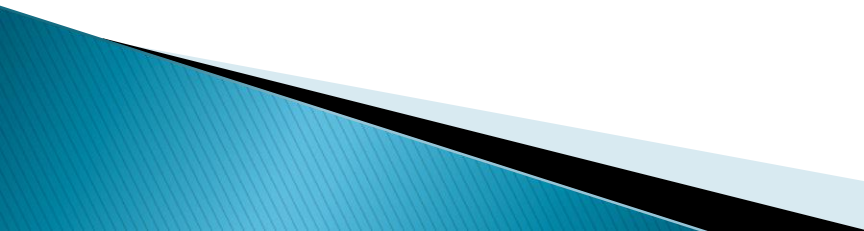


Regulation of the Market

A question of Democracy

Market, Democracy

- ▶ Joined institutions in the new “constitutionalism” in the world: the doctrine of human rights and representative governments
 - ▶ The difference : two different models of social choice : elections, transactions
 - ▶ The intersection : a (sub)set of rights (freedom of choice, right to ownership)
 - ▶ What is exactly the meaning of the democracy/the market?
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1.1. The critique of “institutional democracy”

- ▶ Classical model : democracy is a set of legal of *elected governments* limited by the *legal rights of the citizens* (human rights); a market is .
- ▶ Beyond, in both cases, the “transcendental” definition of ideal institutional rules (as in Rawls’ philosophy).
- ▶ Realization of institutional models matters. Necessity of a “comparative approach” of democratic institutions.

1.2. Democracy : Sen's critiques

1st critique : elections are not enough. We need “public reasoning”. Deliberative democracy must be added to representative democracy.

But public reasoning is not only an issue of formal freedom of expression.

It is a question of *capabilities for voice*, first.

We might complement this idea of capability for voice with an idea of public forums. Distinction between deliberation and negotiation.

- ▶ Human right is an aspect of freedom
 - General and important enough to become a collective moral principle
 - Dependent on socialisation processes and social interconnections.
- ▶ Human rights are not “parents” of legal rules (Hart) neither “children” of legal rules (Bentham). Sen’s refusal of a legal “foundation discourse”. HR are not “waiting for” legalization (even if they often furnish the inspiration for new legislation).

Human rights are values according to Sen, not only legal norms. He refuses the **legalistic** reduction of HR, leading to the idea that social and economic rights are not rights as the other ones. As goals instead of means, human rights can be evaluated via diverse scales and measures. *Intrinsic* value is as important as *consequences* of human rights.

1.3. The incompleteness of Sen's critique of the classical notion of democracy

“Tradition of democracy as non violent cooperative self-government” (James Tully). In this tradition, the democratic challenge is not only to discuss publicly and scrutinize the government decisions;

–it is mainly a question of “acting together for the sake of public goods”. Gandhi's democratic practice (ethics and politics); Ostrom's demonstration in political science.

– Associations as cooperative experiments of sharing information and self-monitored productive units.

2. The critique of the market

- ▶ The market is “ a basic arrangement through which people can interact with each other and undertake mutually advantageous activities” (*Development as Freedom*, p. 142).
- ▶ Classical representation: free competitive individuals exchange monetarized goods (commodities).
- ▶ According to Sen, the market is an institution which is not good or bad in itself. Relativism in his evaluation of the market.

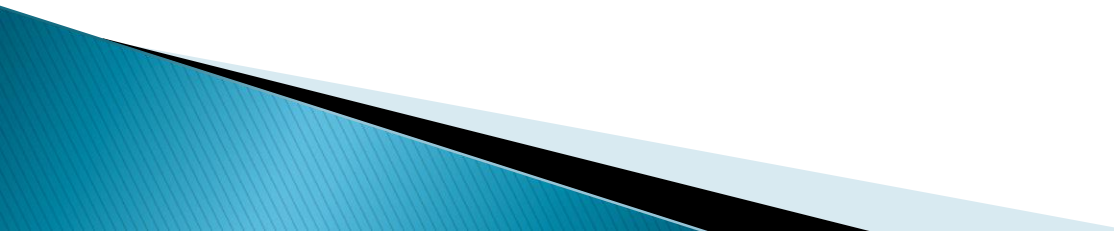
2.1. Limits of the justice of the market

- ▶ In opposition to such an utilitarian frame, Sen defends a Capability Approach of the market. According to him, the market can develop positive freedom.
- ▶ Utilitarianism means that the well-being of a person can be measured as quantities of pain and pleasure, or happiness. The results of the market are often taken as arguments. Nevertheless, what is more important is the market **as a realization of freedom**. This is a deontological evaluation, not an utilitarian one.

Examples :

- the labor market. The wage relationship is a freedom when it compared with slavery.
- The art market : emancipation from academic definition of art and beauty.

Institutional conditions of the market

- ▶ The market is an institution – depends on other institutions, not a self-realizing mechanism
 - ▶ Condition 1 : communication of relevant information, for free choices, no asymmetry of powers
 - ▶ Condition 2 : Strong background authorities in order to implement the contracts
 - ▶ Condition 3 : Insurance mechanisms.
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2.2. Limits of efficiency of the market : the public goods

Standard assumption on the efficiency of the market mechanism : “every commodity – and more generally everything of which our welfare depends– can be bought and sold on the market. .. In fact however some of the most important contributors to human capability may be hard to sell exclusively to one person at a time. This is especially so when we consider the so-called public goods, which people consume *together* rather than separately” (*Development as Freedom*, p. 128).

Examples:

- Public health : a “malaria-free surrounding” is not something I can buy privately.
 - the police
 - the environmental protection : the commodification of natural resources is a danger for the environment.

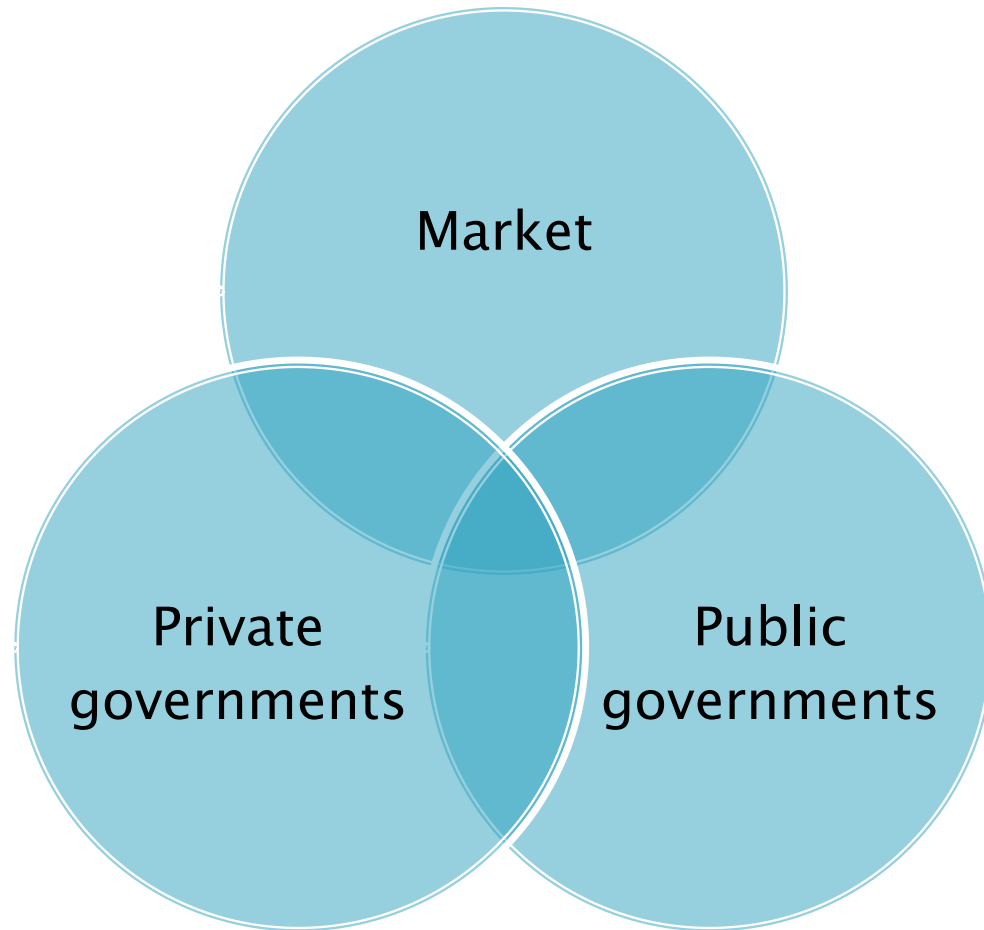
2.3. The limits of the market not taken into account by Sen

1. Private ownership as a source of private governments.

Right to ownership are not only attributes of individuals, as Sen emphasizes, but of legal “moral persons” (Corporations).

A legal moral person is an immortal rights–bearer who can accumulate. Complex and indirect connections with a legal individual subject.

This accumulation creates normative powers (firms, multinational firms): the market of competitive individuals is not an image of the system of economic systemic powers.

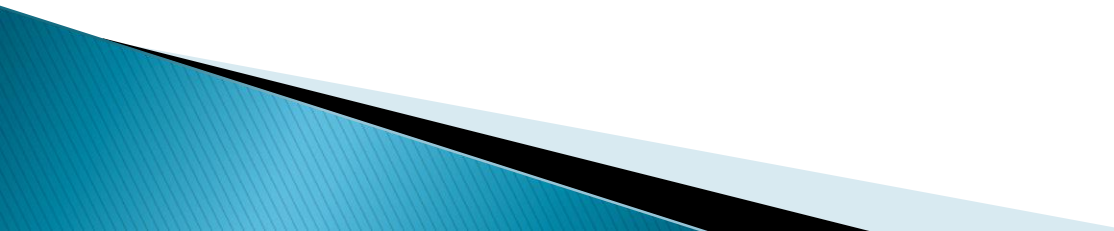


Market

Private
governments

Public
governments

The democratization of the economy

- ▶ Constitutional limits to private governments: stakeholders powers.
 - ▶ Constitutional citizenship inside the firm
 - ▶ Organization of the labor market : collective bargaining instead of individual bargaining.
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2. Public goods or public aspects of any private goods?

Example : education is a “semi-public good”.
The value of literacy depends on the collective use of literacy.

Fuzziness of the limit.



3. In some cases, the management of public goods/public aspects of goods can be given to the State. A third way is the management of “Commons”.

Examples : fields for the cattle, fisheries, irrigation systems.

Institutional principles different from market/State: limitation of common goods; rules of reciprocity; dispute settlement system available; self-monitoring government; distribution of functions of regulation.

Conclusions

- ▶ The market is an important component of democracy
 - ▶ The State can be a provider of public goods / public aspects of private goods
 - ▶ The Commons (associative economy) can be the third way.
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