I understand Gray to be making three points:

1. That political theory in general (and the contractarian method, in particular) is to be understood as a practical inquiry, embedded in the context of particular historical situations and independent of the finding of solutions to the eternal problems of philosophy;

2. That an efficient market economy necessarily entails the institution of private property and is incompatible with socialism;

3. That a market economy (and hence private property) is necessary for a just society—where by “just” is meant derived with the help of the contractarian method—even though such things as the primacy of liberty are not among the prerequisites of a just society.

I have no quarrel with Gray’s first claim, concerning the contextual nature of political philosophy. If anything I could make the point more stark and bring out more distinctly its consequences for the method of contractarianism. Thus, while I think Gray is on the right track when he says that a contextualization of the contractarian method makes the results that the method
yields much less determinate, I am not sure whether he realizes how far-reaching a limitation on the utility of contractarianism this entails. Quite obviously, contextualization means that contractarianism, like any other method of political philosophy, does not produce a priori, historical results, valid for all societies and all circumstances. Gray also argues that even when the method is contextualized to the conditions of “constitutional democracies,” it still underdetermines the answers to most important political questions (although he believes it suffices to decide in favor of a free-market economy), so that only an actual, rather than hypothetical, political discussion can result in a set of particular norms that give a concrete shape to a political community. But then what does the method allow us to accomplish?

It is, of course, an important element of the strategy of moral and political argument to be able to say that one’s opponent’s views are tainted with self-interest and that justice does not admit of such a taint. It is also a very appealing view that the boundary between coercion and legitimacy involves some notion of consent. Both of these intuitions are deeply embedded in the idea of contractarianism and both are entailed by the Rawlsian “original position.” But the broader the scope of the particularistic interest from which we must abstract in considering the issues of justice and the stricter the notion of consent that is seen as entailed by our concept of legitimacy, the less likely it is that anything of interest will follow. This seems true not only with respect to the possibility of discovering any “eternal” truths of political theory, but also with respect to any context-embedded conversations as well. From a certain point on, on the one hand, there is simply not enough to go on and, on the other hand, the conversation is more and more unlikely as a real event. An increase in the level of abstraction very quickly leads not only to a multiplicity of possible solutions, but also to a situation in which the choice of the rules governing the acceptability of any given outcome is itself underdetermined. As consent becomes more and more hypothetical, what one is supposed to consent to becomes either more suspect or more inane.

Not only is the type of rational consensus concerning the basic ideas of justice envisaged by the contractarian method unlikely, but it is also arguably unnecessary. What the contractarian idiom suggests (and this is true not only of Rawls, but also of
Gray's admittedly in part nonliberal contractarian project) is that neutrality with respect to different lifestyles or conceptions of the good is a morally based requirement of political theory. But the idea of neutrality so conceived (as an inherent value, regardless of the actually existing diversity of the conceptions of the good) is quite controversial and probably unnecessary to underwrite the very liberal political theory with which it is usually associated. Liberalism, it seems to me, is not dogmatically committed to neutrality for its own sake, but rather rests on the (quite commonsensical) idea that, in structuring political institutions, we must not base them on those principles about which there is significant controversy, capable of undermining the stability of the social and political regime. Where there is no controversy, on the other hand, there is also no need for further neutrality. (The consensus that defines the absence of controversy is also to be understood as a practical matter—as not enough dissent to create trouble—rather than as that to which every rational agent must agree under any circumstances.) Thus, many matters of justice that are of great moment to us (such as the rules that prohibit a government from invidiously discriminating on the basis of race, extracting confessions by torture, punishing people for being sick, or allowing some citizens to starve) will (in our society, but not in some others) be resolved to most people's satisfaction long before the suspension of our particularistic interests reaches the level of the Rawlsian (or even Gray's) "veil of ignorance." On the other hand, many other issues (such as whether reverse discrimination is appropriate or whether abortion should or should not be allowed) will probably not be resolved for us even if we try to abstract from our particular situation in life (while they may be relatively uncontroversial in other societies). The kernel of truth in the contractarian intuition seems to be that social consensus is a crucial element of legitimacy and that an agreement to disagree is more valuable than a forced orthodoxy. But what the somewhat dogmatic contractarian idea is inherently prone not to appreciate is that the level at which the norms of justice are properly recognized and validated is most likely to differ from one issue to another, and that it is a fundamental element of the art of not only political but also moral discourse to know the appropriate level at which a particular debate is to be conducted.

Against this background (which only extends further Gray's
own departures from Rawls), I am somewhat puzzled by Gray’s claim that private ownership of the means of production and market economy are seen by him as dictated by the most abstract principles of justice, to be arrived at behind the veil of ignorance. Depending on context, the idea of market economy may appear quite uncontroversial or be subject of hopelessly heated debates. But it strikes me as bizarre that one would think the contractarian metaphor useful in deciding about its merits or demerits. As a matter of fact, the great appeal of the idea of the market has always been as an alternative to the contractarian approach: the results of a market are supposed to come about spontaneously and to require no conventional agreement. It is because market transactions are thought to be consensual that markets are (rightly or wrongly) said to be not only efficient, but also just. To pile up a hypothetical consent designed to legitimize the market in a contractarian fashion on top of the actual consent involved in the market situation is unnecessary for those who believe in the justice of markets and useless for those who don’t.

Not surprisingly, therefore, even though I am otherwise quite committed to the idea of a free market, I find Gray’s “contractarian” arguments in favor of market economy unconvincing. I will come back to this in a moment. In the meantime, however, I want to address Gray’s second point, namely, that markets cannot function in socialist systems. If he means that markets will never function well in what are today called “socialist” states of the Eastern bloc, i.e., in countries in which the ruling elites maintain themselves in power through an elaborate spoils system in which positions of economic power are distributed as rewards for political obedience and support, then I of course agree with Gray, but his claim is uninteresting. If, on the other hand, he means to include every socialist regime within his argument then I think we should inquire a bit deeper into what is meant by “socialism” here.

What Rawls meant by saying that socialist regimes may avail themselves of market mechanisms was that a market system of pricing does not determine a system of wealth distribution a society must adopt. In this sense, Rawls could very well have been talking about such countries as Sweden (or more advanced “socialist” countries of this kind) in which, as we know, markets
function quite well, but in which personal incomes are severely circumscribed by a system of redistribution through taxation and provision of social services. To be sure, some system of economic incentives must be preserved in such regimes (and in fact nominally private ownership of most enterprises is also maintained), but it does not have to be anything like the distribution of income that would be produced by a free market.

This is clearly not what Gray means by "socialism." But what he does mean is a bit hard to discover. A (the?) distinguishing feature of socialism for him seems to be the absence of the wage system. In some sense (in which Marx, for example, understood it), the abolition of the wage system is tautologically incompatible with a full sovereignty of market mechanisms; not just because the market is viewed as leading to an unjust distribution of wealth, but also because the very idea of market pricing is viewed as unacceptable. Even a system of market pricing of the kind advocated by Lange\(^1\) is a system in which planners attempt to adjust production to social demand understood as an aggregate of individual preferences—this much seems to be essential to every market system. As long as this is the case, it does not very much matter who makes the actual decision whether to produce widgets or whatchamacallits, since production is supposed to track social demand and the right decision will be the same, whoever makes it. In this context, abolition of the wage system (and the corresponding creation of a system of workers’ control) may very well mean that productive choices (and the underlying judgments of social desirability) are not to be left to haphazardly formed individual preferences, but rather are themselves to become collective decisions. If this is so, in turn, that is, if the opposition between socialism and capitalism is based on their opposing views of the relation between individuals and the collectivity, then markets and socialism are clearly incompatible.

Sometimes Gray seems to rely on this kind of conception of socialism, since he often appears to assume that every socialist economy must involve an element of central ideological planning. Insofar as he makes such an assumption, Gray is again making an essentially trivial point: planning and free market cannot at once govern the same aspects of economic production. But at other times, Gray seems to be operating with yet another
conception of socialism. Unlike the (Marxist) view just presented, Gray assumes the individualist position as his starting point, and seems to view the abolition of the wage system as merely a change in factory ownership, so that factories become worker-owned partnerships. I don’t want to be taken for a proponent of such a system—it doesn’t seem to me better than other systems of property, since I don’t see why the fact of employment is any more a just source of ownership than the fact of management, investment of life savings, inheritance, and scores of other factors. I also agree with Gray that it leads to a lot of inefficiencies and generational injustices. But I still fail to perceive why a system of this kind cannot have an efficiently functioning market for capital. For some reason, Gray seems to believe that capital is different from other goods, so that the same solution as in the case of factories (ownership by the employees of a bank) does not seem to be sufficient for him here: I take it that the ownership of capital must be collective in some broader sense. So let’s assume state ownership indeed. But as Gray himself acknowledges, state ownership of banks is not incompatible with decentralization and running them on a competitive basis. Having granted the point, however, Gray tries to take it back without providing any new arguments, and simply falls back on the idea that a truly free market for banking must somehow “unravel” the rest of the socialist economy. The logic of all this escapes me. After all, banks do not function in anything like an unregulated manner in most capitalist economies, and in some of them they are indeed nationalized. Nor do they function with anything resembling flawless efficiency, as indicated by their disastrous lending practices in developing countries in the 1970s or the need for state bailouts in the 1980s. Undoubtedly, socialist banking systems run on a market model would have their own problems and require periodic intervention as well. The ineptitude of government officials, be they of socialist or capitalist states, is quite well known, so there is no doubt that such intervention is often likely to do as much harm as good. But other than Gray’s own ipse dixit, I see no a priori argument why a socialist state must be at a systematic disadvantage here, as compared with other politico-economic regimes. Be that as it may, Gray’s point that a socialist state could not avail itself of efficiently functioning market mechanisms for
allocating its productive resources is, by itself, of secondary importance. More basic is his contractarian argument for the justice, as opposed to mere efficiency, of markets. I said already that the argument strikes me as fatuous. For those who believe that market transactions are essentially consensual, so that in the absence of externalities, they always lead to states that are Pareto-superior to the states that precede them, the contractarian argument seems quite unnecessary. Clearly, if we have actual uncoerced consent of all the parties affected, we have no need of any hypothetical one. Those, on the other hand, who are not persuaded that the consent of a market participant is always (or most often) free (even given some reasonably “just” initial distribution of resources) or that we can ever conceive of a market which entails no serious external effects on nonparticipants (especially if the worsening of one’s relative position in society is deemed to be relevant) will be utterly unpersuaded by any contractarian embellishment of the old argument from consent. After all, the contractarian consent is merely parasitic on the actual one here, for if you believe that a worker’s consent to a wage relation is merely Pickwickian and does not change the fact of his brutal exploitation, you will never believe that it would be rational for most people to agree to the institution of a market system without knowing that they would not end up among the exploited.

Gray’s own argument involves exactly this fallacy of petitio principii. First, his contractarian method assumes a conception of human person that seems to be at least as controversial as the idea of the free market that it is supposed to support. To be sure, Gray’s exposition of his theory of human personality is so schematic and undeveloped that it is hard to see what it really entails. But judging from his reference to Hobbes and Spinoza, Gray seems to view man as an essentially self-sufficient entity, not “radically situated” but rather autonomous and independent in forming his own individual life plan, a calculating maximizer for whom social interaction is a matter of choice rather than necessity. I doubt very much that the idea of political individualism needs a grounding in such a strange construct as the Hobbesian natural man (even if for Gray he is no longer “natural” but rather a projection of our own historically contingent selves), but if it does then woe to political individualism,
since the idea seems so far removed from any reality recognized by anthropologists, psychologists, or even philosophers that it is likely to be much more controversial than any other idea (including that of the free market) that is to be derived from it.

Second, Gray is even more puzzling when he says that the social contract among individuals endowed with those characteristics of autonomy with which Gray's theory endows them would not contain the idea of liberty but would involve an establishment of a free market. The explanation seems to be that liberty, for the man Gray contemplates, would be just one value among others, and the contracting parties would not want to preclude the possibility that they might want to trade it for such things as increased security, peace, or greater prosperity. Now, maybe I am missing something, but I fail to see why the same argument would not hold with equal force about the free market: in some situations, most rationally maximizing people might come to the conclusion that a centrally regulated economy would lead to so much more power, security, prosperity, liberty, or whatever else they happen to value that they would gladly trade for them their preference for an unrestricted choice among a number of ways in which they could conduct their “productive enterprises.” If anything, such a trade-off seems to be more, and not less, likely than the trade-off of one's basic protections against political tyranny for material prosperity. (That I disagree here with Gray also goes to show, once again, how controversial is his conception of the person upon which the whole edifice of his contractarianism so precariously rests.)

Third, Gray's argument about the neutrality of the free market with respect to various ideals of productive life seems to me grievously flawed. Gray claims that markets are neutral with respect to opposed ideals of productive life because they allow those who prefer individual private ownership to run their enterprises on that basis, whereas those who prefer communes or cooperatives can have those. I take it, however, that the justice of the market derives not only from the freedom of choice possessed by the various owners of “productive enterprises,” but also from that possessed by the people who are employed in them. Thus, if it were to turn out that the workers employed in capitalist enterprises are in fact not really free to choose their occupation and if, in addition, it were to turn out that they are
seriously exploited (in some sense of "exploitation" that would be reasonably uncontroversial), then Gray's hypothesis of the neutrality of the market with respect to various ideals of productive life would be shown to be groundless. Now, it should be clear that this is precisely what many socialists (and other critics of capitalism) have claimed all along, and I do not see any arguments that Gray has to offer against them (other than assuming them out of existence). To be sure, I do not want to sound as if I set great store by the standard Marxist theses, such as that workers are systematically afflicted with false consciousness or that individual preferences under conditions of market competition are effects of exploitative and brutalizing conditions of life under capitalism. It seems to me clear, however, that if you don't believe in any of these theories, you will never need Gray's contractarian argument, and if you do, Gray is mistaken if he thinks his contractarian method will do anything to convince you.

But even without such fundamental disagreements with the very notion of consent underlying Gray's account of market transactions, it is difficult to take seriously his claim that the market is really neutral with respect to different ideals of productive life. To begin with, some forms of "productive life" may simply be less efficient than others, and it is not immediately clear why they should not be subsidized. It might be said, of course, that the consumer of a product should be given a right to buy it at the lowest available price and that it would be wrong to force him to pay more in order to maintain someone else's productive preferences. But this simply amounts to saying that justice does, after all, track the concept of efficiency, rather than requiring a system in which different modes of productive life can genuinely coexist. This idea is not just controversial; it is quite probably false. It seems to me more than likely that persons in the original position would believe that the cultural diversity connected with various traditional ways of life is sufficiently valuable to require them to subsidize, say, the inefficient fishing methods of the Alaskan Eskimos, the weaving methods of the Navajo Indians, etc., none of which could be done without abandoning a dogmatic commitment to the free market. In fact, in accordance with my previous remarks, it seems to me that most people in America today are prepared to agree to
these propositions even without leaving their present personae in favor of the vapid contractors in the "original position."

I will not, however, insist on a subsidy for inefficient modes of production, but will look instead at the alleged neutrality of the market from a somewhat different angle. Many modern proponents of the free market (Gray among them) seem to believe that market failures are a rather marginal phenomenon. I suppose, however, that most people opposed to capitalism (especially those who claim that exploitation of some social groups or classes is a foundation of the capitalist system) would be in one way or another committed to the argument that the free market ultimately fails to produce a level of aggregate welfare comparable to some other systems and that this failure dooms it on efficiency grounds as much as it makes it otherwise unacceptable. The reasons for that failure are often not stated in economic terms, but translated into the language of economics, they amount to the inability of the market to provide important public goods and the ability of the capitalists to impose external costs on the rest of society.

The latter kind of argument is most likely to be made by the most economically minded opponents of the market. Marxist socialists, who might say that the capitalist economy involves a creation of a significant "army" of the unemployed and that the capitalist who benefits most from the operation of the market can in this way "externalize" some of the costs of his operation (both by being able to pay his workers less than the full value produced by their labor and by making the rest of society share in bearing the burden of providing for the destitute and the unemployed). This makes the goods produced by a capitalist enterprise less expensive than the goods produced by a socialist one, which would be committed to ensuring that the workers enjoy the full fruits of their labor. Thus, even on the assumption that all the workers would rather work for socialist enterprises (and thus are not victims of false consciousness), the viability of the socialist enterprises would still require that the consumers of goods produced by them be prepared to pay for the fact that these goods are produced with the help of nonexploitative means. But even if we assume this as well, it would still make no sense for an individual consumer to pay more for goods produced by socialist enterprises, unless there were some
means of coordinating the actions of all the similarly minded consumers as a group and of overcoming the free-rider problem that will otherwise pose insuperable obstacles for their collective aims. A comparison with the problem of child labor comes to mind here, since goods produced by exploited workers may be as much cheaper as goods produced by underpaid children. Not only is constant reliance on people’s moral virtue (which in no society is in overabundant supply) required in order to limit the demand for goods produced by exploited labor, but also no individual’s sacrifice (in the form of the higher price paid for “clean” products) significantly contributes to the overall goal of the elimination of the evil in question, and thus all have an incentive not to adhere to their ideological preferences, even if they would otherwise be willing to pay the higher price for having the evil eliminated. Thus, in the same way as child labor could only be abolished by legislation operating uniformly over the whole relevant market, the elimination of capitalist exploitation may require a similar collective decision.

That some special enclaves of ideological consumers, such as the Amish, have been able to persist in their withdrawal from the market despite all these disadvantages does not change very much here, for the price paid by these consumers (in terms of their life standard as well as submission to a system of communal controls necessary to counteract the otherwise irresistible incentive to free-ride) may simply be too high for an average person. Consider, in fact, someone committed to the Amish way of life. This person would most likely say that the environment in which an average American lives is spiritually impoverishing and that only by integrating his productive activities into an all-embracing, religiously inspired, communal way of life can man’s dignity be restored. Translated into the language of economics, the objection of the Amish can be reformulated as follows: The operation of the capitalist economy requires the availability of a mobile labor force that, in turn, destroys the bonds of tradition. These bonds are of great value to an individual, but they are a quintessential “public good” and their preservation is possible only if very high coordination costs are borne by the community and a large number of people are made to resist the impersonal operation of the market. As it happens, the Amish, perhaps because of the low value they put on material prosperity, are
willing to pay the price of creating a separate autarchic society that can protect their members from the temptations of the market. But other groups, for whom a radical lowering of the life standards necessary to preserve the social bonds differentiating them from the capitalist world is not as easily acceptable, have no chance of protecting themselves from extinction. ³

Finally, even Gray himself seems not to take very seriously his claim that the market is just because it allows for various forms of productive life to coexist. After all, before coming to his neutrality argument, Gray devotes a whole section of his chapter to the argument that market economy requires private ownership of capital and that any other form of capital allocation must lead to crippling inefficiencies. Since the market is certainly not neutral with respect to efficiency, far from allowing the noncapitalist forms of production to survive, it will mercilessly eliminate them. Gray may (and does) say, of course, that efficiency is not itself a morally relevant characteristic, and thus he may also maintain that the market does not discriminate on moral grounds. But this does not make the moral neutrality of the market any different in principle from that of the revolutionary struggle for survival (in which the good may be good but the strongest never fail to win) or that of the market for money (in which the most debased coins are bound to push out the more honest ones).

All this is not to say that Gray is wrong that markets are just, or at least more just than other systems of distribution. It might also be that the successes of the market economy are now so obvious that its proponents do not really have to defend it. But if they do, they will have to address such issues as the voluntariness of market transactions involving underprivileged members of society, the problem of false consciousness, and, above all, the pervasiveness of market failures in modern economies. Gray’s method of avoidance, on the other hand, is too successful: it misses the issues that are truly decisive.

NOTES

2. That someone like Rawls essentially adopts the point of view of individualism is quite understandable, given that the main target of his attack was utilitarianism. But the very idea that one can successfully argue against socialism by simply assuming the point of view of individualism strikes me as odd.

3. Gray could perhaps reply at this point that if capitalist enterprises indeed involve serious external costs, the state could tax them to cover the value of any such externalities, thus equalizing the chances of capitalist and noncapitalist enterprises. In theory this would be possible, of course. In practice, however, the externalities involved here would be extremely hard to measure, and their very existence is denied by most admirers of the market economy. The differences between those who argue on both sides of the issue go to the very foundations of economic science, such as the basic theory of value for example, and their resolution is precisely what is at stake in the dispute between the proponents and the opponents of market economy. Without implying anything about who is ultimately right, I only want to argue that the resolution of this dispute cannot come through a simple device of the contractarian methodology.