Markets and Justice

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I. Introduction: The Metaphor of the Wall

It has been traditional to view some aspects of social life as inappropriate for the market. We speak of a metaphorical wall between the market and other realms of social life, much as we speak of a wall between church and state. There is a traditional understanding that important political activities, like voting, are on the nonmarket side of the wall. There is also an understanding that certain special kinds of interactions between persons are on the nonmarket side of the wall—that is, are morally required to be kept there—even if some people desire to "marketize" them. It is this latter understanding that I wish to explore and question here. Does justice require that we delineate and protect a nonmarket domain? In general, how might a theory of social justice take into account the question of the domain of the market?

A traditional liberal view is that the market appropriately encompasses most desired transactions between people, with a few special exceptions. Those few exceptions—for example, the way we acquire a spouse or a child—are morally and legally protected from the market. I want to suggest that the traditional view is wrong in granting too much ground to the market. The metaphor of a wall between a market and nonmarket realm is inapposite because it wrongly suggests a large realm of pure free-market transactions to which special kinds of personal in-
teractions form a special exception. It wrongly suggests that a laissez-faire market regime is prima facie just.

I shall leave aside here one way that the wall metaphor is evidently inapposite. To think of a wall between politics and markets, and also a wall between special kinds of personal interactions and markets, obscures the fact that they are not the same kind of wall. The wall between certain personal interactions and markets is thought to bar sales only, whereas the wall between politics and markets is thought to wall off nonmonetary transactions as well as sales. In political elections we are not to give other people proxies to vote for us, whether they pay us or not; elected officials are not to relinquish their power to another's discretion, whether they are bribed or not. In nonmarket personal transactions, like adoption or organ donation, by contrast, giving is not prohibited. Indeed, fostering giving may be a reason for the market ban. This discrepancy between the kinds of walls at least shows that the wall metaphor is oversimplified. Nevertheless, I do not pursue this, nor do I pursue the problem of how we should think about the supposed wall between politics and the market.¹ Instead, I want to pursue the debate over nonmarket personal interactions. How should we conceive, for example, of attempted sales of human organs?

In order to frame this discussion it is necessary to notice that there is another way to deny the appositeness of the wall metaphor, and that is to say that in principle there is no limit to the market. Someone who holds this view thinks of the market as encompassing the social world. She thinks not only that social justice does not require us to protect a nonmarket domain, but also that social justice requires a universal market structure. This is the approach taken by some of the contemporary theorists who bring economics to bear on political and legal theory. Hence, it is possible to see an imaginary battle being waged. The traditional liberal view, asserting that there must be a realm of personal interactions walled off from the market, is striving to hold some territory against the oncoming forces of economics and the notion that everything is grist for the market mill.

In my view, both sides are wrong, and so is the battle. Instead of trying to defend the small piece of ground representing the list of special nonmarket personal interactions, it would be better to try to reclaim for peaceful co-existence some of the terri-
tory the traditional liberal view concedes to the market. The
traditional liberal view is wrong because it assumes that not
much is on the nonmarket side of the wall, and the battle lines
prevent us from appreciating the nonmarket aspects of many of
our market relations. They prevent us from seeing fragments
of a nonmarket social order embedded or latent in the market
society. They prevent us from thinking about social justice in
terms of fostering this latent co-existent nonmarket order.

II. Universal Commodification vs. the Wall

A. The Market as Methodological Archetype

Let us first consider a sketch of an archetype representing the
economic view, and then consider the reasons given by its op­ponents for walling off a few special things from the market.
Some law-and-economics theorists can be understood to en­
dorse a methodological archetype that is sometimes referred to
as market-imperialism, but which I prefer to call universal com­
modification. Under universal commodification, all things de­sired or valued—from personal attributes to good government
—are goods or commodities. Commodities are usually pictured
as objects separate from the self and social relations. Hence,
universal commodification is a form of objectification. It assimi­lates personal attributes, relations, and desired states of affairs
to the realm of objects. Universal commodification implies that
all things can and should be separable from persons and ex­
changed through the free market, whenever some people are
willing to sell and others are willing to buy. All human attributes
are conceived of as possessions bearing a value characterizable
in money terms, and all human interactions are conceived as
exchanges understandable in terms of gains from trade.

The language in which this conceptual scheme is couched is
the rhetoric of the market. Under universal commodification,
the human universe of social interaction—from government to
love and sexuality—is conceived and described in the rhetoric
of trading objects for money. Hobbes conceived of the value of
a person in market rhetoric: “the Value or WORTH of a man, is
as of all other things, his Price; that is to say, so much as would
be given for the use of his Power.” In Hobbes's conception,
everything about a person that others need, desire, or value is a
possession that is priced. The Hobbesian person fits into the archetype of universal commodification. The Hobbesian conception of the political order likewise conceives of politics in market rhetoric. Modern Hobbesians view political activity as fully describable in terms of "rent seeking" by those who can achieve monetary gain from the capture of portions of Leviathan’s power.\(^4\)

The method of justifying actions and states of affairs under universal commodification is monetary cost-benefit analysis. For whatever we do not normally buy and sell, universal commodification uses monetary cost-benefit analysis either to justify or criticize the anomaly. Thus, in the universal commodification methodology, the only exceptions to the rule of laissez-faire are for situations in which laissez-faire cannot arrive at an efficient result. These are the situations called market failure.\(^5\)

For one who is willing to conceive of everything (corneas for transplant, sexuality, babies for adoption) in market rhetoric, the only explanation for why some things might be held out of the market is market failure: free riders and holdouts, administrative costs, information costs, and so on. Judge Richard Posner, for example, apparently views a ban on selling oneself into slavery as justified by information costs.\(^6\) Finding no apparent market failures that would suggest noncommodification of children, he suggests that a free market in babies would be a good idea.\(^7\)

**B. Three Attempts to Maintain the Wall**

Those who advocate the traditional wall to claim a few things for a domain that is in principle off limits to the market rely on reasons other than market failure. Three prevalent kinds of arguments are deployed in trying to keep something—babies, blood, kidneys—on the nonmarket side of a metaphorical wall. The first is an argument based upon the degradation and invasion of personhood occasioned by allowing sales. The second is an argument based upon creating or preserving opportunities for altruism. The third is a slippery slope argument that I call a domino theory, claiming that to allow sales for some people who choose them will foreclose nonmarket sharing for those who don't choose the market regime. As we shall see, the second and third arguments are related, because the argument based upon
opportunities for altruism assumes the domino theory is true. But the two arguments are not coextensive, for, as we shall see, the domino theory is also applied to cases that do not fit the argument about altruism.

I shall argue that these arguments are too general for the task they have been put to, that is, to show that universal commodification is wrong because there must remain certain specific pockets of nonmarket social interactions. Instead, they seem to point toward a more generalized nonmarket perspective. That is, these arguments have been aimed at shoring up a wall between the market and nonmarket domains, but in fact they undermine the wall metaphor. These arguments fail to capture what is wrong about universal commodification.

**Personhood prophylaxis.** The first strand of argument is often thought of in connection with organ transplants, especially from living people. The argument holds that we must prevent poor people from being forced to sell their kidneys and corneas. The general idea is that it is somehow degrading to be selling off one’s body parts, and that this is an injury to personhood that society should prevent. Thus I characterize the argument as aimed at personhood prophylaxis. In this strand of argument it is also thought that in some sense such sales are the result of coercion and do not represent a voluntary act on the seller’s part.

Of course, it is problematic whether this kind of action that results from poverty should count as coerced. Does poverty “coerce” someone into selling a kidney, or does someone, because she is poor, choose to sell a kidney? A hard choice is not a non-choice. But the main problem with the personhood prophylaxis form of argument is that it seems cruelly smug. Under what circumstances do people need money badly enough to sell a kidney? Perhaps to feed, clothe, and house their children, or to support elderly or handicapped relatives. It may appear to observers that selling a kidney is degrading, but if these are the circumstances, it seems more degrading instead to have to endure the state of affairs that the sale was supposed to ameliorate.\(^8\)

Notwithstanding the problems with the prophylaxis argument as it stands, it seems clearly to harbor a compelling thought. There is something going on that troubles us with respect to the
integrity of the person when we observe someone trying to sell off parts of the body. As I shall argue later, this suggests that we think through more clearly in general how we can structure society to respect persons, not that we try to wall off a few troublesome transactions.

Preserving opportunities for altruism. According to the second strand of argument, something should be held off the market when permitting sales would foreclose, or fail to create, opportunities for altruism that ought to be open. With regard to human blood, for example, Richard Titmuss claimed that altruism is encouraged if society permits only donation, and discouraged if society permits both gifts and sales. In the Titmuss style of argument, altruism is encouraged by donation rather than sale because giving is thought to be communitarian and to emphasize interdependence, whereas market transactions are thought to be individualistic and to emphasize isolation. A donor’s experience in being responsible for saving a stranger’s life is said to bring us closer together, cement our community, in a way that buying and selling cannot. Interdependence is also emphasized by the possibility of reciprocity. A donor’s sense of obligation today could be partially founded on the recognition that she might well need to become a recipient tomorrow. A recipient’s sense of gratitude and acknowledgment of dependence upon others’ altruism rather than upon her own wealth creates solidarity and interdependence.

According to this argument, altruism is foreclosed if both donations and sales are permitted. If sales are not allowed, donations have no market value and remain unmonetized. If sales are allowed, then even gifts have a market equivalent. My giving a pint of blood is like giving $50 of my money. According to this argument, such monetization discourages giving. We are more willing to give health, perhaps life itself, to strangers than we are to give them $50 of our money.

Something like this argument can be made for certain cases of human organ donation, as well. Imagine the case of grief-stricken parents being asked to donate the heart of a brain-dead child to a newborn victim of congenital heart disease in a distant hospital. The act of donating the heart may be one of those distinctively human moments of terrible glory in which one gives up a significant aspect of oneself so that others may live
and flourish. The parents are being asked to give up the symbolic integrity of their child and face immediately the brute fact of death.

But now imagine the experience if the grieving parents know that the market price of hearts is $50,000. There seems to be a sense that the heroic moment now cannot be, neither for them to experience nor for us to observe, in respect and perhaps recognition. If the parents take the money, then the money is the reason for their action; or at best, neither we nor they themselves will ever know that the money was not the reason for the action. But if they don’t take the money, then their act can seem like transferring “their” money to someone else. It can seem so, that is, if the domino theory is true, and once something is monetized for some it is monetized for all.

If the domino theory is true, no matter what choice the parents make, the opportunity for a pure act of caring is foreclosed. I think many people would intuitively object, however, to the domino idea that whatever is monetized for some people is necessarily monetized for themselves as well. As I shall argue later, this objection has a deeper theoretical basis. For the domino theory to hold, we must “naturally” tend to commodify, and this “natural” tendency seems to be merely a debatable ideological postulate.

A domino-style argument can also be made about adoption. People (sometimes) give up children in pain and in hope that they will have a better life elsewhere. There is at least some human glory in being able to do this. Perhaps it disappears if the child bears a market value. If money is paid, it would contaminate the experience of the adoptive parents as well as that of the natural parents, since they will be aware that they valued the child as much as a car, perhaps, but not as much as a house. The adopted child herself, if she finds out what price was paid for her, may always wonder whether a higher asking price would have left her without parents. Even if the natural parent doesn’t accept the money, doesn’t take the price that the market will bear, perhaps knowledge of the price could contaminate the experience, making it seem as though the natural parent is giving the adopting parent $10,000 out of her pocket. In addition, if children have a market value, then even parents who do not put their children up for adoption will know what their
children are worth, and how much money they are losing by not doing so. All children will also know how much they are worth and how much their parents are losing by keeping them. We will all know how much we cost our parents. We will all conceive of ourselves as objects bearing monetary value. But this worry too assumes the domino theory is true, which we have yet to investigate.

Although the example of organ donation involved donation of a child’s heart, it seems that the argument about opportunities for altruism also fits the case of donation of one’s own organs, especially donation to strangers. But it may not fit the case of donation to one’s friends and relatives. That depends upon whether this situation can properly be described as altruism. Perhaps altruism means giving unselfishly in the context of a presupposition of selfishness; altruism is to go against one’s "natural" selfishness. Perhaps, at any rate, altruism means this in the context of liberal individualism. Ties of family and friendship already overcome one’s “natural” selfishness. So, perhaps, actions expressing those ties, although unselfish, would not count as altruistic, since there is no selfishness to overcome in doing them.

If we grant arguendo the assumption that permitting any commodification engenders a domino effect, the main problem with the argument about opportunities for altruism, which I think turns out in the end to be a virtue, is that it is too general to carve out a few exceptional kinds of interactions that must remain unmonetized. Suppose we grant that opportunities for altruism must be kept open, most likely because we think altruism is required for proper human flourishing and community cohesion. Still, how are we supposed to know which, and how many, opportunities must be kept open? Why focus on blood, for example? Many (perhaps even most) kinds of work present opportunities for altruism—social worker, teacher, police officer, etc.

Maybe those who make the argument would cabin it by suggesting that, given our pervasive “natural” selfishness, only things that can be given without special training or on a one-shot basis are practicable avenues for altruism in the market society. It is not quite clear why this should be so, however. Can we not say that people ought to give their services when they can? But the problem is that we cannot argue that any of these services must
remain completely unmonetized. If we must invest our capital in learning skills or developing our talents, then we must expect (in a market society) to be paid for them once they are developed, in order to supply ourselves with those things we need in order to keep on living and working—food, shelter, and so on. If the domino effect that is implicit in the argument about opportunities for altruism really does hold, then all such services given altruistically will in fact feel like transferring money from donors to recipients, because the services bear a market value. Altruism requires nonmonetized vehicles.

Even accepting a need to find gift objects that must remain completely unmonetized, it still seems that the argument about opportunities for altruism is more general than its proponents have thought. Many kinds of gift objects or volunteer services that can be given on a one-shot basis and do not require much special training might still fit the argument: gifts of old clothes or books; services like reading to blind people, being a subject for experimentation, driving voters to the polls, census-taking, and so on. Why do we not think of keeping these things completely unmonetized? Maybe those who make the argument about opportunities for altruism would further try to cabin it by suggesting that, in addition to being things that can be given on a one-shot basis, the things that must be kept unmonetized are extremely important, perhaps meaning the difference between life or death, to the recipient. But such an attempt to cabin the argument must fail, because it is unclear why the level of importance should matter in this way. There seems to be no reason why we must make altruism dramatic in order to preserve it.

The domino theory. The third strand of argument, the domino theory, holds that there is a slippery slope leading from toleration of any sales (of something) to an exclusive market regime (for that thing). Although it is a necessary supposition of the argument about opportunities for altruism, the domino theory is more often brought up in connection with prostitution and sale of babies. The domino theory implicitly makes two claims: first, as a background normative premise, that it is important for a nonmarket regime to exist; and second, as an empirical premise, that a nonmarket regime cannot co-exist with a market regime. The market drives out the nonmarket version, hence the market regime must be banned.

The domino theory covers more than just the territory sup-
posedly conducive to altruism, since those who argue that sexuality must remain nonmonetized do not argue that the reason is so that it may be altruistically given. Indeed, as I suggested earlier, it seems that the concept of altruism already presupposes more distance, remoteness, or impersonality between people than we wish to countenance in our ideals of sexuality. Those who are against monetized sex are probably against altruistic sex also.

Preserving opportunities for altruism does not, then, seem to be the main reason for asserting that noncommercial sex must remain possible. Nor does it seem to be the main reason at work in the inclination to ban baby selling, although it can play a part, as my earlier discussion indicated. Rather, it appears that the uncommodified version must remain possible because commodification somehow destroys or deeply disfigures the possible value of sex itself or the value of the baby itself.

With babies this does not seem difficult to understand. Superficially, at least, it seems to fail to treat children as persons to make them all realize that they have a definite commercial value, and that this is all their value amounts to, even if their parents did not choose to sell them or did not obtain them by purchase;¹³ the domino theory asserts that this will be the result of permitting sales for those who choose them. Is it similarly an injury to personhood to commercialize sex? If noncommercial sex becomes impossible, as we are here assuming, the argument that the answer is yes asserts that we shall all be deprived of a significant form of human bonding and interrelation. If disrespect for personhood has an individualistic flavor, perhaps this would be better put as disrespect for humanity or human relations. Under this analysis, noncommercial sex is a component of human flourishing, like the need for opportunities to express altruism. Commercial friendship is a contradiction in terms, as is commercial love. If opportunities for noncommercial friendship and love were not available, we would not be human. The argument we are reviewing asks us to see sexuality analogously.

But let us finally focus on the domino part of the theory. Is it the case that if some people are allowed to sell babies or sexual services, those things will be thereby commercialized for everyone? The argument that the answer is yes assumes that once the fact of market value enters our discourse, it must be present in,
and dominate, every transaction. The fact of pricing brings with it the conceptual scheme of commodification. We cannot know the price of something and know at the same time that it is priceless. Once something has a price, money must be a part of the interaction, and the reason or explanation for the interaction, when that something changes hands. A sale cannot simultaneously be a gift. If our children know that the going rate of babies is $10,000, they will know that they are worth $10,000. They will know that they are worth as much as an economy car, but not as much as a house. Worse, if they know that the market price of “good” babies is $10,000, whereas the price of “medium-grade” babies is only $8,000, they will be anxiously comparing themselves with the “good” grade of child in hopes that they measure up. One can fill in the analogous argument regarding sexuality.

III. INCOMPLETE COMMODIFICATION: THE METAPHOR OF COEXISTENCE

A. Coexistence of Market and Nonmarket Interaction

The domino theory assumes that we cannot both know the price of something and know that it is priceless. We cannot have a sale that is also, and “really,” a gift. Is this assumption correct? Or does it grant too much to universal commodification at the outset, by assuming that thinking in money terms is what comes most “naturally” to us? Perhaps it is not true that an interaction cannot be both a sale and a gift at the same time; that we cannot both know the price of something, and know that it is unmone-
tizable or priceless. This kind of critique of the domino theory would see a nonmarket aspect to much of the market. I shall elaborate it somewhat by considering work and our ideals about work.

Because this is a market society, most people must be paid for their work if they are to live, yet the kind of work we all hope to have—I think—is that which we would do anyway, without money, if somehow by other means our necessities of life were taken care of. Our ideals about work—at least for many of us —do not turn on capitalist rationality. What we hope to get out of working is not all money, nor understandable in money terms
(unless the archetype of universal commodification describes our conceptual scheme).

Inspired by Hannah Arendt, I think it is helpful here to introduce a distinction between work and labor, though it is not the same one she had in mind.\textsuperscript{14} It is possible to think of work as always containing a noncommodified human element; and to think of the fully commodified version as labor. I think we can understand the difference between working and laboring the way we understand the difference between playing notes and playing music. Laborers play notes, workers play the music. Laborers are sellers; fully motivated by money, exhausting the value of their activity in the measure of its exchange value, and understanding their labor as separate from their real lives and selves. Workers take money, but are also at the same time givers. Money does not fully motivate them to work, nor does it exhaust the value of their activity. Work is understood not as separate from life and self, but rather as a part of the worker, and indeed constitutive of her. Nor is work understood as separate from relations with other people.

Many teachers and scholars identify this way with their work. So, of course, do many performers, artists, and writers; and editors and publishers. So do many doctors, and nurses, and people who care for children, the elderly, the retarded, the handicapped; and people who counsel students, or married couples, or those who have trouble with drugs or alcohol. Firefighters, paramedics, and law enforcement officers can do their work as givers to others while being paid. So can military people and judges. Certainly that is what we hope for from political officials.

The nonmarket aspect to work is not limited to the arts, public servants, teaching, and the helping professions. (Even if it were, it would be significant enough to recognize that so many activities can be in the market but not of it.) The concept of the personal touch in one's work, of doing a good job for the sake of pride in one's work, and for the sake of the user or recipient, and for the sake of one's community as a whole, is intelligible for much of the market economy. Plumbers, housecleaners, carpenters, financial advisers, and clerks can all work with personal care for those who need their services. Those who sell products can genuinely care about the needs of people they are
saying to. It is possible to fix a vacuum cleaner and care whether it works; it is possible to sell shoes and care whether they fit. However mechanized and technological and rational is the market society, it is still true that the worker we consider the good worker is working and not just laboring.

These are prevalent ideals about work; they are seen played out in practice sometimes. It is true, of course, that the market also contains grinding assembly-line jobs that hardly anyone could treat as humane work. With few exceptions those who labor at these jobs do not feel that they are living while working, but only do the labor so that they may have some time to live during the hours they are not on the job. But I think these jobs run counter to deep-seated ideals about work based upon a pervasive conception of human flourishing; I think that basically we agree with Marx that this is inhumane commodification of people. 15

Many people have the sense, however, that these ideals about work are declining. As market rationality takes over, there is less and less room for working with care. Many kinds of work are becoming impersonal, some say. (Health care is a primary example.) 16 What does it mean to say they are becoming impersonal? That seems to be simply to say that market rhetoric fully characterizes the process of interaction between seller and buyer. This is to say that to the participants in the interaction the services or things are completely commodified. The relation between health-care provider and patient, for example, is no different from that between the proverbial seller and buyer of widgets.

Putting it this way suggests that complete noncommodification—complete removal from the market—is not the only alternative to complete commodification. Incomplete commodification is also possible. Incomplete commodification describes a situation in which things are sold but the interaction between the participants in the transaction cannot be fully or perspicuously described as the sale of things. If many kinds of sales retain a personal aspect even though money changes hands, those interactions are not fully described as sales of commodities. There is an irreducibly nonmarket or nonmonetized aspect of human interaction going on between seller and recipient; to them the things sold are incompletely commodified. That there
should be the opportunity for work to be personal in this sense does seem to be part of our conception of human flourishing—which is why those who see increasing depersonalization deplore it. Complete commodification of work—pure labor—does violence to our notion of what it is to be a well-developed person.

B. Incomplete Commodification and the Ideals of Personhood and Community

Now it may be clear why I think it gives up the ball game to argue that certain specific items (for example, blood) must remain completely noncommodified so as to keep open opportunities for altruism, especially if those who argue this way hope that these sporadic opportunities may lead the way to a less commodified society. The way to a less commodified society is to see and foster the nonmarket aspect of much of what we buy and sell, rather than to erect a wall to keep a certain few things completely off the market and abandon everything else to market rationality.

If social justice would be improved by a less commodified society, then, rather than walling off a few transactions from the pure free market, we should seek to deepen and consolidate the nonmarket countercurrents that cut across the market. One way that we already do this to some extent is, of course, with regulation. At least, that is one way of interpreting what regulation means. Such an interpretation would be consistent with prevalent critiques of liberal notions of the individual and society.

Liberal conceptions of personhood and community (individuality and sociality) have been criticized for expressing and creating an alienated, crassly commercial form of life. Liberal personhood has seemed to postulate an abstract, isolated subject radically separate from a world of objects (and other subjects). Liberal sociality has seemed to postulate that the whole is nothing other than the sum of its parts. In this conception of sociality, community is an aggregate of self-interested individuals each striving for her own autonomous ends, and cooperation is normatively conceived of as resulting from an n-person prisoner’s dilemma. If we accept to some extent the criticisms leveled against the liberal conceptions of personhood and community, we shall conceive of the person as more integrally con-
nected to the world of things and other people. And we shall conceive of community as crucially founded on human interdependence, as a network of processes and relations that expresses and creates value and significance not normatively reducible to an aggregate of self-contained individuals.

Incomplete commodification as an expression of a nonmarket order co-existent with a market order can be related to this shift in conception of the ideals of personhood and community. The kinds of goods that deviate most from laissez-faire are those related to human beings’ homes, work, food, environment, education, communication, health, bodily integrity, sexuality, family life, and political life. For these goods it is easiest to see that preservation and fostering of the nonmarket aspect of their provision and use is related to human flourishing and social justice—to personhood and community as reconceived to meet the critique of liberalism. Once we accept that pervasive incomplete commodification is related to appropriate ideals of personhood and community, it is clear why the arguments for piece-meal noncommodification of specific items are unsatisfactory. It seems that the values of personhood and community require not that certain specific exceptional things be insulated by a wall while everything else is governed by market forces; rather, it seems that the values of personhood and community pervasively interact with the market and alter many goods from their pure free-market form.

IV. SOME RAMIFICATIONS FOR A THEORY OF JUSTICE

Now I shall offer a few reflections on how what I have said so far might bear on how we think about justice. I cannot offer a theory of social justice integrating incomplete commodification and the demise of the wall metaphor. But I think it may be useful, nevertheless, to reflect in a preliminary way on how this view of the question of the market domain would influence the general form of an appropriate theory of social justice.

A. Walzer’s Liberal Theory of Separation

It should be clear that in my view it is misguided to conceive of social justice in terms of erecting and maintaining a wall separating market from nonmarket realms. Michael Walzer’s theory
of separation is the most distinguished example of the spatial metaphor I believe we should reject. In Walzer’s work, the metaphor is of spheres rather than walls. Nevertheless, we can see in his work the concessions of a modern liberal toward universal commodification.

Walzer posits eleven separate “spheres of justice,” with the market as only one of them. Walzer’s separation thesis is that justice consists in complex equality. By this he means that the hierarchization that occurs in each sphere—due to differences in biological endowments, energy, and luck—is not wrong so long as preeminence in one realm does not spill over, giving the top dogs in one realm automatic dominance in others. In other words, justice lies in keeping the spheres separate. Thus, Walzer assumes that complete commodification in a large sphere is prima facie just.

In light of this separation thesis, one of Walzer’s primary tasks, perhaps his most crucial one, is to show how money and power in the free-market sphere can indeed be self-contained in the market realm. Otherwise money and power in the market sphere spill over and give market top dogs unjust dominance in the realms of education, free time, security, recognition, public office, and political power. (Thus, Walzer accepts a domino theory: the market, if unchecked, will tend to overstep its bounds.) In order to show how the market may be contained, Walzer must first tell us where the market sphere (normatively) ends and other realms begin. That is, he must map the limits of the sphere. This he does not satisfactorily accomplish.

Walzer’s term for the transforming of every social good into a commodity (which I have called universal commodification) is “market imperialism.” Here is how he poses the problem of market imperialism and proposes a principle for containing it:

What is at issue now is the dominance of money outside its sphere, the ability of wealthy men and women to trade in indulgences, purchase state offices, corrupt the courts, exercise political power. Commonly enough, the market has its occupied territories, and we can think of redistribution as a kind of moral irredentism, a process of boundary revision. Different principles guide the process at different points in time and space. For my immediate purposes the
most important principle has this (rough) form: the exercise of power belongs to the sphere of politics, while what goes on in the market should at least approximate an exchange between equals (a free exchange).\textsuperscript{23}

As an attempt to delimit a market sphere, the power/free exchange distinction is not useful. That only free exchanges should be allowed is no more than the negative liberty that “market imperialists” themselves claim. A contract made under duress is not a valid contract.

Apparently Walzer wants us to understand “free” expansively, so that poverty by itself can count as coercion and negate free exchange. Perhaps Walzer just means to argue that without welfare rights or a minimum income or standard of living we cannot count any exchange as free. Does he mean, then, that selling to poor people is an act of political power while selling to middle-class people is an appropriate act in the market realm? The concept of economic coercion seems to straddle the supposed boundary between politics (power) and the market (free exchange), so I do not see how Walzer can use that concept to help draw it.\textsuperscript{24}

Walzer lists fourteen types of things that are “blocked exchanges” (off limits to the market). One of them is “desperate exchanges,” by which he means exchanges in the labor market that are motivated by poverty.\textsuperscript{25} This “blocked” category of “desperate exchanges” raises theoretical problems that are relevant to the issues surrounding use of the spatial metaphor. Walzer uses this rubric to justify the eight-hour day, minimum wage regulation, and health and safety regulation. About this Walzer comments, “This is a restraint of market liberty for the sake of some communal conception of personal liberty, a reassertion, at lower levels of loss, of the ban on slavery.”\textsuperscript{26}

It is unclear whether market liberty and the communal conception of personal liberty are synonymous with negative and positive liberty, respectively. In general, it is not clear whether Walzer means to reject the idea of negative liberty at all, and, if so, to what extent. The ideological force of negative liberty tends to pull liberal separationist views like Walzer’s toward universal commodification.\textsuperscript{27} It would be helpful to know, then, how Walzer would treat the libertarian hard question that the
idea of "desperate exchanges" doesn't get to: are we justified in prohibiting someone who really freely chooses for reasons of her own to work long hours in dangerous conditions from doing so? Would Walzer say that this free choice would be an exercise of "market liberty," but one we reject in the name of "personal liberty"?

Perhaps Walzer means to argue that the choice is not "liberty" at all, but coercion. Perhaps he would want to say that the argument about free choice raised by the notion of "market liberty" is a red herring. We should not preoccupy ourselves with the case of some middle-class, well-off, sane, well-educated person suddenly taking it into her head, fully cognizant of what she is doing, to subject herself to hazardous work for long hours at subsistence wages, because this person and these conditions just do not in life confront each other. Those who choose to sell their labor under these conditions—or to sell their kidneys—are poor and oppressed. But even if we think of the exchange as coerced, and not usefully characterized as an exercise of liberty, we are still left with the problem that to the desperate person the desperate exchange must have appeared better than her previous straits, and in banning the exchange we haven't done anything about the straits. That is the same problem we noticed with the liberal prophylactic personhood argument I described earlier. It seems to add insult to injury to ban desperate exchanges by deeming them coerced by terrible circumstances, without changing the circumstances.

Walzer's argument seems unsatisfactory because the distinction between market liberty and personal liberty assumes the divide Walzer wants to use it to delineate. Market liberty for Walzer characterizes the permissible sphere of commodification and personal liberty characterizes a realm that is off-limits to the market. If we assume that it is intuitively obvious or a matter of definition which kind of liberty an asserted transaction belongs to, then we have solved the normative issue of the limits of the market. Otherwise, as I think is the case, the categories personal liberty and market liberty must be the conclusions of a moral argument rather than the basis of one. In my view, that moral argument will turn on our substantive commitments to a theory of proper human flourishing within a properly constituted community. Also in my view, those substantive commit-
ments will lead not to a wall, but rather to a more generalized modification of the market (commodity) scheme.

**B. Incomplete Commodification and the Form of a Theory of Justice**

Now I wish to explore whether we can think more satisfactorily about social justice and the market if we abandon the metaphor of walls (and spheres). Before proceeding, it will be useful to take note of prevalent forms of theorizing about social justice. In one kind of theorizing, we concentrate on justice for the community as a whole. This is often conceptualized in terms of distribution of goods or wealth. A theory of justice in this form can (though of course it need not) cohere with a universal commodifying view of the social order. For example, Robert Nozick's unpatterned entitlement theory replicates the market in its global reliance on entitlement (private property) and just transfer (free contract). Ho Hobbesian theories likewise conceive distributive justice to be the outcomes of unfettered market trades, with adjustments for market failures that mimic what a free market would have achieved.

In another kind of theorizing, we concentrate on social justice as just deserts for individuals, or respect for personhood. This kind of theory too can be captured by universal commodification; for example, when the person's deserts are conceived of as negative freedom to buy and sell all things in markets. Although it would oversimplify matters to attribute such a conception to Rawls, it is possible to see Rawls's theory as tending in this direction. For Rawls, a version of negative liberty is the primary requirement of social justice. All the bases of self-respect necessary to respect persons are conceived of as primary "goods," which at least perpetuates the rhetoric of fungible possessions and objectification.

Whether we are theorizing about justice for the community or for individuals, the still-prevalent liberal metaphor of social contract seems itself to perpetuate market rhetoric. Modern contractualists do not always mean the language of contract to imply monetary exchange or implicit monetizability of all individual and social value. Yet contract is a linchpin of universal commodification, and in the liberal tradition the contract metaphor must draw its power from the normative power of prom-
ises to exchange commodities. It is hence possible to see theories of justice that are couched in contract rhetoric as tending toward universal commodification—reduction to monetary terms of the broader normative ideas of social commitment, agreement, and consensus.

Positing the propriety of pervasive coexistence of market and nonmarket aspects to human interactions is an alternative both to theories that imply or can be understood to countenance universal commodification and to “wall” theories of social justice like Walzer’s. Incomplete commodification would be reflected both in a theory of overall distributive fairness and a theory of proper treatment of individuals. Key principles for both these aspects of justice in such an alternative theory are that who should get what things of value depends upon the appropriate relation between persons and things, and between persons and other people.

For example, if we accept as appropriate a close connection between persons and their housing, then housing should be socially provided in such a way not only that everyone may have the shelter necessary for physical survival, but also that everyone may have the continuity of residence (often) necessary for proper self-development. Housing, both rented and owned, is appropriately incompletely commodified: it has special nonmarket significance to participants in market interactions regarding it, and it is appropriately socially regulated in recognition of the propriety of this self-investment. This is not because, as Walzer might have it, housing belongs to the “sphere” of security and welfare, in which distribution should be according to the principle of need, rather than to the “sphere” of money and commodities, in which distribution is appropriately according to the principle of free exchange. Rather it is because, although we value the efficiency of the market, at the same time housing must be incompletely commodified in recognition of its connection with personhood.

Who gets what depends upon appropriate relations between persons and other people, and not just between persons and things. People engaged in market interactions are not just acquiring things, they are relating to each other. A theory of social justice should recognize that these interactions often are (and ought to be able to be) valued for themselves and specifically,
and not merely instrumentally and fungibly. As critics of Rawls (for example) have often noted, many kinds of solidarity and interrelations between people are central to our conception of human flourishing and hence must not be excluded from a theory of social justice.

C. Incomplete Commodification and the Issue of Nonideal Justice

Once we abandon the wall metaphor, does this mean that all things formerly thought to be exceptional can be treated as incompletely commodified, enabling them to be bought and sold? That would be frightening to anyone who accepts the domino theory, for it would mean that incomplete commodification would necessarily give way to complete commodification. Yet if personhood and community are better fostered by generalized incomplete commodification than by the traditional wall, then perhaps even babies, sexuality, etc., could be bought and sold without being thought of as objects or as fungible. But before we conclude that this is correct, we must address two further kinds of questions. First, in our nonideal world, should we credit the domino theory, at least for things important to personhood, because it is too risky not to? Second, even under ideal circumstances, are there some things that just cannot be commodified, even incompletely, consistently with our conceptions of personhood and community?

The second question is hard to address for anyone who thinks, as I do, that our circumstances—our situatedness—matter deeply for our central normative conceptions. We cannot jump outside our present world to see whether partial commodification (of babies, for example) would be a wrong in itself in some other world. If we view the question as asking us to focus on our ideals as currently formulated (and not, so to speak, on ideal ideals), then it seems to me that we cannot say that the mere fact that money changes hands is a wrong, once that fact is divorced from the various bad implications of commodification.

But perhaps that is a divorce we cannot now imagine in detail, much less socially implement. In our nonideal world, the mere fact that money changes hands might be rightly treated as having bad implications, or at least bad possibilities, for some especially sensitive cases like sale of babies. (A sensitive case is one in
which complete commodification would destroy or deeply undermine personhood or community as we conceive them.) This would be to answer the first question I posed above in the affirmative for such cases. Whether or not babies could be priced and yet not be inappropriately commodified depends on how important noncommodification of people is and how risky it might be to allow buying and selling given our estimate of the current state of our tendencies to think in terms of commodification. It is one thing to say that in some imagined world to sell babies is not necessarily to commodify them unduly, and another thing to say that that is so in our world. In other words, there is still room for complete noncommodification of some special things, not because they are to be walled off from a laissez-faire market realm, but rather because in our nonideal world even partial commodification could lead to foreclosing the nonmarket conceptions of personhood and community.

The problem brings up the issue of non-ideal or second-best (or perhaps just practical) justice. There is always a gap between the ideals we can formulate and the progress we can realize. Hence there is always an ambiguity about theorizing about (and seeking) justice: does justice refer to the best general ideals we can formulate, or does it refer to a theoretical working out of what changes would now count as social improvements? To avoid all significant harms to personhood and community may be an ideal of justice; yet it may also be the case that justice (at least for here and now) instead means only that we should choose the best alternative from among those available to us. If that is what justice means, then whatever harms to personhood and community are present in the best alternative cannot be thought of as unjust, although they may come to be unjust when a better alternative becomes available.

\[ D. \text{ Further Implication for Justice as Respect for Personhood} \]

Pursuing a bit further the idea that both the overall distribution pattern and individual desert depend upon appropriate connections between persons and their contexts of things and other people, I shall comment on three kinds of connections between what I have said about the considerations counseling rejection of the wall metaphor, and the notion of justice as respect for
personhood. Here I mean to discuss, first, the significance for social justice of the dilemma created when it seems we cannot respect personhood by choosing either the market or the non-market solution to a problem. Second, I want to note the significance of incomplete commodification, based on respect for personhood and the fostering of community, for the justification of regulation. Finally, I want to bring up the ultimate question of market rhetoric: Is it possible that it is unjust to think and talk about some things in the discourse of commodification?

The dilemma of commodification. First, there is the observation that the prophylactic personhood argument—that people should not be allowed to sell their organs, etc., because that is degrading to personhood—calls attention to a more pervasive problem of social justice. If people are so desperate for money that they are trying to sell things we think cannot be separated from them without significant injury to personhood, we do not cure the desperation by banning sales. Nor do we avoid the injury to personhood. Perhaps the desperation is the social problem we should be looking at, rather than the market ban. Perhaps worse injury to personhood is suffered from the desperation that caused the attempt to sell a kidney or cornea than would be suffered from actually selling it. The would-be sellers apparently think so. Then justice is not served by a ban on “desperate exchanges.”

These considerations change the arena of argument from considerations of appropriateness to the market to explicit considerations of social justice. If neither commodification nor non-commodification can put to rest our disquiet about harm to personhood in conjunction with certain specific kinds of transactions—if neither commodification nor noncommodification can satisfy our aspirations for a society exhibiting equal respect for persons—then we must rethink the larger social context in which this dilemma is embedded. We must think about wealth and power redistribution.

In other words, sale of one’s body parts presents a dilemma because it seems we cannot honor our intuitions of what is required for society to respect personhood, either by permitting sales or by banning them. I am suggesting that the dilemma should be treated as Wittgenstein suggests we treat philosophical questions: as the symptom of an illness. The dilemma
throws into relief the results of inequalities of wealth distribution, and should make us consider the justice of the surrounding circumstances that create the dilemma.

One's body is bound up with one's personhood, which is why when organs are donated it is a significant expression of human interrelation. But to preserve organ donation as an opportunity for altruism is also one way of keeping from our view the desperation of poor people. Hence, one who thinks social progress can be brought about by forcing unjust conditions upon our attention might agree with the universal commodifier that sales should be permitted. The progressive thinks, in other words, that fellow feeling is better served by permitting sales so that the spectacle will awaken fellow feeling in the rest of us, to eliminate poverty. The universal commodifier, on the other hand, thinks that even altruism is monetizable, and, in cases where there are willing buyers and willing sellers, it must be worth less than sales. This type of alliance between the far right and the far left is a sure sign that something is incoherent about the middle way.37

If it appears that we cannot respect personhood either with commodification or noncommodification, given the surrounding social circumstances, for example with organ-selling, and if we agree that this means we ought to change the surrounding circumstances, we are still faced with the question of whether or not we should permit commodification while we try to do that. If we opt to permit sales for those who choose, as the libertarian and radical might both recommend, we risk complete commodification—if the domino theory correctly predicts the resulting social consciousness, given the level of commodification already present. Complete commodification makes the supposed goal of greater respect for persons in a less commodified future even less imaginable. But perhaps this risk is not as bad as the degradation of personhood and reinforcement of powerlessness brought about by the regime of enforced noncommodification. Obviously, I have no handy algorithm for making this decision.38

Regulation and community. A second connection between justice and my discussion of the arguments surrounding the wall metaphor is the question of nonefficiency justification for regulation—that is, socially mandated deviations from the laissez-faire
market regime for many things that are bought and sold. If everything is appropriately fully commodified unless efficiency dictates otherwise, then exceptions from the laissez-faire regime are justified only where the market for some reason cannot achieve efficient outcomes. This in fact is the position of many economists on regulation. It makes many types of regulation (for example, residential rent control) difficult to justify; when these types of regulation are frequently imposed anyway by the political order, they are seen as obvious examples of selfish rent-seeking by powerful interest groups. But as I have argued above, there is another way to view regulation of many things that are important to human personhood and community, and that is as incomplete commodification. If we stubbornly intuit that these things that are very important to human life, health, and self-and community development ought not to be completely monetized, then regulation that does not (theoretically) meet an efficiency test is in principle justified. Then the response of the political order in imposing the constraints on commodification may be seen as a good-faith working out of community values, so that persons and the community may properly flourish, rather than interest-group rent-seeking.

Can market rhetoric be unjust? The third question that I would like to raise here has to do with whether social justice (as respect for persons) and the rhetoric of universal commodification are connected. I think that conceiving of politics as mere rent-seeking, and essential human attributes as mere scarce commodities, expresses and fosters a conception of human flourishing inferior to that expressed and fostered by a discourse that recognizes personhood and community as essentially unmone-tized and not fungible. But is it unjust to think of these aspects of human life in terms of commodities? Does Richard Posner act unjustly in trying to convince us that the right way to think of children is as commodities, and that the right way to think of much that legislatures do is in terms of rent-seeking? 39

I want to be especially tentative here because I do not suppose I understand the connection between justice and a discourse that embodies an inferior conception of human flourishing. At present it seems to me that three things can be said about it. First, there is a serious risk of error to interests important to personhood and community. Even if the universal commodifier
thinks that these interests are in principle monetizable and tradeable, it is very easy to make mistakes in one's cost-benefit analysis, and in particular to ignore these "costs" that are difficult to monetize. This pattern of ignoring "costs" to personhood and community can be thought of as a wrong, and perhaps as an injustice.

Second, in some cases market rhetoric itself can be viewed as an act injurious to personhood. Thinking about children in market rhetoric makes a person's uniqueness into a fungible item of exchange: This seems insulting to personhood, and injurious to personhood insofar as it is even partly internalized by the persons affected. Again, this is a wrong, and perhaps can be characterized as an injustice in an ideal theory of justice having respect for personhood as a central element. Even in a nonideal theory, it does not seem plausible that countenancing this kind of wrong is our best alternative, all things considered.

Third (and this may be a generalization of the above), it may be that market rhetoric, the discourse of commodification, in which all things valued by and in human beings are goods for sale, is a conceptual scheme that keeps us from becoming well-developed persons. To the extent the rhetoric is internalized, it alienates us from our true selves as persons; or, to put this another way, hampers self-development. For example, if universal commodification rhetoric were to succeed in creating internal perceptions of ourselves as laborers rather than workers, or as bearers of fungible commodities rather than personal attributes, then some of the human potential included in our conception of personhood would be lost to us. (Of course, if this transformation were fully to take place, perhaps we would drop the conception of personhood that counts this as a loss, and substitute instead a commodifier conception of personhood that would not recognize it.)

If there is no such thing as better or worse conceptions of human flourishing, and therefore no such thing as better or worse discourses embodying them, then there is no problem of wrong or injustice posed in setting up such a dissonance within the self; the dissonance is at best a psychological malaise. Nor is it wrong to eliminate the dissonance by converting us completely to a commodified self-conception. But it seems to me that it must be otherwise if we do accept that there can be better
or worse conceptions of human flourishing, and better or worse discourse that creates and expresses them. If we accept that universal market rhetoric is an inferior discourse because it creates and expresses a conception of flourishing inferior to one that holds that certain aspects of personhood and community must remain unmonetized and not fungible; and if we accept that part of a theory of social justice is that we must treat persons as persons, or as persons deserve, or with respect for persons; then it seems that it is at least wrong to commodify everything in rhetoric. It seems at least open to us to argue that this kind of wrong is an injustice from the ideal point of view, and perhaps from the nonideal point of view if it does not plausibly seem to be our best available alternative.41

V. CONCLUSION

I would like to leave matters here for now, except to point out that the title of this chapter, “Justice and the Market Domain,” must now be taken as a warning rather than a prescription. The warning is against trying to construct a theory of justice by drawing out limits or boundaries or a wall—or even, in Walzer’s metaphor, a sphere—around a free-market bailiwick that is laissez-faire in principle. Instead, I think that we should think about justice in terms of a nonmarket perspective that permeates many of our market interactions, at least in the way we think about them ideally. At the same time, we can recognize, I think, that this perspective is played out in practice to some extent in large areas of incomplete commodification. If I am right that these intuitions can be related to central ideals of personhood and community, then further reflection on personhood and community should yield a better understanding of incomplete commodification, both of its role in a good theory of social justice and of the extent to which it should prevail in practice.

NOTES

1. I am aware that this bifurcation of the topic may assume a distinction that is problematic for the views I recommend. Our chosen regime
for the transfer of human organs may be just as political as voting. I think that all this means, however, is that in pursuing the debate over nonmarket personal interactions versus the market, I am making a start on the debate over politics versus the market as well.

2. There are clearly affinities between the connotations of the term "commodity" as I use it, and Marx's use of the term "commodity" to mean a good traded under laissez-faire market circumstances. For Marx a commodity is valued for its exchange value (which we now call market value) and all commodities are commensurate with money, which he called the universal equivalent. There are other ways of viewing the word commodity that antedate the advent of capitalism and the notions of exchange value and laissez-faire markets. Nevertheless, I prefer to use it in the sense I define, so that it can make clear the import of treating the human world as if it were one giant market, which I am calling universal commodification.

A more detailed characterization of universal commodification and a discussion of the meaning of the term "commodity" will be found in Margaret Jane Radin, "Market-Inalienability," *Harvard Law Review* 100 (June 1987): 1849. In that article, which is a companion piece to the present chapter, I explore the notion of making some things inalienable through market transactions. There I contrast universal commodification to an opposing archetype, universal noncommodification, and reject both these extremes in favor of a nonideal evolutionary coexistence of market and nonmarket schemes. More detailed discussions of some of the themes referred to below will be found there: in particular, market rhetoric and market methodology; the link between universal commodification and an inferior conception of human flourishing; incomplete commodification in its participant and social aspects; the critique of the prophylactic personhood defense of market-inalienability; the domino theory (holding that once any market transactions are permitted, market rhetoric and methodology will dominate all transactions); the double bind (representing a perception that for some things both commodification and enforced noncommodification seem harmful).


As an example of market rhetoric, consider this passage by Judge Richard Posner:

The household commodity that places the greatest demands on the wife's time is rearing children, so an increase in the opportunity cost of that time is immediately translated into an increase in the shadow price of children to the household. A rise in the price
of children can be expected to reduce the quantity of children demanded; and since rearing children is not only one of the most difficult to conduct at comparable cost outside of the household, a decline in the demand for children should result—and evidently has resulted—in a decline in the demand for marriage. But even without any increase in women’s net market income, there would be a reduction in the number of children per household, for with dramatically reduced child mortality a couple needs fewer children in order to be reasonably confident of having as many (grown) children as desired. . . . The pleasure we get from our children’s presence is the result of “consuming” the intangible “services” that they render us.


4. See, e.g., James M. Buchanan, Robert D. Tollison, and Gordon Tullock, eds., *Toward a Theory of the Rent-Seeking Society* (College Station: Texas A & M University, 1980).

5. It should be clear that not all economic analysis is ipso facto universal commodification. Actual thinkers are more complex than the archetype, although the archetype may coherently crystallize their premises. Moreover, many who practice economic analysis are sensitive to situations where complete commodification is troublesome. For example, Alan Schwartz finds previous economic analysis of the legal treatment of minority shareholders in corporate takeovers to be wanting in not recognizing that people may value corporations as communities in some non-market sense. See Alan Schwartz, “The Fairness of Tender Offer Prices in Utilitarian Theory,” *Journal of Legal Studies* 17 (1988): 165.


8. The prophylactic personhood argument is also thought of in connection with aspects of sexuality and reproduction. Examples are prostitution, surrogate motherhood, and release of infants for adoption. The argument is further criticized in Radin, “Market-Inalienability.”


11. Allied to this argument about altruism is the claim that a nonmarket regime better preserves and expresses the sanctity of life than would
a market regime. In the market regime, recovering one's health depends upon ability to pay instead of merely one's desert or need as a person. See Michael Shapiro, "Regulation as a Language" (forthcoming).

12. Indeed, perhaps altruism, insofar as it connotes impersonal giving, is an artifact of liberal alienation. Thus I agree with Eric Mack ("Dominoes and the Fear of Commodification," this volume) that my criticism of altruism in the context of sexuality should be generalized to include our conceptions of personhood and community.

13. For a somewhat more detailed discussion of baby-selling, see Radin, "Market-Inalienability."

14. See Hannah Arendt, The Human Condition (Chicago: University of Chicago Press, 1958). Arendt noted that many languages have two words corresponding to work and labor, and that only work can also be a noun. For her, labor meant the kind of activity necessary to sustain life. It is ephemeral and leaves no traces on the environment; and it does not distinguish human beings from animals, since they too must labor in this sense. Work, on the other hand, lives after us and changes the world in which we live. (This seems to me similar to Marx's notion of "working up" our world.)

15. I do not believe, however, that the conception of work I am advocating here is Marxist. Marx argued for complete decommodification, whereas I am arguing for recognition of incomplete commodification. That is, I am proposing that market interactions can and do have a significant nonmarket aspect. This is an argument for "peaceful coexistence" that I think Marx would not have accepted; I believe he thought the logic of capitalism must perforce play out in practice as universal commodification (both in real life and in rhetoric), and that the only way to change this would be complete decommodification.


17. A well-known version of this critique is found in Roberto M. Unger, Knowledge and Politics (New York: The Free Press, 1975).


21. Although this is Walzer's theoretical assumption, in practice there would not be a very large free-market sphere left after all the various kinds of welfare regulation he recommends were implemented. Thus, in a sense, a theory of incomplete commodification would better have served Walzer's purposes than the spatial metaphor.

22. Walzer, *Spheres of Justice*, 120.

23. Ibid.

24. Although this boundary is described as a moral matter, and the market exceeding its bounds is—in a nice phrase—“moral irredentism,” Walzer says that the issue of what things cannot be bought and sold, because we do not want certain values to be priced, is “an empirical matter.” This is puzzling; surely this too is a moral matter since this too involves the containment of the market within its proper sphere, necessary for justice as complex equality. Walzer says as much when he says that these “blocked exchanges” “set limits on the dominance of wealth.” See Walzer, *Spheres of Justice*, 100.

The puzzle is resolved to some extent when one takes into account that Walzer is at least sometimes a moral conventionalist. What is right is what the relevant social group thinks is right. Thus, if his list coincides with social practice, no further argument is needed to convince us of its moral rightness. Walzer's critics have taken him to task for his conventionalism. See, e.g., Brian Barry, review of *Spheres of Justice*, by Michael Walzer, *Columbia Law Review* 84 (1984): 806; James S. Fishkin, review of *Spheres of Justice*, by Michael Walzer, *Michigan Law Review* 82 (1984): 755. To be fair, however, I think that Walzer is only sometimes merely a conventionalist; sometimes he seems to be a pragmatist refusing to accept the positive/normative distinction (that is, the fact/value dichotomy). That position is capable of sophisticated defense, even though raising this position explicitly and creating that defense is not Walzer's project in this book.

25. The fourteen things are: human beings; political power and influence; criminal justice; freedom of speech, press, religion, assembly; marriage and procreation rights; emigration rights; exemptions from military service, jury duty, and "any other form of communally imposed work"; political offices and professional standing; the minimum level of "basic welfare services like police protection or primary and secondary schooling"; "desperate exchanges"; public and private prizes and honors; divine grace; love and friendship; and, "Finally, a long series of criminal sales are ruled out." See Walzer, *Spheres of Justice*, 100–103. In this list, all different kinds of inalienabilities are lumped together under a general ban on buying and selling. To speak only of sale when a particular inalienability is broader than that distorts its political and social significance, and reflects a tendency toward universal commodification, at least in rhetoric.

27. In Radin, “Market-Inalienability” I show how the traditional liberal idea of the wall between nonmarket and market realms is rendered unstable by the commitment to negative liberty, which is in tension with the commitment to substantive requirements of personhood. The instability results in a pull toward universal commodification as one way to resolve the inner tension.


30. See, for example, James M. Buchanan, *The Limits of Liberty* (Chicago: University of Chicago Press, 1975).

31. Rawls’s ideal scheme “makes considerable use of market arrangements.” Rawls says, “It is only in this way, I believe, that the problem of distribution can be handled as a case of pure procedural justice. Further, we also gain the advantages of efficiency and protect the important liberty of free choice of occupation.” See Rawls, *A Theory of Justice*, 274. In his discussion of public goods, for example, Rawls relies on the Hobbesian model of politics (265–74). John Stick argues that Rawls’s methodology readily leads to Nozickian results. See John Stick, “Turning Rawls into Nozick and Back Again,” *Northwestern Law Review* 81 (Spring 1987): 363–416.

32. For example, T. M. Scanlon’s influential essay, “Contractualism and Utilitarianism,” in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1981), cogently argues in favor of a moral methodology based on hypothetical uncoerced agreement. The market metaphor of contract is not a necessary part of this argument, and may in fact detract from its breadth and force.


34. See Walzer, *Spheres of Justice*, chap. 3.


37. In the same vein, it should be noticed that arguments urging that commodification of something would set off a domino effect often involve things that would be commodities produced and/or controlled largely by women. There is a deep dilemma or double bind created if both commodification and noncommodification of certain things would, under the current surrounding social circumstances, be degrading or disempowering to women. The double bind should lead us to rethink the surrounding circumstances. The double bind is discussed further in Radin, “Market-Inalienability.”

38. More of my nonideal views on these subjects will be found in my “Market-Inalienability.”


40. Radin, “Market-Inalienability”; see note 2 above.

41. I am aware, of course, that the liberal proponent of free speech would see a powerful objection here: How can mere choice of rhetoric be wrong or unjust? I think that this objection cannot be so powerful for someone who already accepts certain important views of the antifoundationalist trend in philosophy, according to which it is impossible to maintain a bright-line distinction between discourse and the world, and discourse and value. If, in our terms of discourse, we are making choices for constructing our human world of facts and values, like it or not, we cannot maintain liberal neutrality on the good life for human beings. If it is true that the discourse in which human life is conceived and the nature of human life itself are not fully separable, it seems we must be able to say that there are better and worse discourses, just as there are better and worse views of what it is to be human.

To say that a discourse can create wrongs, and (ideally or under certain nonideal circumstances) injustice, is not—it should be clear—to argue that it would be right or just for the government to try to suppress it. To suppose that any conviction that something is unjust necessitates the conviction that the government should suppress it makes justice completely the province of government, a conflation I do not espouse.