an expected value. If the buyer learns that the product is suitable the value in the second period will be higher even if nothing else has changed. It seems reasonable that good faith bargaining now means that the price should not change even though  $v_2 > v_1$ . Our analysis, and Proposition 2, can be extended to this case.

consistent with fair dealing and good faith, e.g., because they correspond to market trends — see the discussion in the introduction. We refer to this as case M. However, fair dealing and good faith may limit the extent to which parties can incorporate outside options into the bargaining process if the outside options are idiosyncratic and do not represent market trends: doing so may be seen as opportunistic. We refer to this as case I. In this case the analysis does change significantly<sup>26</sup>.

Let us deal first with the easy cases of long-term and short-term contracts. It is now efficient for trade to occur in the second period if and only if  $v_2 - c_2 > r_B + r_S$ . With a long-term contract renegotiation will therefore occur if  $v_2 - c_2 < r_B + r_S$ . In this case B will offer S  $p - c_2 - r_S$  not to trade, but S will feel entitled to  $r_B - v_2 + p$ . Shading =  $\theta(r_B + r_S - v_2 + c_2)$ . Thus, analogously to (2.1) – (2.2), a long-term contract solves:

$$(3.1) \quad \text{Max } (v_1 - p) + \int_{v_2 - c_2 > r_B + r_S} (v_2 - p) dF + \int_{v_2 - c_2 \leq r_B + r_S} [r_B + r_S - p + c_2 - \theta(r_B + r_S - v_2 + c_2)] dF$$

S.T.

$$(3.2) \quad (p - c_1) + \int (p - c_2) dF \geq \bar{u}.$$

As before, (3.2) holds with equality and

$$(3.3)$$

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<sup>26</sup> Of course, any real situation will include elements of both cases: with some probability the outside options will represent market trends and can be included in bargaining and with some probability they will not represent market trends and cannot be included. To simplify we consider the two cases separately.

$$U_B^{LT} = (v_1 - c_1)$$

$$+ \int_{v_2 - c_2 > r_B + r_S} (v_2 - c_2) dF + \int_{v_2 - c_2 \leq r_B + r_S} [r_B + r_S - \theta(r_B + r_S - v_2 + c_2)] dF - \bar{u},$$

$$U_S^{LT} = \bar{u}.$$

By analogy to (2.4) – (2.5), a short-term contract will solve:

$$(3.4) \quad \text{Max } (v_1 - p_1) + \int r_B dF + \int_{v_2 - c_2 > r_B + r_S} (1 - \theta)(v_2 - c_2 - r_B - r_S) dF$$

S.T.

$$(3.5) \quad (p_1 - c_1) + \int r_S dF \geq \bar{u}.$$

(3.5) holds with equality and so

$$(3.6) \quad U_B^{ST} = (v_1 - c_1) + \int (r_B + r_S) dF + \int_{v_2 - c_2 > r_B + r_S} (1 - \theta)(v_2 - c_2 - r_B - r_S) dF - \bar{u},$$

$$U_S^{ST} = \bar{u}.$$

Consider next a continuing contract. Start with case M where outside options *can* be used in the bargaining. Suppose  $v_2 - c_2 > r_B + r_S$ . Then the analysis is similar to that of Section 2. B thinks that  $\underline{p}$  is a reasonable price but recognizes that price must lie in the  $[c_2 + r_S, v_2 - r_B]$  range for trade to occur and so offers S

$$(3.7) \quad \hat{p}^M = \text{Min} \left( v_2 - r_B, \text{Max} \left( \underline{p}, c_2 + r_S \right) \right).$$



S thinks that  $\bar{p}$  is a reasonable price but recognizes that price must lie in the  $[c_2 + r_S, v_2 - r_B]$  range for trade to occur and so adjusts her entitlement to

$$(3.8) \quad \tilde{p}^M = \text{Min}(v_2 - r_B, \text{Max}(\bar{p}, c_2 + r_S)) .$$

In other words, in case M, each party is willing to go outside the  $[\hat{p}, \check{p}]$  range to match the other party's outside option if this is necessary to ensure trade; but neither party will go further nor is this expected.

As an example, suppose  $v_1 = 20$ ,  $c_1 = 10$  and  $p_1 = 15$ . At date 1 it is learned that  $v_2 = 24$ ,  $c_2 = 10$ ,  $r_B = 0$ ,  $r_S = 11$ . Without outside options B would offer S 15 in period 2. S feels entitled to 19, and is aggrieved by 4. With S's outside option, in case M, B is willing to match the outside option and offer 21, and S does not expect more:  $\hat{p}^M = \check{p}^M = 21$ <sup>27</sup>. Thus trade takes place and there will be no shading.

In case M, an optimal continuing contract solves:

$$(3.9) \quad \text{Max} (v_1 - p_1) + \int_{v_2 - c_2 > r_B + r_S} (v_2 - \hat{p}^M - \theta(\check{p}^M - \hat{p}^M)) dF + \int_{v_2 - c_2 \leq r_B + r_S} r_B dF$$

S.T.

$$(3.10) \quad (p_1 - c_1) + \int_{v_2 - c_2 > r_B + r_S} (\hat{p}^M - c_2) dF + \int_{v_2 - c_2 \leq r_B + r_S} r_S dF \geq \bar{u}.$$

As before, (3.10) holds with equality and so we obtain

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<sup>27</sup> Note that (3.7) and (3.8) are not simply (2.8) and (2.10) with  $v_2, c_2$  replaced by  $v_2 - r_B, c_2 + r_S$ . The reason is that the formulae for  $\underline{p}, \bar{p}$  depend on  $v_2, c_2$  not  $v_2 - r_B, c_2 + r_S$ . In particular, in the numerical example, If we replace  $c_2$  by  $c_2 + r_S = 11$  and set  $r_S = 0$ , then according to the logic of Section 2  $\hat{p} = 24, \check{p} = 21$ .

$$(3.11) \quad U_B^{CM} = (v_1 - c_1) + \int_{v_2 - c_2 \leq r_B + r_S} (r_B + r_S) dF + \int_{v_2 - c_2 > r_B + r_S} (v_2 - c_2 - \theta(\tilde{p}^M - \hat{p}^M)) dF - \bar{u},$$

$$U_S^{CM} = \bar{u}.$$

Proposition 1 generalizes to this case. A continuing contract that can fully adapt to market trends is always superior to a short-term contract: there is less to argue about given that the period 1 contract forms a reference point.

Proposition 3 (Case M).  $U_B^{CM} \geq U_B^{ST}$ .

We turn now to the case where outside options *cannot* be used in bargaining (case I). It is helpful to start with the same example:  $v_1 = 20$ ,  $c_1 = 10$ ,  $p_1 = 15$ ,  $v_2 = 24$ ,  $c_2 = 10$ ,  $r_B = 0$ , but let us not fix  $r_S$ . Without outside options, as noted, B would offer 15 in the second period, while S feels entitled to 19. With S's outside option, in case I, we suppose that B is willing to adjust the price up to 19 but he is not willing to go any further. In other words, B is flexible enough to accept that some or all of the increase in surplus can be attributed to S but not go beyond this: any further price would smack of exploitation. This is the difference between cases M and I.

Of course, with B's increased flexibility, trade can occur whenever  $r_S \leq 9$ . But, if  $9 < r_S < 14$  trade will not occur even though this is inefficient. Thus in case I good faith sometimes leads to inefficient outcomes.

Let us now move to the general analysis. As we have seen B feels that  $\hat{p} = \text{Min}(v_2, \text{Max}(\underline{p}, c_2))$  is a reasonable price. However, B is willing to ascribe all increases in surplus and no decreases in surplus to S if this is necessary to ensure trade, which yields  $\tilde{p} = \text{Min}(v_2, \text{Max}(\bar{p}, c_2))$  as a reasonable price. (Of course, this is the price S thinks is reasonable although analogously to B she is flexible enough to accept  $\hat{p}$  if this is necessary to ensure trade.) Thus the range of acceptable prices is  $[\hat{p}, \tilde{p}]$ . If this range intersects with the range  $[c_2 + r_S, v_2 - r_B]$ , trade is possible; otherwise it is not. (If  $v_2 - r_B < c_2 + r_S$  the intersection is of course empty.) In our example  $[\hat{p}, \tilde{p}] = [15, 19]$ ,  $[c_2 + r_S, v_2 - r_B] = [10 + r_S, 24]$  and so the intersection is nonempty as long as  $r_S \leq 9$ .

If  $[c_2 + r_S, v_2 - r_B] \cap [\hat{p}, \tilde{p}] \neq \emptyset$ , let  $p'$  be the smallest price in the intersection and  $p''$  the largest price. B will offer  $p'$ , S will be aggrieved by  $(p'' - p')$  and shading =  $\theta(p'' - p')$ .

Thus a continuing contract solves:

$$(3.12) \quad \text{Max}(v_1 - p_1) + \int_{[c_2 + r_S, v_2 - r_B] \cap [\hat{p}, \tilde{p}] \neq \emptyset} (v_2 - p' - \theta(p'' - p')) dF + \int_{[c_2 + r_S, v_2 - r_B] \cap [\hat{p}, \tilde{p}] = \emptyset} r_B dF$$

S.T.

$$(3.13) \quad (p_1 - c_1) + \int_{[c_2 + r_S, v_2 - r_B] \cap [\hat{p}, \tilde{p}] \neq \emptyset} (p' - c_2) dF + \int_{[c_2 + r_S, v_2 - r_B] \cap [\hat{p}, \tilde{p}] = \emptyset} r_S dF \geq \bar{u}.$$

An important difference from the M case is that (3.13) may not be binding at the optimum. The reason is that (3.12) may not be monotonic in  $p_1$  given that a lower  $p_1$  may lead to inefficient

outcomes. In other words an “efficiency” wage (or price) may be optimal. Also it is no longer true that a continuing contract is always superior to a short-term contract. Example 3.1 illustrates both of these possibilities.

Example 3.1

There is no uncertainty,  $v_1 = 20, c_1 = 10, v_2 = 20, c_2 = 10, r_S = 1, \bar{u} = 1$ .

Consider a continuing contract (case I). Suppose  $10 \leq p_1 \leq 20$ . Since  $v_2 = v_1, c_2 = c_1, \bar{p} = \underline{p} = p_1$  and so  $\hat{p} = \tilde{p} = p_1$ . That is,  $p_2 = p_1$ : no change in price is possible. Hence, given S’s outside option in period 2, trade will occur in period 2 only if  $p_2 = p_1 \geq 11$ . Given  $p_1 \geq 11$ , it is optimal for B to set  $p_1 = 11$ : this ensures trade in both periods and yields  $U_B = 18, U_S = 2$ . Alternatively, if  $p_1 < 11$ , since no trade occurs in period 2, it is best for B to set  $p_1 = 10$ . This yields  $U_B = 10, U_S = 1$ . (It is easy to show that  $p_1 < 10$  or  $p_1 > 20$  is not optimal.)

Obviously the first contract is superior, and this gives S more than her reservation utility  $\bar{u}$ . As promised (3.13) is not binding.

Now let’s compare the optimal continuing contract with a short-term contract. Under a short-term contract

$$U_S^{ST} = p_1 - c_1 + r_S = \bar{u}$$

and so  $p_1 = 10$ . Hence

$$U_B^{ST} = 10 + (1 - \theta)9 = 19 - 9\theta$$

$$> 18 = U_B^{CI}$$

if  $\theta < \frac{1}{9}$ .

In other words, if  $\theta < \frac{1}{9}$ , a short-term contract is superior to a continuing contract: the reason is that the shading cost is less than the cost of offering S an efficiency wage.

Of course, in this example, with no uncertainty, a long-term contract achieves the first-best since trade is always efficient. The next example shows that a short-term contract can be uniquely optimal for the idiosyncratic case.

### Example 3.2 (Case I)

$v_1 = 20, c_1 = 10$ . There are three states of the world in period 2. In s1 (prob  $\rho/2$ )  $v_2 = 20, c_2 = 10, r_S = 3$ ; in s2 (prob  $\rho/2$ )  $v_2 = 20, c_2 = 10, r_S = 13$ ; and in s3 (prob  $1 - \rho$ )  $v_2 = 10, c_2 = 20, r_S = 0$ .  $r_B = 0$  in all states.

Trade is efficient only in s1 in period 2.

### Continuing contract

Under a continuing contract, trade never occurs in s2 or s3: the parties walk away. If  $p_1 < 13$ , trade does not occur in s1 either since  $v$  and  $c$  have not changed and outside options cannot be used in bargaining:  $p_2 = p_1$  and S will quit. Hence

$$U_S^{CI} = p_1 - 10 + 8\rho,$$

$$U_B^{CI} = 20 - p_1,$$

which implies

$$U_B^{CI} = 10 + 8\rho - U_S^{CI}.$$

If  $13 \leq p_1 \leq 20$ , trade occurs in s1. Hence

$$U_S^{CI} = p_1 - 10 + (p_1 - 10)\frac{\rho}{2} + \frac{13\rho}{2}$$

$$= p_1 \left(1 + \frac{\rho}{2}\right) - 10 + \frac{3\rho}{2},$$

$$U_B^{CI} = (20 - p_1) \left(1 + \frac{\rho}{2}\right),$$

which implies

$$U_B^{CI} = 10 + \frac{23\rho}{2} - U_S^{CI}.$$

The relationship between  $U_B^{CI}$  and  $U_S^{CI}$  is illustrated in Figure 2. Note that the discontinuity arises from the fact that B would never choose  $13 - \frac{7\rho}{2} < p_1 < 13$  as increasing  $p_1$  to 13 would result in trade in s1 and a higher expected payoff for B.

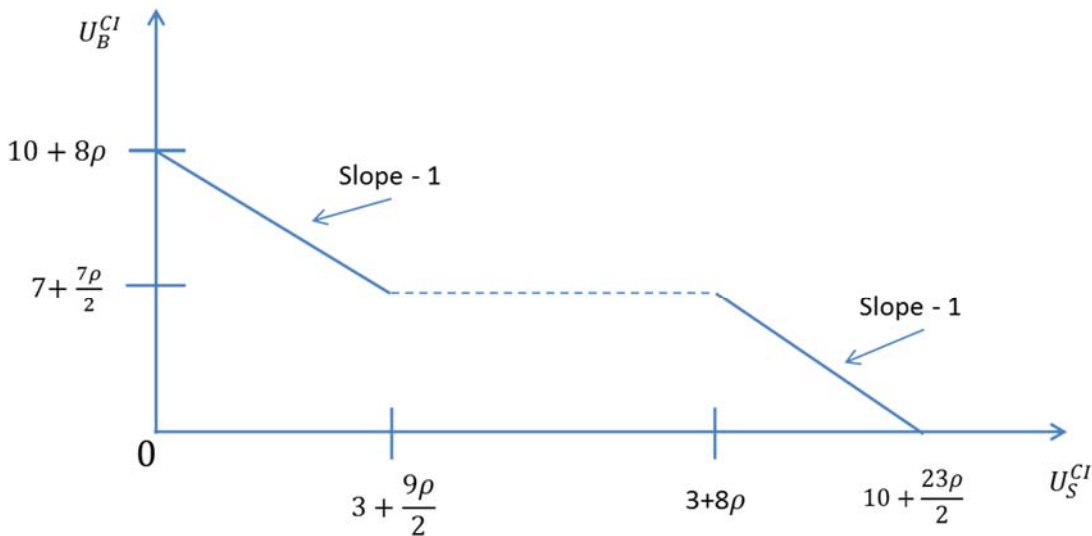


Figure 2

From Figure 2 it follows that an optimal continuing contract satisfies:

$$U_B^{CI} = 10 + 8\rho - \bar{u}, \quad U_S^{CI} = \bar{u} \quad \text{if } 0 < \bar{u} < 3 + \frac{9\rho}{2},$$

$$U_B^{CI} = 7 + \frac{7\rho}{2}, \quad U_S^{CI} = 3 + 8\rho \quad \text{if } 3 + \frac{9\rho}{2} \leq \bar{u} \leq 3 + 8\rho,$$

$$U_B^{CI} = 10 + \frac{23\rho}{2} - \bar{u}, \quad U_S^{CI} = \bar{u} \quad \text{if } 3 + 8\rho < \bar{u} \leq 10 + \frac{23\rho}{2}.$$

For low values of  $\bar{u}$  pushing S down to her reservation utility implies such a low  $p_1$  that there will be an inefficient quit in s1. For intermediate values of  $\bar{u}$  B is better off raising  $p_1$  to 13 so

that trade will take place in s1; this results in S getting more than her reservation utility. Finally, to satisfy S's participation constraint for high values of  $\bar{u}$   $p_1$  must be high enough so that trade will take place in s1. In this region a continuing contract achieves the first-best.

### Long-term contract

A long-term contract requires renegotiation in s2 and s3. It is easily seen that

$$U_B^{LT} = 10 + \frac{23\rho}{2} + \frac{17\rho\theta}{2} - 10\theta - \bar{u},$$

$$U_S^{LT} = \bar{u}.$$

### Short-term contract

A short-term contract requires renegotiation in s1. It is easily seen that

$$U_B^{ST} = 10 + \frac{23\rho}{2} - \frac{7\rho\theta}{2} - \bar{u},$$

$$U_S^{ST} = \bar{u}$$

It follows from the above that the (unique) optimal contract is:

- (i) Short-term if and only if  $\rho < 5/6$  and  $\bar{u} < 3 + 8\rho - \frac{7}{2}\rho\theta$
- (ii) Long-term if and only if  $\rho > 5/6$  and  $\bar{u} < 3 + 8\rho - \left(10 - \frac{17}{2}\rho\right)\theta$
- (iii) Continuing if and only if  $\min\left\{3 + 8\rho - \left(10 - \frac{17}{2}\rho\right)\theta, 3 + 8\rho - \frac{7}{2}\rho\theta\right\} \leq \bar{u} \leq 10 + \frac{23}{2}\rho$



We know that for low values of  $\bar{u}$  a continuing contract results in an inefficient quit. This is more costly for B than shading under either a short-term or a long-term contract. For high values of  $\bar{u}$  a continuing contract achieves the first-best. For intermediate values of  $\bar{u}$  there is a tradeoff. S receives an efficiency wage under a continuing contract while a short-term or a long-term contract results in shading. Therefore, for the lower values of  $\bar{u}$  (in the intermediate range) the benefit of getting S down to her reservation utility outweighs the expected shading costs of a short-term or a long-term contract.

Based on Example 3.2, we can state the following proposition.

Proposition 4

In case I, the optimal contract can depend on  $\bar{u}$ .

The intuition here is that while the comparison between a long-term contract and a short-term contract is independent of  $\bar{u}$  (in both cases  $\bar{u}$  is subtracted off the buyer's payoff), the value of a continuing contract can depend on  $\bar{u}$  in a more complicated way since for some levels of  $\bar{u}$  the buyer will offer the seller an efficiency wage. As a result a continuing contract may be suboptimal for one level of  $\bar{u}$  but then as  $\bar{u}$  rises the buyer's payoff under a continuing contract stays the same while it falls under a long-term or short-term contract. Hence a continuing contract can become favored for high values of  $\bar{u}$ . This is what happens in Example 3.2 above, where only the seller has an outside option. On the other hand, if the buyer has an outside option,

an increase in  $\bar{u}$  can make a continuing contract *less* desirable since as  $p_1$  rises, the buyer will quit more often.

The next two propositions provide some general conditions under which the contracts can be ranked. They parallel Proposition 2 and as there it is useful to write

$$(3.18) F = \pi F_1 + (1 - \pi)F_2,$$

where  $F_1$  is the distribution of  $(v_2, c_2, r_B, r_S)$  conditional on  $v_2 - c_2 > r_B + r_S$ ,  $F_2$  is the distribution of  $(v_2, c_2, r_B, r_S)$  conditional on  $v_2 - c_2 \leq r_B + r_S$ , and  $\pi = Prob(v_2 - c_2 > r_B + r_S)$ .

Proposition 5 (for case M)

- (i) Fix  $F_1$  and  $F_2$ . For  $\pi$  close to zero, a short-term or continuing contract is superior to a long-term contract, whereas for  $\pi$  close to 1 the reverse is the case.
- (ii) Fix  $0 < \pi < 1$ . Suppose  $Prob(|v_2 - c_2 - (v_1 - c_1)| \leq \varepsilon | v_2 - c_2 > r_B + r_S) = 1$  for some  $\varepsilon > 0$ . Then for  $\varepsilon$  small enough a continuing contract is optimal.

Proof

Part (i) is proved in the same way as in Proposition 2. To prove (ii), note that a continuing contract achieves the first-best if  $\varepsilon = 0$ . The reason is that either  $v_2 - c_2 \leq r_B + r_S$  and the parties walk away or  $v_2 - c_2 > r_B + r_S$  and there is nothing to argue about in period 2: B and S agree that the division of surplus should stay the same subject to individual rationality and outside option constraints being satisfied. Also  $p_1$  can be adjusted so that S receives  $\bar{u}$  and B

obtains all the surplus. Thus the first-best is achieved. Since a short-term or long-term contract does not achieve the first-best a continuing contract is optimal. By continuity the same is true if  $\varepsilon > 0$  is small. Q.E.D.

Proposition 6 (for case I)

- (i) Fix  $F_1$  and  $F_2$ . For  $\pi$  close to zero, a short-term or continuing contract is superior to a long-term contract, whereas for  $\pi$  close to 1 the reverse is the case.
- (ii) Fix  $0 < \pi < 1$ . Suppose  $Prob(|v_2 - c_2 - (v_1 - c_1)| \leq \varepsilon, r_B \leq \varepsilon, r_S \leq \varepsilon | v_2 - c_2 > r_B + r_S) = 1$  for some  $\varepsilon > 0$ . Assume also  $\bar{u} \geq Er_S$ . Then for  $\varepsilon$  small enough a continuing contract is optimal.
- (iii) Suppose there exist  $r_1, r_2$  such that  $(v_1, c_1, r_1, r_S) \in \text{support } F_1$  for some  $r_S$  and  $(v_1, c_1, r_B, r_2) \in \text{support } F_1$  for some  $r_B$ , where  $r_1 + r_2 > v_1 - c_1$ . Then for  $\theta$  small enough a long-term or short-term contract is superior to a continuing contract.

Proof

Part (i) is proved in the same way as in Proposition 2. To prove (ii), note that a continuing contract achieves the first-best if  $\varepsilon = 0$ . The reason is that either  $v_2 - c_2 \leq r_B + r_S$  and the parties walk away or  $v_2 - c_2 > r_B + r_S$  and there is nothing to argue about in period 2, and since  $r_B = r_S = 0$  trade occurs. Also  $p_1$  can be adjusted so that S receives  $\bar{u}$  and B obtains all the surplus. Thus the first-best is achieved. Finally,  $p_1 \geq c_1$  since  $\bar{u} \geq Er_S$ . Since a short-term or long-term contract does not achieve the first-best a continuing contract is optimal.

By continuity the same is true if  $\varepsilon > 0$  is small given that  $p_1$  can be adjusted slightly to ensure that trade continues to take place in the presence of small outside options.

To prove (iii), note that if  $\theta$  is small a long-term or short-term contract approximates the first-best. In contrast a continuing contract does not since good faith bargaining leads to a second period price equal to  $p_1$  if  $v_2 = v_1$ ,  $c_2 = c_1$ , and hence trade cannot occur in both  $(v_1, c_1, r_1, r_S)$  and  $(v_1, c_1, r_B, r_2)$ : there will be inefficiency in a continuing contract. Q.E.D.

Proposition 5(ii) and 6(ii), like Proposition 4(ii), can be interpreted as saying that a continuing contract works well if it is known in advance that either business will remain as usual or a big change will occur that will make it efficient for the relationship to break up.

#### IV. RENEWABLE AND EXCLUSIVE CONTRACTS

We have studied a particular class of contracts. But there are other possibilities. We consider two in this section: renewable and exclusive contracts<sup>28</sup>.

##### *IV.A. Renewable Contracts*

A renewable contract is a contract that specifies a first period price and a second period price, but allows either party to walk away in the second period. Another way to think of a

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<sup>28</sup> We could consider other types of contracts, e.g., long-term contracts that allow one of both parties to exit (or “breach”) but only if they pay damages; or contracts that give one or both parties an option to exercise trade in the second period. Doing so would not vitiate the relevance of the trade-offs discussed here. Note also that a renewable contract, discussed next, can be thought of as a long-term contract where either party can breach by paying zero damages.

renewable contract is that, concerning the second period, it is an “agreement to agree”. As mentioned in the introduction such contracts are observed in practice<sup>29</sup>.

A renewable contract can then be represented by a first period price  $p_1$  and a second period price  $p_2$ .<sup>30</sup>

Trade occurs in the second period if

$$(4.1) \quad v_2 - p_2 \geq r_B,$$

$$(4.2) \quad p_2 - c_2 \geq r_S.$$

If one of (4.1) – (4.2) fails to hold, but  $v_2 - c_2 > r_B + r_S$  the parties renegotiate. In this case B offers S a price  $p = c_2 + r_S$ , S feels entitled to  $v_2 - r_B$ , and S shades by  $\theta(v_2 - c_2 - r_B - r_S)$ . An optimal renewable contract solves:

$$(4.3) \quad \begin{aligned} & \text{Max } v_1 - p_1 + \int_{v_2 - p_2 \geq r_B, p_2 - c_2 \geq r_S} (v_2 - p_2) dF \\ & + \int_{v_2 - c_2 > r_B + r_S, v_2 - p_2 < r_B \text{ or } p_2 - c_2 < r_S} [v_2 - c_2 - r_S - \theta(v_2 - c_2 - r_B - r_S)] dF \\ & + \int_{v_2 - c_2 < r_B + r_S} r_B dF \end{aligned}$$

S.T.

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<sup>29</sup> If the second period price equals the first period price a renewable contract can also be interpreted as an evergreen contract.

<sup>30</sup> We could consider a price range, with B choosing from this range ex post, instead of a single second period price (as in Hart and Moore (2008)). This would not change the analysis significantly.

$$(4.4) \quad p_1 - c_1 + \int_{v_2 - p_2 \geq r_B, p_2 - c_2 \geq r_S} (p_2 - c_2) dF + \int_{v_2 - c_2 > r_B + r_S, v_2 - p_2 < r_B \text{ or } p_2 - c_2 < r_S} r_S dF + \int_{v_2 - c_2 < r_B + r_S} r_S dF \geq \bar{u}.$$

Since (4.3) is decreasing in  $p_1$ , (4.4) will be binding at the optimum. Thus we can write

$$(4.5) \quad U_B^R = \text{Max}_{p_2} \left[ v_1 - c_1 + \int (r_B + r_S) dF + \int_{v_2 - p_2 \geq r_B, p_2 - c_2 \geq r_S} (v_2 - c_2 - r_B - r_S) dF + \int_{v_2 - c_2 > r_B + r_S, v_2 - p_2 < r_B \text{ or } p_2 - c_2 < r_S} [(1 - \theta)(v_2 - c_2 - r_B - r_S)] dF - \bar{u} \right],$$

$$U_S^R = \bar{u}$$

Compared with a continuing contract, a renewable contract has advantages and disadvantages. The advantage is that the second period price is nailed down and so, if (4.1) – (4.2) are satisfied, trade will occur and there is nothing to argue about. In contrast, under a continuing contract, there will be argument and aggrievement if  $v_2 - c_2 \neq v_1 - c_1$  and, in case I, trade may not occur at all. The disadvantage of a renewable contract is that, if (4.1) or (4.2) is not satisfied, the parties will bargain over the whole gains from trade ( $v_2 - c_2 - r_B - r_S$ ) in renegotiation and there will be substantial shading. In contrast under a continuing contract the use of the first period contract as a reference point may allow the parties to adjust to the new situation relatively easily.

Since our focus in this paper has been on continuing contracts we present two examples showing that a continuing contract can be superior to a renewable contract. We do not mean to suggest, however, that the ranking cannot be reversed<sup>31</sup>.

#### Example 4.1

$$(v_1, c_1) = (20,10), (v_2, c_2) = (20,10), (35,25) \text{ or } (10,20), r_B = r_S = 0, \bar{u} = 0.$$

The first-best can be achieved with a continuing contract where  $p_1 = 10$ . In period 2 the surplus is the same as in period 1 if it is positive. Therefore the parties agree that S's payoff should be zero as in period 1. This yields  $p_2 = 10$  if  $(v_2, c_2) = (20,10)$  and  $p_2 = 25$  if  $(v_2, c_2) = (35,25)$ . There is no shading.

In contrast, a renewable contract does not achieve the first-best since there is no  $p_2 \in [10,20] \cap [25,35]$ .

#### Example 4.2

$$(v_1, c_1) = (20,10), (v_2, c_2) = (20,10) \text{ or } (10,20), (r_B, r_S) = (7,0), (0,7) \text{ or } (4,4). (v_2, c_2) \text{ and } (r_B, r_S) \text{ are independent. } \bar{u} = Er_S.$$

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<sup>31</sup> In our formulation a renewable contract is always at least as good as a short-term contract. This is because the parties can always renegotiate if (4.1) or (4.2) fails to hold, as if the renewable contract never existed. This may be too optimistic. In some cases renegotiation of a renewable contract may be seen as opportunistic and the parties may simply walk away. A short-term contract can then be better than a renewable contract. A renewable contract may also have advantages and disadvantages relative to a continuing contract not captured in the text. In some cases, courts may make it hard for the parties to escape from or change the terms of a renewable contract (particularly if the parties have specified good faith bargaining; see footnote 3 and the references therein). This may reduce the scope for opportunistic behavior on the one hand, but also lead to inefficient outcomes on the other.

Assume that outside options *can* be used in bargaining (case M). Then a continuing contract with  $p_1 = 10$  achieves the first-best. Suppose  $(v_2, c_2) = (20, 10)$ . Then since  $(v_2, c_2) = (v_1, c_1)$ , both parties think that  $p_2 = 10$  is a reasonable price. However, both recognize that outside options must be matched to ensure trade. This yields  $p_2 = 10$  if  $(r_B, r_S) = (7, 0)$ ,  $p_2 = 17$  if  $(r_B, r_S) = (0, 7)$ , and  $p_2 = 14$  if  $(r_B, r_S) = (4, 4)$ . There is no aggrievement or shading.

In contrast, a renewable contract does not achieve the first-best. The reason is that there is no  $p_2$  such that (4.1) – (4.2) are satisfied for  $(v_2, c_2, r_B, r_S) = (20, 10, 7, 0)$ ,  $(v_2, c_2, r_B, r_S) = (20, 10, 0, 7)$  since that would require

$$(4.6) \quad 20 - p_2 \geq 7,$$

$$(4.7) \quad p_2 - 10 \geq 7,$$

which is impossible.

Note also that, more generally, Propositions 5 and 6 provide general conditions under which a continuing contract will achieve (approximately) the first-best and can therefore be expected to be superior to a renewable contract.

#### *IV.B. Exclusive Contracts*

A feature of a continuing contract is that the parties are free to walk away. We now consider the possibility that the parties constrain themselves not to do that. In particular, B and S agree that, while they will not necessarily trade with each other, they will not trade with



anyone else: neither can quit because of an outside option. (Of course, such a contract can always be renegotiated.) In addition the contract is continuing in the sense that, if the parties bargain with each other, this bargaining will be in good faith. We call a contract of this type an “exclusive contract”. We will see that an exclusive contract may have some advantages over a continuing contract (case I).

Suppose first that B and S learn at date 1 that  $v_2 - c_2 \geq r_B + r_S$ . Then the exclusive contract will not be renegotiated since trade is efficient. The outside options are irrelevant since neither party can walk away. Hence the analysis is as in Section 2. B will offer S

$$(4.8) \hat{p} = \text{Min} \left( v_2, \text{Max} \left( \underline{p}, c_2 \right) \right),$$

and S will shade by  $\theta(\tilde{p} - \hat{p})$ , where

$$(4.9) \tilde{p} = \text{Min} \left( v_2, \text{Max} \left( \bar{p}, c_2 \right) \right).$$

The parties’ period 2 payoffs are

$$(4.10) U_B^2 = v_2 - \hat{p} - \theta(\tilde{p} - \hat{p}),$$

$$(4.11) U_S^2 = \hat{p} - c_2.$$

Suppose next that  $v_2 - c_2 < r_B + r_S$ . Then renegotiation will occur. There are two subcases. If  $v_2 \leq c_2$ , in the absence of renegotiation the parties would not trade and so each would get a payoff of zero. In this subcase B will offer S  $-(r_S)$ , S will feel entitled to  $r_B$ , and S will shade by  $\theta(r_B + r_S)$ . The period 2 payoffs are

$$(4.12) U_B^2 = r_B + r_S - \theta(r_B + r_S),$$

$$(4.13) U_S^2 = 0.$$

The second subcase is where  $v_2 > c_2$ . Then in the absence of renegotiation B and S would bargain in good faith and agree to trade. The analysis of good faith bargaining is the same as in Section 2. B will offer  $\hat{p}$ , and S will feel entitled to  $\tilde{p}$ . S's payoff =  $\hat{p} - c_2$ . Consider now the renegotiation to allow the parties to trade elsewhere. B will offer S  $-r_S + \hat{p} - c_2$ , and S will feel entitled to  $r_B - v_2 + \tilde{p}$ . S's total shading =  $\theta(r_B + r_S - v_2 + c_2 + \tilde{p} - \hat{p})$ . Thus period 2 payoffs will be given by

$$(4.14) U_B^2 = r_B + r_S - \hat{p} + c_2 - \theta(r_B + r_S - v_2 + c_2 + \tilde{p} - \hat{p}),$$

$$(4.15) U_S^2 = \hat{p} - c_2.$$

It follows that an optimal exclusive contract solves:

$$(4.16) \text{Max } (v_1 - p_1) + \int_{v_2 - c_2 \geq r_B + r_S} (v_2 - \hat{p} - \theta(\tilde{p} - \hat{p})) dF + \int_{v_2 - c_2 < r_B + r_S, v_2 \leq c_2} [r_B + r_S - \theta(r_B + r_S)] dF + \int_{v_2 - c_2 < r_B + r_S, v_2 > c_2} [r_B + r_S - \hat{p} + c_2 - \theta(r_B + r_S - v_2 + c_2 + \tilde{p} - \hat{p})] dF$$

S.T.

$$(4.17) (p_1 - c_1) + \int_{v_2 - c_2 \geq r_B + r_S} (\hat{p} - c_2) dF + \int_{v_2 - c_2 < r_B + r_S, v_2 > c_2} (\hat{p} - c_2) dF \geq \bar{u}.$$

Under an exclusive contract the inefficiency that arose with a continuing contract (case I) does not occur. In particular, trade takes place whenever  $v_2 - c_2 > r_B + r_S$ , since neither party can quit without renegotiation.

It is easily seen that B's payoff in (4.16) is decreasing in  $p_1$ : a reduction in  $p_1$  reduces  $(1 - \theta)\hat{p} + \tilde{p}$ . Hence (4.17) will be binding at an optimum. (Recall that this is also true for

long-term and short-term contracts but was not true for continuing contracts in the presence of outside options.) We can therefore write B's payoff as

$$\begin{aligned}
 (4.18) \quad U_B^E &= v_1 - c_1 + \int_{v_2 - c_2 \geq r_B + r_S} (v_2 - c_2 - \theta(\tilde{p} - \hat{p})) dF \\
 &+ \int_{v_2 - c_2 < r_B + r_S, v_2 \leq c_2} [r_B + r_S - \theta(r_B + r_S)] dF \\
 &+ \int_{v_2 - c_2 < r_B + r_S, v_2 > c_2} [r_B + r_S - \theta(r_B + r_S - v_2 + c_2 + \tilde{p} - \\
 &\hat{p})] dF - \bar{u},
 \end{aligned}$$

while

$$(4.19) \quad U_S^E = \bar{u}.$$

As we have noted exclusive contracts can be more efficient than continuing contracts (case I) since trade will always occur when  $v_2 - c_2 > r_B + r_S$ . At the same time, similar to long-term contracts, exclusive contracts involve renegotiation costs if  $v_2 - c_2 < r_B + r_S$ . There is no simple ranking between long-term, short-term, continuing (case I), and exclusive contracts, but the following proposition identifies a situation where an exclusive contract is optimal<sup>32</sup>.

### Proposition 7

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<sup>32</sup> It is easy to show that a continuing contract (case M) always dominates an exclusive contract.

Suppose that for some  $\varepsilon > 0$ , (i)  $v_2 - c_2 \geq r_B + r_S \Rightarrow |v_2 - c_2 - (v_1 - c_1)| \leq \varepsilon$ , (ii)  $v_2 - c_2 < r_B + r_S \Rightarrow v_2 < c_2$  and  $r_B < \varepsilon, r_S < \varepsilon$ . Then, if  $\varepsilon$  is small, an exclusive contract approximates the first-best.

### Proof

(i) guarantees that, whenever trade is efficient, there is little to argue about given that the period 1 contract is a reference point. (ii) guarantees that, whenever trade is inefficient, there is also little to argue about given that  $r_B + r_S$  is small. Q.E.D.

Two points should be noted. First, if there is a significant probability that  $v_2 - c_2 < r_B + r_S$  and that  $v_2 - c_2 > r_B + r_S$ , then neither a long-term contract nor a short-term contract will approximate the first-best since both will involve renegotiation costs. Also a continuing contract (case I) will not approximate the first-best if  $r_B$  or  $r_S$  can be high when  $v_2 - c_2 \geq r_B + r_S$ , since it will be impossible to find a  $p_1$  such that neither party ever quits. Hence under the conditions of Proposition 4 an exclusive contract will typically be optimal among the contracts we have considered.

Note also that condition (ii) is less restrictive than it may appear. It says that when trade is inefficient between B and S neither party can do well elsewhere. But this may be the case if a high cost  $c_2$  for S also means that S's cost of supplying elsewhere is high; and if a low value  $v_2$  for B also means that B's value from buying elsewhere is low.

## V. CONCLUSIONS

In this paper we have studied the trade-off between long-term, short-term, and continuing contracts in a setting where gains from trade are known to be present in the short-term, and may or may not be present in the long-term. We have shown that a continuing contract, which uses the first period contract as a reference point, can sometimes be a useful compromise between a long-term contract and a short-term contract. A continuing contract will perform particularly well if either “business will remain roughly as usual” over time or a big change will occur that will make it efficient for the relationship to break up. This may describe quite well the situation of many rental or employment relationships mentioned in the introduction and help to explain why continuing contracts are often seen in these settings. Continuing contracts are not a panacea, however, since good faith bargaining may preclude the use of outside options in the bargaining process and as a result parties will sometimes fail to trade when this is efficient.

We have also shown that a continuing contract that leaves the terms of trade in subsequent periods open can be superior to a renewable contract that specifies these terms. We can interpret this result as saying that the parties may prefer to write a contract that is deliberately incomplete; that is, it says nothing rather than something about the future.

Our paper is based on the idea that, in a continuing contract, parties will apply the notions of fair dealing and good faith and this will constrain the changes in prices that can occur. We should acknowledge that this assumption is more plausible in some settings than others. For example, the idea that a landlord may be reluctant to raise the rent greatly because this would be a violation of good faith may be reasonable in the case where the landlord and tenant are individuals who have a personal relationship, such as in the vacation house example mentioned in the introduction, but less reasonable when the landlord is a large, anonymous company and the tenant is a business. On the other hand, there are some situations, such as employment, where,

even though one side of the transaction, the employer, is represented by a large company, aggrievement and shading in response to wage cuts, say, are a first order concern-- and our model seems relevant (see Bewley (1999)). As another example of the importance of context, we noted in the introduction that in some employment settings it is the norm for employers to match employees' outside offers, whereas in others it is not. Thus whether case M (outside options can be used in bargaining) or case I (they cannot) is more appropriate will depend on the circumstances. Identifying situations where the model applies, and whether case M or I is relevant, is a very important direction for future research.

The difference between cases M and I yields an empirical implication. We have seen that continuing contracts are more efficient when outside options are market-based (case M) than when they are idiosyncratic (case I). This suggests that one might expect to see continuing contracts used more frequently in the former situation. There is a countervailing force, however. When outside options are market-based they are more likely to be verifiable. This might permit the use of indexed contracts, and favor long-term contracts over continuing ones<sup>33</sup>.

Our theory provides a novel view of the trade-off between short-term and long-term contracts. A standard view is that long-term, possibly indexed, contracts are efficient when parties make relationship-specific investments that affect their own payoffs – self-investments – but inefficient when parties make investments that affect the other parties' payoffs – cross-investments (see, e.g., MacLeod and Malcomson (1993)). The reason is that in the first case (e.g., an electricity company locating next to a coal-mine, as studied in Joskow (1988)) the parties want to avoid renegotiation since this leads to hold up and discourages investment in cost reduction; whereas in

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<sup>33</sup> For a preliminary analysis of indexation, see Halonen-Akatwijuka and Hart (2013).

the second case (e.g., a cafeteria investing in providing high quality food) they want to encourage renegotiation since this encourages investment in quality. In contrast, we would argue that indexed long-term contracts are efficient to the extent that the index accurately tracks whether future trade is desirable; this way renegotiation costs (aggrivement and shading) are avoided. But indexed long-term contracts may be inefficient to the extent that there is no verifiable index that accurately tracks whether future trade is desirable; in this case long-term contracts may lead to costly renegotiation and relying on continuing contracts and good faith bargaining may be superior. We should emphasize that we see our explanation as complementary to, rather than a replacement for, the existing investment or moral hazard theory.

There are several developments of the model that seem fruitful. First, our model is based on the idea that the market at date 0 is more competitive than at date 1: indeed at date 0 it is perfectly competitive, whereas at date 1 parties' outside options are exogenous and may yield each party strictly less than if they trade together. In other words there is a "fundamental transformation" in the sense of Williamson (1985). However, we have not modeled this transformation explicitly. It would be interesting to do this, perhaps by introducing relationship-specific investments.

Related to this, if there are many buyers and sellers at date 0, then the contracts they sign with each other will affect who is available as a trading partner at date 1. Under these conditions outside options at date 1 will no longer be exogenous, but will be determined as part of a general equilibrium. Analyzing this general equilibrium would seem valuable although challenging.

In our analysis of continuing contracts we have distinguished between the cases where outside options can or cannot be used in the bargaining process. We argued that which case applies may depend on norms and practices in the industry or country concerned. However, it may also

depend on agents' actions. For example, if a worker receives an outside offer out of the blue, his or her employer may treat this differently from the case where the worker searched for this offer: the employer may be more willing to match in the first case than the second. Another way to enrich the model would be to recognize that many outside opportunities are not obtained costlessly but are the result of a search process.

Our analysis has several other obvious limitations. First, we have ignored risk-aversion and wealth constraints. Both of these may be important in determining the nature and length of contracts. Second, by considering a finite horizon model we have ignored reputational concerns. But in practice these are obviously important in determining how parties negotiate or renegotiate contracts, how they react to not getting what they feel entitled to (whether they shade or not), whether they are willing to match outside options, etc.

Finally, we have assumed that the parties have a clear choice between writing a short-term or a continuing contract. But in practice even a short-term contract may create obligations between the parties that require them to treat each other fairly in the event that they trade again. In other words a short-term contract may merge into a continuing contract. To understand what contracts are feasible requires a theory of how obligations are determined, including whether parties can manipulate or design notions like good faith or instead must take them as given<sup>34</sup>. This is a challenging research agenda that seems an important complement to what we have done here.

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<sup>34</sup> If the parties were able to design fairness or good faith without constraints they could choose them to mean that the parties must split the ex post surplus 50:50. In our context of symmetric information and no noncontractible specific investments a long-term, short-term, and continuing contract would then all achieve the first-best. While splitting the surplus is a familiar idea when value and cost are verifiable, it is not something that we see in other contexts such as ours. This is perhaps because our model is a crude attempt to capture a more complex situation where the parties do not observe value, cost, and outside options exactly and there is some flexibility about how they interpret these variables; this opens the door to conflict.



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