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Chapman, John W.

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INTRODUCTION

J. ROLAND PENNOCK AND JOHN W. CHAPMAN

John Gray’s chapter, which leads off part 1, is at once a defense of a certain version of contractarian theory and an argument that his theory supports reliance on a market capitalist economy as opposed to market socialism, which many today find morally and politically attractive. These two components of his essay are so intricately intertwined that it is difficult to treat them separately, and our remarks will do so only in part.

Gray welcomes the development of John Rawls’s thought in a contextualist direction, which seeks to avoid entanglement with metaphysical issues. At the same time he thinks Rawls goes too far in adopting a radically pluralistic position on values, à la Sir Isaiah Berlin. (In view of the fact that Gray later denies the priority of liberty, it is not clear how he himself avoids the charge of value-pluralism.) Gray also accuses Rawls of failing to rid his theory entirely of metaphysics, because his reliance on a conception of the person, which depends in part on a theory of human nature, verges on the metaphysical.

Up to this point, Andrzej Rapaczynski, our legal commentator, largely agrees with Gray, but he wonders whether Gray appreciates how much he has undermined the generalizations achievable by the contractarian method. Although Gray argues that his version of contracting does yield some determinate propositions—for example, the impossibility of efficient central allocation of capital is presumably known to the contractors, and they act accordingly—both Rapaczynski and Joshua Cohen,
our philosophical critic, take sharp issue with this conclusion. They hold that Gray’s acceptance of Hayek’s rebuttal of the Lange-Lerner conception of market socialism moves on too abstract a level to touch the real world. Hence he overlooks both the extent of market failures under capitalism and the possibility that state-socialist bankers, subject to bureaucratic and political oversight and influence, may be as efficient as fallible private bankers. Perhaps Gray would reply that it is unrealistic to underestimate the vulnerability of socialist bankers to both political and economic opportunism.

As for justice, Gray contends that his Hobbesian contractarianism, with its minimal equality and neutrality as to values, embodies essential liberal values that socialism denies. Socialism is unneutral in that it rules out any wage-labor system. And it is unjust because it forbids individuals the right to use their productive resources as they prefer, thus effectively running counter to the equality mandate. Gray’s opponents, for their part, launch a two-pronged counterattack: (1) they say that neutrality is not essential to liberalism, calling attention to the prohibition of slavery by both capitalists and socialists; and (2) they assert that capitalist economies operate in unneutral fashion, not only by the ban on slavery, but also through the prohibition of practices such as the sale of votes. They argue further that it is proper, indeed just, for societies to take sides in favor of certain values over others, as they do when they subsidize uneconomic aspects of a culture, such as Navajo rug-making. Moreover, Cohen emphasizes that private property systems are biased against autonomy and community in favor of productive efficiency. More obviously, the notorious neglect of third-party interests and the public interest by unchecked market operations under capitalism calls for state intervention for the sake of valued states of affairs.

Both of Gray’s critics, but Cohen in particular, protest his apparent lack of concern for substantive, rather than merely formal, neutrality and equality—the weakness in the marketplace of the underprivileged, not to mention failure to take into account the values of power, self-respect, and others that cannot be monetized. Presumably Gray would respond that both Cohen and Rapaczynski fail to appreciate the strength of a Hobbesian understanding of ourselves and our situation. One feels the presence of divergent conceptions of human nature.
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As a final mark of Gray's abstractness and shortage of empirical reference, both Rapaczynski and Cohen note, either overtly or by implication, that he thinks market socialism would tend, in practice, to mutate inexorably into either capitalism or a command economy. Rapaczynski points to Sweden as a stable mixed economy. And societies do change direction, as under Ronald Reagan and Margaret Thatcher. Still, Gray could fall back on his citation to Janos Kornai's analysis of the natural bent of bureaucratic socialism in Hungary.

Jan Narveson has chosen to devote his essay to comments on both John Gray and Margaret Jane Radin. That essay itself we include in part 3. It seems appropriate, however, to examine its contents, as they relate to Gray, at this point.

While agreeing with Gray in part, Narveson questions his conclusion that a Hobbesian contract would be so egalitarian as to guarantee to each person an initial capital endowment (and therefore a productive system that would admit of and require it). Universal agreement on this point at the contract stage of negotiation seems highly implausible. (Narveson accepts David Gauthier's version of contractarianism, rather than Gray's.) Further, according to Narveson, it is not correct that Hobbes's account contains nothing that might guarantee the absolute priority of liberty. He says, "It is difficult to see how [Gray] can say both that the enforcement of any particular system or, among mutually agreeing persons, distribution, would be unjust if it were also true that liberty has no special claim on our attention."

Moreover, Narveson affirms that Gray is mistaken in trying to build liberalism on the basis of an ideal of the person. For no such ideal could command universal assent. What has to be agreed to originally and can be universally is simply recognition of one's ownership of one's natural endowment, mutual respect, and contractual obligations. As Narveson put it, "The market is not a separate 'institution' in the free society. It simply is the free society."

Less radical forms of individualism than John Gray's inform the thinking of our authors in part 2, Gerald F. Gaus and Jonathan Riley. One senses that ultimately at stake is what to do about human inequality. The radical individualist's answer is "nothing." Let it work itself out, and that is what markets based on private property do. You can reach this prescription by way of Gray's Hobbesian contract. (But notice that Hobbes was not
prepared to rely on private charity.) Or by way of Robert Nozick’s natural rights. John Rawls, of course, offers a more “Christian” interpretation of justice in which the more able are obliged to help the less able. Gaus presents an outlook on economic justice that stands as a compromise somewhere between the “pagan” and the Christian attitudes.

According to Gaus, arrangements in the just society must serve the interests and values of all, whatever these may be. These arrangements must also respect our common morality, about the existence of which John Gray has doubts, as we have seen. Gaus says we experience ourselves as self-directing agents, and so we affirm an equal right to natural liberty. This affirmation may well be at the heart of classical liberalism. And we believe that people ought to get what they deserve. Gaus thinks that taken together these basic moral sentiments are sufficient to support a market economy based on private property, that is, capitalism. But these arrangements benefit the able far more than the less able among us. It is as though the market unduly magnifies the pay-off for scarce abilities of all kinds. (Recall that John McEnroe once pronounced the earnings of the top tennis players “obscene.”) And so rightly we must compromise. Nobody gets all he wants, neither the gifted nor the least advantaged; all must gain. Therefore Gaus’s contractual justification of capitalism incorporates a principle of fair compromise that dictates some redistribution in favor of the less able. How much? Apparently less than would be called for by Rawls’s “maximin” principle of justice. Probably less than goes on in Sweden. In line with the “new” liberalism, Gaus seems to have in mind some kind of “basic minimum” conception of social justice as integral to capitalism.

Inspired by John Stuart Mill, Jonathan Riley is also concerned about the inequalities generated by capitalism as we know it. As an alternative he outlines a cooperative capitalist ideal based on strict application of the principle of desert. People deserve what they can earn in a long run competitive equilibrium and also whatever wealth they can accumulate on the basis of their earnings. Holdings above and beyond that are morally suspect. Property rights in land and natural resources cannot be grounded on desert. Still, it may be expedient for society to recognize these rights as important incentives. Gifts and inheritances may
also be allowed as a matter of general expedience. Capitalist desert-based justice is to be qualified by a principle of need. The outcome of Riley's eclecticism, as he portrays it, is a kind of classless, egalitarian form of capitalism, somewhat akin to J. E. Meade's vision of a "property-owning democracy."

Neither Gaus nor Riley have much to say about the role of luck in the game of life. But Riley does assume that when people have equal access to education and job training the differences between them are pretty much a matter of voluntary choice. And so by way of conclusion he raises the possibility of a radical and acceptable redistribution of personal wealth in a generation or two. His ideal capitalism is clearly more egalitarian than the society Gaus has in mind, and vastly more egalitarian than John Gray's Hobbesians would be willing to accept. It may well be more egalitarian than ordinary people think justice requires.

Part 3 deals with questions as to what life in a market society does to people. The fear is that it will encourage people to treat themselves and others as commodities, to acquire what Eric Fromm once referred to as a "marketing orientation" to life. In her chapter "Justice and the Market Domain," Margaret Jane Radin seeks to allay this fear, which she shares, by way of what she calls "incomplete commodification."

Radin opens by attacking the liberal theory of a "wall" protecting certain restricted areas, such as the ban on the sale of votes, not on the ground that these matters should not be protected, but rather because this setting aside of domains for absolute protection implies that all else should be subject to the rule of laissez-faire. This she refers to as "universal commodification." This is straight Hobbism, the idea that everything, including persons, has its price.

The problem with this sharp delineation, she says, is that it raises barriers that do not exist, between sales and gifts, for instance. A transaction may be both at one and the same time. We should recognize and indeed foster the nonmarket aspects of commercial transactions. Consider housing. A house is much more than a house; it is a home. My home is part of my self. When, because of my poverty, I am threatened with its loss, state interference with standard property rights is justified. What the limits to intervention should be she does not attempt to prescribe. Indeed, when poverty is to blame it may be that
maldistribution of wealth is at the root of the matter. She sees no immediate solution, but the implication is that many ameliorating regulations are warranted despite running counter to orthodox property rights. This approach to living, which she recommends, is an instance of what she calls "incomplete commodification." Incidentally, she challenges Michael Walzer's notion of "spheres of justice" on the ground that it, like the metaphor of the wall, leaves too much room for complete commodification.

Radin finds no "slippery slope" or "domino effect" entailed by incomplete commodification, which might lead to gradual erosion of all or most property rights. But she does think that the domino possibility justifies absolute prohibition of serious intrusions on personal dignity, such as the sale of bodily parts. True, she says, cases may arise where the indignity involved is less than the need. Here again society is faced with a problem that demands an overall solution by means of redistribution.

Finally, she holds that protection of life, health, self-development, and also community development should not be "completely monetized," and that "regulation that does not [theoretically] meet an efficiency test is in principle justified." Moreover, "it is at least wrong to commodify everything in rhetoric."

Hence for Radin the best defense against commodification is not to build walls. Rather, it is to recognize and sustain the personal aspect present in market transactions. Our humanistic attitudes point the way to greater social justice in the shape of distributive justice and respect for personhood and community. To foster these attitudes already and always present in our dealings is the way to save us from the moral disaster of commodification.

Eric Mack is much less fearful of rampant commodification. Indeed, his fear is that misplaced worry about commodification may lead to unwarranted restrictions on the scope of the market. He points out that so long as we distinguish between the intrinsic and the instrumental dimensions of our lives, as we naturally do, coming to treat each other as things is an unlikely prospect. Moreover, according to Mack, life in a market society liberates. It frees us from oppressive and intrusive relations precisely by depersonalizing and monetarizing aspects of our lives that should be so defined.
In his comments on Radin’s essay, Mack deals principally with her attitude toward domino effects. The possibility of universal commodification is so clearly false, he argues, that one need not at all be concerned with it. He goes on to point out that not all “external” or instrumental motivations are bad, and not all “internal” ones, where something is sought for its own sake, are good, as for example, malice or lust for power. Market relations enable us to keep one another at arm’s length where called for and so promote greater freedom and individuality—all to the good.

Robert E. Lane reviews the literature and the evidence that bear on the question of markets and character. Distinguished observers differ in their assessments, but Lane thinks it reasonable to doubt the charges levelled against market societies. Nor does the evidence from socialist, primitive, and peasant societies lend support to the market’s critics; nor does it wholly refute them. Perhaps this is not surprising in view of the fact that all human choices are “priced,” that is, have opportunity costs. Lane reminds us to keep an eye on systemic effects: economic efficiency, justice, personality development, and quality of life are all interconnected.

As to the theory that commodification of human relations, allegedly entailed by the market, destroys community, Lane finds that it simply does not fit the facts. He cites numerous studies in support of this assertion. One survey, for example, discovered that “a prosperous life” is ranked thirteenth out of eighteen “terminal values.” And in this market society it has been found that number of friends is a better predictor of life satisfaction than is size of income. Other lines of inquiry yield similar results. More generally, Lane’s analysis lends support to Margaret Radin’s belief in the presence and value of incompletely commodified human relations.

Furthermore, according to Lane, many choices are just as selfish and degrading as market choices. Moreover, a “wall” between the market and other parts of society could never produce the desired result because of the interdependence and interaction that characterize our relations and values. Nevertheless, certain social subsystems can be given protection against other subsystems, as Michael Walzer’s “spheres” might do, and as prohibitions of child labor in fact do. Radin’s fostering of
humanistic attitudes combined with selective “walling” should take the sting out of domino effects and universal commodification.

Jan Narveson reenters the conversation. He holds that Radin’s conception of “commodity” is too broad. It should be confined to things that are normally for sale. This, of course, would rule out sale of oneself into slavery. To have a market, Narveson seems to say, implies that not everything is for sale. The “market value” of something I own is seldom what it is “worth” to me—otherwise I would sell it. It may be, he says, that parents ought not to sell a child even if they know they are poor parents and that they could sell the child to people who would be good for the child. But that is not necessarily a reason for not permitting the sale. If the child knew his parents would like to sell him, he would probably run away! But one must also consider the effect on the community. Narveson’s conclusion is that a market defender need not object to stopping the sale of children any more than he need object to prohibition of the sale of automatic rifles.

As to “incomplete commodification,” noting that for Radin it seems to apply to cases of great inequality, which she identifies with injustice, Narveson questions this identification. He doubts that regulations foster either personhood or community. On the other hand, Radin’s humanistic valuation of having persons relate to each other is fostered by the market. “One suspects,” he concludes, “that in Radin’s proposal, we will find community often taking precedence over personhood.”

In part 4 Cass R. Sunstein and Bernard Saffran take us to the legal and economic frontiers respectively of thinking about markets and justice. Sunstein’s “basic goal is to set out a range of reasons for disrupting voluntary transactions, even if such transactions deserve prima facie respect.” This he accomplishes in a lawyerlike manner that is both subtle and detailed while cautioning that much work remains to be done. Saffran provides a survey of the latest developments in economic theory and research, the upshot of which casts serious doubts on the possibility of achieving substantive or end-state conceptions of justice. Moreover, he finds that “A just economy may require a substantial reduction in output and efficiency.” This is a conclusion that many will feel disturbing.

Sunstein presents a catalogue of considerations that justify
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intervention in markets, either real or potential. Some considerations have to do with justice, others with autonomy realistically conceived, and still others with welfare. And he mentions cases in which considerations overlap. His catalogue goes as follows: (1) collective action problems and externalities, for example, pollution; (2) preferences about preferences that are well grounded and widely shared; (3) adaptive preferences that are clearly harmful and can be altered for the good; (4) intrapersonal collective action problems that have to do with addiction, myopia, and the like; (5) absence of information, the possession of which would change behavior; and (6) protection of goods that should be inalienable. On the basis of his analysis, Sunstein concludes that “in a wide range of cases voluntary transactions should be disrupted. The market outcome is distinct from the outcome justice requires.” Still, he reminds us that sometimes disruption may only make things worse. “The case for intervention . . . is only presumptive.”

Bernard Saffran, our economist contributor, relates an essentially cautionary tale. Realistic thinking about economic justice must be informed by what Frank Knight used to refer to as “human nature as we know it.” It seems appropriate, therefore, as Saffran brings to our attention, that recent work in economic theory has been preoccupied with analysis of incentive and informational effects. Strategic behavior is taken to be “a primary force in economic behavior.” As Oliver Williamson, whose thinking displays a blend of Burke and Machiavelli, would say, people tend to be “opportunists.” They are guilefully self-interested. They disguise, obfuscate, lie, withhold relevant information. These incentives may well defeat efforts to design “just” schemes of taxation. More generally, Saffran draws an important lesson: “Since our moral theories lead to implications so contrary to any likely behavior, they clearly omit important considerations and we should be sceptical about their cogency.”

Important new empirical findings bear on questions of economic justice and productivity, and yet motivations remain somewhat murky. Evidently taxation and transfers do not adversely affect the supply of labor. Recently, when after-tax rates of return to savings increased, rates of saving decreased. According to Saffran, “This increasing scepticism about the strong effects of changing incentives on labor supply and savings be-
behavior should encourage those who believe in the possibility of a more just distribution of income without greatly decreasing the potential for growth.” Still, large intergenerational transfers of wealth are taking place. People want to do well by their children. Perhaps it would be unwise to go too far in limiting inheritance for the sake of greater equality of opportunity. Our world is riddled with trade-offs.

Saffran remarks that, “Historically, a major source of the demand for economic justice was not so much inequality as the fact that people were living in extreme poverty.” It may be a risky generalization, but our impression is that economists generally tend to be more concerned about poverty than about equality, unlike some egalitarian theorists of justice. Saffran himself would seem to be a case in point. Typically the economist’s perspective on justice appears to be both utilitarian and procedural, to maximize by way of structuring incentives, while providing a basic minimum for all. That brings us back to the classic liberal way of thinking about markets and justice, with the proviso that much remains to be done before we fully understand ourselves.