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Chapman, John W.

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THE JUSTICE OF THE MARKET:
COMMENTS ON GRAY AND RADIN

JAN NARVESON

INTRODUCTION
Is the free market a just institution? I will support an affirmative answer here, mainly by way of discussing two chapters in this volume, those of John Gray and Margaret Jane Radin. They deal with very different aspects of this question, but my remarks present a unified view that benefits from reflection on each of these interesting and well-argued essays. To a degree, my view will be developed independently as well.

What we have in contemporary developed nations are partial market societies, where markets operate with a substantial overlay of public-sector activity. This presents a problem. The many who wish to condemn market society on the basis of perceived shortcomings in our general socioeconomic fabric need to show that the problems are due to the market portion rather than the rest. In turn, defenders of the market argue that those shortcomings are due to the public sector rather than to the market, and that the cure for what is wrong consists in extending market methods beyond their current rather constricted limits. I incline toward the latter view. The question is how far it can be reasonably taken. Some aspects of this large issue will be addressed here, though it will not, of course, be resolved.

1. GRAY ON MARKET SOCIALISM
Gray is instructive in his treatment of “market socialism,” wherein enterprises are worker-owned and worker-managed, but com-
pete freely with each other for the consumer dollar. When the worker’s connection with the firm is via an inalienable share in its capital and a vote in its management, shortcomings ensue, familiar from the case of family-owned enterprises in free-market economies: the firm is reluctant to take on new employees who will dilute existing shares of profits, and it tends to be risk-averse and consequently slow to innovate. But these, as he says, are of secondary importance. The more fundamental problem of market socialism lies in its socialism, which now takes the form of state control of investment. This creates an institutional problem of substantial magnitude: “All our knowledge of bureaucracies suggests that the permanent officials of the state bank would be conservative and risk averse in the extreme and would shy away from investment strategies involving substantial speculative risks even if these were dictated by accepted principles of justice. . . . Large existing enterprises with political clout will be favored over small and struggling ones . . . malinvestments would be unlikely to be eliminated, but instead would be concealed by further inputs of capital.”¹ And so on. Gray observes that the “upshot of the calculation debate . . . is that calculational chaos—waste, malinvestment, and discoordination in the economy—can be avoided, or at least minimized, only if decision-making is decentralized to the level of the individual through the institution of private or several property.”²

With all of this I agree entirely, and would only add some further reflections on the whole idea of market socialism. As Gray observes, the calculational debate took place between proponents of the free market and socialist theorists who were aware of the advantages of the pricing mechanism and hoped to retain most of those advantages in their versions of socialism without what they took to be the disadvantages of capitalism. The Austrians in effect argued that they could not succeed in this, and Gray summarizes that case. Meanwhile, we should raise the prior question of what the market socialists think they are up to. Why be a market socialist?

The standard answer provided by these theorists—almost all of them academics—is that the socialistic aspect of market socialism provides the “democracy” supposedly lacking in an unvarnished market system, while the market aspect supplies, as it were, the efficiency. Gray gives good reasons for doubting that
efficiency will in fact be achieved in such a system. What about the alleged democracy? Does it even provide that? Further reflection, I suggest, will show the answer to be in the negative.

The argument is that worker's democracy is called for by the principles of democracy in general, when applied to the workplace in particular. Is this so? It is not. The usual arguments for industrial democracy are fallacious.

Let us use the latter term in its conventional sense, that is, to refer to a system in which the workers in a given enterprise have a right to share in its management, a right that is strong in the sense of not requiring the owners, if any, to agree voluntarily to such sharing. This, of course, means that the owners are not really owners. But a free enterprise system already allows worker-owned enterprises, and it also allows owners for whatever reason to give their employees substantial managerial independence; in those cases, worker control obviously obtains, and industrial democracy in the sense defined is unnecessary. Thus those who advocate industrial democracy as an alternative to free enterprise must mean by this a system in which private ownership of productive property is prohibited; this fits it in with the classic Marxian idea. Given these assumptions and this definition, do we have an argument for industrial democracy based on democratic political theory? No.

Let us see why. Political democracy is more general than industrial democracy. Industrial democracy is an analogue of political democracy: it is democracy in the particular case of a productive facility involving the efforts of many people. But the case for political democracy, insofar as it holds at all, holds for an involuntary group, namely society. Supposing that we have a case for government at all (anarchists won't grant this, of course), then we can make a strong case for democracy, at least in reasonably favorable social circumstances. Democracy consists in an equal distribution (roughly equal, in actual practice) of ultimate political power. Such power is the power to govern or, in the cases (all the interesting ones) where direct employment of it is impracticable, to determine who will govern. But it is also, and for the same reason, the power to determine what sort of economic system we shall have.

Whether democracy even includes this power is, it should be noted, disputable. Democratic rights are limited, on any reason-
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able view. For example, democracy does not include the right arbitrarily to abrogate the right to vote, nor to revoke by majority vote any of the other basic rights we have come to accept as essential to any decent polity. Majority rule, in short, is limited by a set of rights. But libertarians insist that one of those very rights is the right to hold property, and they would therefore insist that this gives capitalism a fundamental status that cannot properly be modified by political procedures no matter how democratic they are.

However, for the sake of argument we will not adopt this view here. We assume, then, that the choice of economic system is available for democratic decision. But if it is, then one of the choices facing the voters is whether to go for industrial democracy. They might so choose, but they might not. The right to help manage any enterprise one works in simply is not entailed by political democracy. Voters could decide, all entirely within the spirit of democracy, that any form of public ownership or of entrenched workers' rights to manage is a bad idea. They could even, in their wisdom, so decide for some of the very reasons Gray has so acutely identified. And indeed, that seems to be the way voters in the capitalist democracies have decided. Does this show that those countries are not really democracies? No. It simply shows that industrial democracy isn't essential to political democracy.

Of course, some voters would disagree with the majority on this point. But the existence of disagreement cannot be of fundamental consequence to any serious advocate of democracy, for to accept democracy is ipso facto to deny the necessity of unanimity on political matters, except, perhaps, on the matter of whether to have a democracy or not. A contractarian, for instance, might hold that democracy is the best bet for all rational persons for resolving various conflicts of interest: In those areas, we should all go along with the majority, even when we disagree with the majority's view of what is best. The value of having that mechanism, so the argument would go, exceeds the value of getting our way on particular issues.

If a majority were to vote for industrial democracy, it would deprive everyone, to begin with, of the right of free enterprise, that is, the right to start up a business on one's own, raising capital from whomever is willing to provide it, and taking the
risks this may entail. It would limit the freedom of workers to
determine the degree to which they are to participate in the
operation of any business in which they happen to be employed.
This is something with which a reasonable person might well
not want to bother. Some people choose to live in housing
coop eratives because of the opportunities for political partici-
pation this affords. But others choose not to live in them for that
very reason. The many workers who would likely prefer not to
bother with such things, leaving them instead to those who have
the most direct interest in running things efficiently (namely the
owners, when there are any), would not have this option in a
society determined to impose industrial democracy on all.
Moreover, as Gray points out, it would probably severely limit
their mobility for employment purposes. Since free enterprise
permits cooperative enterprises to be formed and run on the
basis of as much industrial democracy as one likes, how could a
rational voter prefer imposed industrial democracy to it, qua
system at any rate?

In short, we may argue either that democracy, being self-rule,
implies the freedom to choose one's own employment situation
insofar as that is possible, or that it at least implies the right to
vote on what sort of economic system to have. It does not,
therefore, imply that the vote must, if democratic, go one way
rather than another.

2. Hobbesian Justice

The argument thus far supplements Gray's important insight
that "Any economic system which imposes on all a productive
ideal which not all share must be condemned as unjust from the
standpoint of contractarian method." Gray reaches this conclu-
sion, properly in my view, by a broadly Hobbesian construal of
contractarian theory, one which does not proceed, as does Rawls's,
via the incorporation of any particular ideal of the person. It
assumes only that we are all agents, concerned to pursue a
variety of purposes and not, for example, that we are members
of any particular moral community devoted only to the pur-
poses it decrees. "We theorize the person . . . as an unsituated
individual, defined not by communal attachments but by pru-
dential interests."
Two important conclusions, he thinks, derive from this construction. One is that "there can be no question of pure redistribution emerging as a policy." Moral equality does not imply an ideal of equality in economic well-being. On the other hand, however, "because the Hobbesian construction does not contain proprietary rights at a foundational level, nothing is exempt from redistribution, either." Indeed, because of the same egalitarian element, "it is not to be supposed that the Hobbesian contract could yield an outcome in which . . . there were some without assets or resources of any kind. Rather, it is reasonable to suppose that the Hobbesian contract would guarantee to each an initial capital endowment which would be his to dispose of."

Is this plausible? Gray does not develop the details, yet those details are crucial if that conclusion is to be reached. Consider the previous issue of choice of a productive system. In the absence of any sort of ideal of the person we cannot argue as might, for example, a Nietzschean, an Aristotelian, a Protestant, or even an early Marxist. Any of those theorists might insist on the importance to personality of production, which might lead to our putting special emphasis on the ability to determine with what sort of productive system one is to live and work. Productive systems and the choice thereof are strictly a means to an end, in the absence of such ideals. If so, however, why should we accept so strong a conclusion as the one Gray arrives at? What if it is argued that Gray's second point, that each should be guaranteed a certain capital endowment, is of such importance that it could allow the imposition of one or another kind of productive system in order to secure it? Mightn't one have to choose between freedom of production and guaranteed freedom from want? If so, would the former have priority over the latter?

It seems to me, on the contrary, that the sort of assumptions Gray proposes to work with will endorse the first conclusion at the expense of the second. If we are endowed only with prudence and a variety of goals, we will not accept as a basic feature of the social system any requirement that we all see to each other's minimal good any more than that we all join hands in a socialist productive cooperative. The reason for this lies in the independence and prudential orientation of the parties, plus the fundamental feature of contractarian method that it re-
quires *unanimity* on the choice of the fundamental principles that are to govern us as social beings. Given unanimity, no one will be able to coerce any particular outcome from others. The productively weak, therefore, will not be able to coerce the productively strong into guaranteeing that social minimum they no doubt may want but which there seems to be no reason to concede. The social agreement must instead be that people may utilize their productive powers as they judge best. If they judge that some of their output should go, gratis, to the otherwise poor, so be it. If not, it is difficult to see what recourse those otherwise poor could have, at the very least *unless* we allow coercion.

Suppose that we do permit coercion at the outset. That is the defining feature of Hobbes’s State of Nature: Since there are no rules, literally nothing is forbidden, and therefore coercion in particular is not. As Hobbes conceives it, it is the permissibility of coercion that causes the problems inherent in that condition. Everybody loses—both the weak and the strong—because human powers are sufficiently equally distributed that no one can gain an advantage if all are able to use their powers without restraint.

Gray’s proposal would call for measures to be taken to see to it that everyone has a minimal stock of capital over and above the stock of “capital” inherent in one’s person by virtue of being a (more or less normal) human being, that is, one’s inherent repertoire of capabilities. But how are these measures to be conceived? There would seem only two options: either they are voluntary, or they are exacted coercively. The former resolves, in turn, into two possibilities: either such a social guarantee is held to be literally in the interest of each individual, or it is conceived as stemming from such things as sympathy or possibly an innate moral sense that one should share. Now, the latter conjectures are dicey if the claim is that all humans have the necessary measure of sympathy or benevolence toward all others. It is surely far more plausible to restrict the likely operation of any innate sympathy to narrower classes of persons such as parents and kin—and even there, as we have witnessed throughout history, cases typified by that of Cain and Abel crop up along with all the cases more favorable to the hypothesis. If the moral version is taken, then one has simply dissented from
the contractarian idea—and also, of course, one is back to the empirically insoluble problem of showing that all humans do have an innate moral sense of the requisite kind.

Absent either of these hopeless maneuvers, what about mutual self-interest? The problem here is that we are now using what amounts to an insurance argument. The idea is that it is worth our while to be assured some minimal share of capital, or the equivalent, at the cost of some loss of economic liberty. But surely temperaments, proclivities, and plausible estimates of situations will differ far too much to make the conjectured universality plausible. Moreover, there is this obvious objection to any enforced system along this line: if people think this is a good idea, they can arrange insurance systems or mutual aid arrangements with whatever individuals are willing to go along. That way, the levels of minimal capital are at least determined by the interests of the parties concerned and not by some social theorist's view of what they should want. Unless we are to indulge in a degree of paternalism plainly unwarranted by the rejection of ideals of the person, this option is therefore extremely dubious.

Thus it appears that an imposed solution would be necessary if any such social minimum is to be achieved. But how can we suppose, in view of the points just made, that individuals operating under no prior constraints and in response only to their own sense of what is prudent or, in any sense in which this may be allowable in contractarian theory, of what is moral, would unanimously agree to this system? Far more plausible, surely, would be to argue that we will adopt a basic constraint of the type proposed by Gauthier, which he introduces as a variant of the "Lockean proviso on acquisition." His form of the proviso prohibits acquiring by taking advantage of others. The baseline for interaction is that in which we have nothing to do with each other. No fundamental duties to supply each other with anything are assumed or forthcoming. The only rational restriction is that our acquisition is not to be at others' expense: utilizing the other person's efforts to promote one's own good is forbidden. Obviously, this means that one may not use coercion for that purpose: All acquisitions must be by cooperation rather than force. In the absence of some extremely conjectural argument, this also rules out Gray's idea as a fundamental one for this purpose. The social minimum is simply noninterference.
Gray, to be sure, does not explore the baseline issue. But his suggestion about initial capital endowments came, as we have seen, from the thought that “because the Hobbesian construction does not contain proprietary rights at a foundational level, nothing is exempt from redistribution, either. From the standpoint of a Hobbesian variant of contractarian method, all assets pass from civil society back into a circumstance of no-ownership (not collective ownership) when initial endowments are to be allocated.”9 But how would this initial allocation work? For one thing, they would surely be variable from one social group to the next. More importantly, if they are genuinely initial, made all at a given time, then what happens to later generations? It is not to be expected that every family would retain its capital intact, and it is to be expected that many would have children numerous enough to require reduction of the shares they could hand on. Within a very few generations, the effect of these initial endowments would therefore be dissipated, even obliterated. So would Gray call for a continuous readjustment, along the lines of the welfare state? One supposes not. And if one does so suppose, then how is that idea to be reconciled with the claim that we are presupposing only prudence and no ideals of the person, no morality, at the outset?

3. The Case for Liberty

In the course of his development of a Hobbes-like contractarianism, Gray claims that it “contains nothing which might guarantee the priority of liberty over other political goods. . . . The basic liberties themselves will not in the Hobbesian account be immune from trade-off with other values (such as peace and security).”10 Should we be content with this rather negative conclusion? I think not. There is, I suggest, a deep reason, arising from the method itself, for expecting certain general results of this type. Trying to specify civil liberties for all and forever may be futile, but the basis for a general right of liberty, a right that does carry priorities over “other values,” is at hand by the very terms of a contractarian dispensation for fundamental political principles. In fact, it is misleading to put it this way, for in a sense there are no “other values” in the Hobbesian perspective. There are your values and mine and other people’s, but the only way they can appear in the contractarian
argument is as yours and mine and so on; and when we contend, what is in contention is whose values are going to prevail, if anyone's, and how. The answer is that nobody's are going to literally prevail; rather, we must find ways of enabling each to enjoy his or her realizations of value without any imposition of one on another.

This is reflected in the contractarian's employment of the agent's presumptively considered preferences. In major clashes of values we assume that those preferences have been considered and that the consideration has done nothing to change the contending parties' minds. Then each must ask whether there is anything to gain from interaction with the other party, and if so, whether the price—forgoing such gains—is worth paying. Where it is not, we have the basis for agreement despite disagreement: namely, agreement that each will allow the other to go his own way, so far as possible. The absence of an overlapping moral consensus need not in principle prevent this result. If anything, indeed, the presence of such a consensus is likely to generate tyrannies of its own; for this consensus will surely not be unanimous in any case, and if we think that its presence is what founds political morality, then the content of the near-consensus there would at best ever be available for bringing any dissenters to heel.

Whether a case for general liberties is possible depends, I would suggest, on how basic the liberties in question are, and also on just which versions of which liberties we are considering. For example, I accept that there is indeed little reason to assume agreement on what constitutes "primary goods," and thus on the principles regarding their distribution. To take another example of great interest to today's liberals, consider the supposed right of nondiscrimination. I do not see how we could get unanimity on such a right either. There is no reason, given absence of any ideals of the person, why someone should not prefer to expend resources in a discriminatory manner: for example, should prefer hiring women to men even if it entails a cost in efficiency and excludes some who are better qualified for the job. Since many contemporary theorists understand the basic liberties to include such things as nondiscrimination, however, it is clear that Gray is right, unless we considerably reduce the scope of the supposed liberties.

To take another important example: Is abortion, as Gray
suggests, "radically undecidable"? Not as a public issue in a pluralistic society. The "conservative" position requires a contentious assumption, either normative or metaphysical, which the position of the "liberals" does not: either (ethical) that it is part of the point of morality to protect organisms (that is, fetuses) wholly lacking in occurrence rationality; or (metaphysical) that, despite the evidence, such organisms do have rationality of the appropriate kind ("souls," perhaps). Fetuses are potentially rational, of course, but there is no logical basis for extending the rights we all accept for occurrence rational beings to occurrence nonrational ones. Lacking agreement on the contentious claims required by the conservative view, liberalism is driven toward accepting as the social compromise an agreement to disagree among the citizens: Those who accept the contentious positions in question may practice what they preach, but others who do not are also free to practice what they think to be right, which in the case in question is abortion on demand. The right to do what we think right when our actions do not force others to act against their own values is inherent in liberalism.

On the other hand, extension of this purely negative right to abortions to such measures as public payment for the abortions in question is, of course, quite another matter. Agreement to that level of liberties is not readily forthcoming.

From a Hobbesian perspective, the liberal hypothesis may be stated as follows: that in the medium-to-long run, cooperation will always be the best bet for each party concerned. Gains from noncooperation in the short run will always be more than offset by longer-run losses. If we can identify each party concerned with a set of personal powers, then the immediate output of this procedure applied globally is a simple prohibition of violence as a way of pursuing one's ends. Is this hypothesis plausible?

It is by this time unnecessary, in view of the publication of Gauthier's *Morals by Agreement*, to review the decision-theoretic facts about prisoner's dilemma games or coordination games. It is, however, necessary to say a few words about their significance, which has been the subject of much and heated discussion. The more important case is that of prisoner's dilemma. Here we have a partial conflict of interest. The way that this is usually characterized is that each party to a prisoner's dilemma finds that if he chooses the "noncooperative" strategy, he "does
better no matter what the other person does.” In a narrow sense of the term does, this may be true. If you defect and I don’t, I come out worse than if I had defected also; if you cooperate and I do, I come out better than in the foregoing eventuality; but if I don’t, I come out still better, namely with the maximum utility by hypothesis available in the situation. But the fact that if we both play this allegedly most rational strategy, then we will end up in a position inferior for both to what we could have had by cooperating really ought to be taken as some indication that the bald claim that rational players will defect has something dubious about it. Gauthier argues that rational players will abandon any interpretation of maximization that would lead to universal defection; instead, they will adopt the disposition to cooperate with others willing to do so. It is important to see that this is a higher-level strategic principle that can be adopted unilaterally by anybody, though it will only pay off when dealing with others who have adopted it. The important point, however, is that it will pay off when so dealing. I now find Gauthier’s argument wholly convincing.

What prisoner’s dilemma most directly shows is that social reinforcement should rationally be directed at cooperation. It shows that individuals ought, insofar as they can do so without incurring great costs, to stimulate the social reinforcement of cooperation, for example, by distributing appropriate epithets to the so-and-sos who insist on defection. It is rational for everyone to attempt to get cooperation adopted as the standard strategy in prisoner’s dilemma situations—and an astonishingly large number of situations turn out to be such. Most importantly, for present purposes, the standard situation of agreements is itself one, as Hobbes pointed out. Suppose that A and B make an agreement: A will do x, yielding payoff i to B, provided that B does y, yielding payoff j to A. By hypothesis, i is preferred by B to what he would have without the agreement, call it k, and j preferred by A to what A would have without agreement, call it m. However, also by hypothesis, i + k is preferred to either i or k alone by B, and j + m preferred to either j or m alone by A. Thus both have a temptation to break the agreement in the case where the other person acts first, since at that point, one has one’s cake and can eat it too: if A acts first, then B has both i and k. But as Hobbes also pointed out, if both players know
these facts in advance and have no trust in the other, then neither will ever make an agreement.\textsuperscript{14} Both will then be worse off so long as any potential gains from cooperation exist.

And this, in the case of virtually any two humans, they assuredly do, especially if one takes the Hobbesian point of view about the State of Nature. Dispensing with Hobbes's particular political views, let us define a "moral state of nature" as one in which there are no \textit{moral} rules—no one is responsive to any moral considerations. In such a situation, absolutely nothing is thought to be wrong, by anyone. In that case we can expect, at least for a very wide range of human temperaments, the result depicted by Hobbes. And so refraining from violence in the pursuit of our ends is an instance of cooperation. Each agrees to refrain from violence provided the other does. This is certainly cooperation in the standard decision-theoretic sense of the term, once we renounce the usual philosophical strategy of presupposing a moral framework already in existence (or of benign philosophical temperaments such as grace the gentle reader and myself). That it is fruitful cooperation is obvious once we see that it \textit{is} cooperation, in the somewhat special sense of decision theory, for it enables each of us to reap the fruits of his labor without incurring the losses that would be entailed by efforts to ward off predation by fellow rational animals.

If this is accepted, then I think we should reject Gray's assertion that the Hobbesian account contains nothing that might guarantee the priority of liberty over other political goods. It is difficult to see how he can say both that the enforcement of any particular system of production or, among mutually agreeing persons, distribution, would be unjust if it were also true that liberty has no special claim on our attention. It is not only quite unnecessary but also entirely unacceptable to derive liberalism from any "ideal of the person." Let the ideals of a person be what they may; that that person is to deal with others different from himself, yet also possessed of reason and the usual repertoire of human powers—notably the power to inflict death and other substantial disutilities—determines the proper character of those relations. That proper character clearly must include acknowledgement of what amounts to the general right to liberty.

If it is a mistake to try to construct liberalism on the basis of
an “ideal of the person,” so too is it to suppose that we need a “conception of the person.” We do not, for example, need to adopt the Spinozian idea suggested by Gray, that what defines an individual is “the disposition to assert his power and freedom in the world.” 15 Many actual people will have little disposition to do that, whatever it is supposed to be. They have all sorts of interests, some of which some of them assert and about others of which they are quite unassertive. Only if the idea is watered down to the point where our unassertive individuals are nevertheless reckoned to be “asserting” something will we capture everyone in its net. The assertion consists in nothing more than the having of interests that motivate action, in particular those actions that require adjustment in response to the actions of others.

We have seen that if any moral consensus can emerge among very diverse persons whose diversity encompasses strongly held religious views and the like, it can be only the consensus of liberalism: that each has the right to live according to her various beliefs, provided only that she not force them on those with whom she interacts. Let there be no mistake that this is a genuine moral outlook, and not a mere avoiding of the issue or somehow a value-free, utterly impartial, and supposedly scientific or objective attitude. It is a condition of entrance into the liberal community that one become liberal in that sense: that is, that one renounce any intention of enshrining by force one’s own particular values, whatever they may be, as the normative regimen for the community as a whole or indeed for any other person or persons. We have only too persuasive evidence of what happens when this attitude is not taken, in such phenomena as the Thirty Years’ War and the current situation in the Middle East. Gray is to be commended for pointing out that the same holds for productive systems. A socialism that would impose cooperation on all is as inimical to this general liberty as would be a capitalism that would break up voluntary socialist communities by force. The liberal commandment is: Thou Shalt Respect! It is, to be sure, the only liberal commandment, but that it is a commandment—if a uniquely rational one—rather than merely one incidental recommendation among others, must be perfectly clear.
4. Liberalism and the Free Market

We may turn now to the subject of the free market. A market is free when its agents have private property rights. Those rights tell us whom we have to see if we wish to acquire this, that, or the other, or make this or that change in the configuration of goods and services. Given such rights, it follows that transfers in the ownership of goods and services will proceed only by agreement of the parties whose goods and services they are. Insofar as there are property rights, there is a market. If everything is owned by individuals or voluntary associations of individuals, then we have full market society.

What the terms of reference are for defending the justice of the market is not entirely clear. To defend some market activity is surely trivial; to defend full market society is another matter. I shall select a version that puts the predominant portion of economic activity in the market sector, but will not here attempt to go the whole way. The proposition to be defended, then, is that whatever can be on the market normally should be. In my comments on Margaret Radin's chapter I shall agree that some things cannot be so. By implication, however, we are left with most things being properly so.

David Gauthier does the market philosophy a slight disservice when he entitles his otherwise admirable chapter on this subject “The Market: Freedom from Morality.” His reason for doing so is understandable, for what he there calls the market is defined in terms of the abstractions of neoclassical economics. Gauthier's market is devoid of externalities; all of the goods and services produced and consumed, and all of the factors of production, are the property of individuals without remainder; technology is known and fixed; information about products and prices is complete and costless to each actor, who is also indifferent regarding the origin of the products (for example, the consumer cares only about its utility qua product, not qua manifestation of a certain ideology); and there is perfect competition in the sense that no one producer can significantly influence prices on his own. In such a situation, each agent simply aims to maximize her utility from her own production and exchange activities, and the result will be terrific for everybody: the invisible hand lives!
The theoretical demonstration of optimality under these conditions is of real interest. Its practical importance is obviously a function of the degree to which these conditions are realized or realizable in the real world, and it is here that morality must enter the picture. Morality consists of recognition and respect for private property rights, starting with such rights in one's own person (this being the fundamental “factor of production”), and of the obligation to live up to one's agreements.

Gauthier insists that “the idea of morals by agreement may mislead, if it is supposed that rights must be the product or outcome of agreement. . . . the emergence of either co-operative or market interaction, demands an initial definition of the actors in terms of their factor endowments, and we have identified individual rights with these endowments. Rights provide the starting point for, and not the outcome of, agreement. . . . Market and co-operative practices presuppose individual rights. . . . And the rights so grounded prove to be the familiar ones of our tradition—rights to person and to property.” 17 That these are the rights we need is clear enough. Most libertarians, I believe, would agree with Gauthier about the nonconventional character of these rights. If we are going to insist that the rights that frame the market must themselves be founded on a prior agreement, then Gauthier's view must be rejected, and we must take up a more radical stance, holding that there is what Jules Coleman calls a “pre-market agreement” to set up the market. This is equivalent to an agreement on property rights, as he also says. 18

My position on this matter is that such rights fall straight out of the initial agreement to turn away from the Hobbesian pre-moral condition. Ownership of one's natural endowment is implicit in any fully social agreement, for it is impossible not to want these things respected if one wants anything at all. In turn, regarding external property: If the problem is that individuals want various things, and need the security to pursue them, then what other form can the Hobbesian social contract have than a general recognition of the rights of these various individuals to those things, provided they have been obtained without force and fraud? Agreeing not to molest Jones in his activities of cultivating, building, creating, and consuming is agreement that the ground he cultivates, the buildings he builds, the works he creates, and the consumables he consumes are in truth his to do
these things with. That’s what property rights are: they are rights to do things with things. Which acts may we perform vis à vis things? Any that do not require force or fraud. The market is simply the subset of activities in which we trade rights to do these various things with the various objects involved in those activities. The fundamental right of liberty is, I suggest, all we need. The market is not a separate institution in the free society. It simply is the free society.

5. Radin on “Commodification”

Margaret Radin, in “Justice and the Market Domain,” argues that “the traditional view,” according to which the market “appropriately encompasses most desired transactions between people,” is “wrong in granting too much ground to the market,” and indeed that it “wrongly suggests that a laissez-faire market regime is prima facie just.” She objects also to the idea that there is a sort of wall between the market and nonmarket realms, suggesting that “the battle-lines prevent us from appreciating the nonmarket aspects of many of our market relations.” Since the traditional view as she states it is certainly something I would wish to maintain, we must take a careful look at her objections. With her objection to the wall idea, on the other hand, I was at first sympathetic, and wondered whether we can combine approval of the market with this perception, that certain nonmarket aspects of what is on the market need to be protected in some way from its ravages. I have instead found to the contrary, as will be seen. We start with the charge of commodification.

Radin is concerned that the market may lead to “universal commodification,” the attitude that “all things can and should be separable from persons and exchanged 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 of as exchanges understandable in terms of gains from trade.” Radin objects to this in terms, broadly, of respect for persons and the fostering of community: to think of everything in terms of monetary value is to depersonalize in a potentially disturbing way. Consider the adopted child. People sometimes give up their children to oth-
ers “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 . . . may always wonder whether a higher asking price would have left her without parents. Even if the natural parent doesn’t accept the money . . . 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 pocket . . . We will all know how much we cost our parents. We will all conceive of ourselves as objects bearing monetary value.”

How narrowly are we to construe the notion of a commodity here? Commodities as Radin says, “are usually pictured as objects separate from the self and social relationships. Hence, universal commodification is a form of objectification. It assimilates personal attributes, relationships, and desired states of affairs to the realm of objects.” However, this doesn’t really help as much as one might think, because the term “object” is likewise subject to narrower and broader construal. When a logician expresses part of the form of an English sentence in partially quantified terms, for example, (x) (x is an aunt → x is female), the variable x ranges over everything, all “objects.” But of course some of those objects are people, rather than inert, material objects, and philosophers debate over the status of lots of other possible referents, such as properties and space-time points. It would be absurd to reject the use of quantificational logic, when the things quantified are persons, on the ground that “you can’t quantify persons, since persons are not objects.” Nevertheless, there is a deal of difference between a person and an inert object, or for that matter a person and, say, a deerfly, and in some contexts the difference will matter a great deal. We must ask, then, whether viewing things as having exchange value is eo ipso to regard them as “separable from the self and social relationships.” And this is to ask also just what a market society is—what we are conceiving when we conceive such a society.

To begin with, not everything available on a market is an
object in the narrow sense of that term. Economists speak of goods and services, goods referring to objects, services not. When I buy someone's services, then, I am not usually buying something separable from his self. Perhaps if the service is one that can also be done by a robot, we might say this. But what about those that cannot be done? Suppose I am a movie director and I wish to purchase the acting services of Robert Redford. Are these separable from Robert Redford? They may not be. It may be, for instance, that nobody else has the unique personality of Redford, who is just right for this part.

Now suppose the service I buy from person A is one that I could indeed get from a machine or a robot, but that I deliberately choose the personal one instead—I prefer A to a robot. Or suppose you are evaluating two applicants for some quite routine job—checkout person at your supermarket, for instance. You note that one of the applicants has a lively, outgoing personality that comes through when she says “Thank you for shopping at XMart!” while the other seems quite hollow—“just doing her job,” as we say. In the case of this job, though, the one who is just doing the job isn't doing the job very well. Personality may count for quite a lot. (There may be little else to go by; other talents required may be modest.) Well, these things make a difference. In fact, they make a difference that can sometimes be translated into dollars and cents. But how can this be so, if market relations mean commodification which means depersonalization?

Now, consider free exchange. Suppose I befriend you because I like your style, because I find what you have to say interesting, because I know I can count on you when the going gets tough, and can rely on your word. You have a similar evaluation of me. We get on famously. But if you were to cease doing and saying things that interest me, or were to become extremely vague and hopelessly unreliable, to show no interest in me, and so on, the relationship would likely wither. Your company is no longer worthwhile from my point of view, or mine from yours. Aren't personal relationships—as the term is not far from implying on the face of it—in fact exchanges? And isn't that the way it should be?

But this doesn't imply that they could be “commodified” in the particular sense of being maintainable through monetary
means. Suppose that next time you tell a particularly good joke, at which I laugh fit to be tied, you continue by saying, "That will be $55.90, please!" Likely I would suppose this was a further part of the joke... but if it were not? This too would obviously alter our relationship for the worse. But that is not because our relationship is one in which exchange is not even an applicable concept; rather, it is because it's one in which monetary payment is simply the wrong kind of currency. Money isn't what we're after. In short, the market in friends cannot be carried on in dollars and cents—but for all that, it is an exchange system: nobody is required to provide friendship to anyone else, and each will select friends, from the available possibilities, on the basis of who will offer the highest "return" on his or her "investment" in terms of time and energy (including emotional energy).

Now it may be said that if I were sticking to my last, I would be defending a society in which money was the only thing anyone was after. Isn't that what is involved in saying that everything is on the market? Let us see.

If the market is framed by the rule that people own things and in consequence may do as they please with them, including giving them to others, either as a gift or in exchange for other things, then is it true that the market involves universal commodification? In exchanges each person acquires things he values more, giving in return things he values less but which the partner to the exchange values more. Will everything I have become a commodity? Commodity is a quite narrow concept, it seems to me: to be a commodity is to be quite literally for sale; if the monetary price is right, it will be sold, or bought. If that is right, that commodification implies attaching specifically monetary values to everything that is within the power of anyone to alienate to others, then the free market, conceived as that institution in which people may do whatever they wish with what is theirs, does not and cannot have precisely that implication: universal commodification is a nonstarter.

For one, lesser thing, market society obviously does not imply the sense of everything's actually being for sale: I may be perfectly happy with some of my things, and there may be others that no one would give me enough for to make it worth my while to part with them. If I just don't want to sell x, then by
virtue of x being mine, I do not need to. If I may do what I want with x, then one of those things could be, simply, to keep it, resisting any offers to buy. People in fact do this all the time, even though they usually are under no legal or moral necessity to do so. “That’s not for sale!” is a familiar remark among economic agents. In this respect, then, the commodification charge is far too sweeping.

But let us turn to the more fundamental question: whether there is any conceptual limit to commodification. There would be if for each person, A, there is something A values so much that it would be in principle impossible for A to prefer anything else. Can we trade in ourselves, for example? To be sure, it is not entirely clear what doing that would consist in—selling oneself into slavery, perhaps? This presents an evident problem, since one would thereafter be unable to do anything with the money. Since the whole point of money, though, is that it represents an exchangeable right to perform various activities, namely those one can do with the things one gets, the reasoning of those who would sell themselves into slavery seems to be defective.

People have sacrificed their lives for the sake of friends, loved ones, ideals, country. None of these would seem to qualify as an exchange in any sense that would permit speaking of commodities. Indeed, it seems on further reflection that if commodification is supposed to imply capacity to enter a market in which things are literally bought and sold, for the medium of money, then it is very plausible indeed to think that selves will not be among the things available for purchase. Money is purchasing power, command over goods and services. Wherever the command in question would in principle be useless or impossible, the item in question ceases to be commodifiable. Slavery is a departure from the market, not an extension of it. It requires that some agents not be treated or regarded as agents.

Money is a means, and that for which it is exchanged is an end. The ends in question can be converted into further means, but eventually we arrive at that for the sake of which everything else is done; and if we do, then that cannot possibly be further exchanged. Personhood, as Radin suggests, may indeed be “essentially unmonetized and not fungible.” But whatever these ultimate values may be, it is worth pointing out that the very
existence of the market is contingent on their existence. On a market, we trade that which we value less for that which we value more. By definition, that which we value above all cannot be rationally traded. Yet we cannot always be increasing values by trades, for that would imply, as Aristotle in effect says, that we don’t really value anything at all. The entailment is strict. To have a market is to have a situation in which many things are not for sale.

A word about market value is in order here. When things are said to be worth such-and-such a number of dollars, what does this mean concerning their real value to their possessors? In a great many cases, it means essentially nothing. The use-value to me of an item that has a market value of $X is characteristically more than $X, which is why I bought it. A charming photograph of a much-loved child will have cost me, perhaps 50 cents. But that sum doesn’t express its value to me, since it may well be irreplaceable, nor, very likely, to anyone else, for strangers would be unlikely to offer even the 50 cents it cost me to get it in the first place. Yet these features of exchanges are, I suggest, typical. It is radically mistaken to think that markets imply commodification in Radin’s sense.

Parents will, in extreme circumstances, sell their children, either in fact or in effect. In nonextremities, why won’t they? Suppose you are the parent of B, of whom you are very fond; and suppose that you see that C, who is extremely fond of B, would no doubt make B a wonderful parent, and is a person of means who would enable B to flourish in ways that you, a person of normal means, cannot. C makes a generous offer, in dollars. Should you sell? Most of us will think of selling one’s child as rather like selling a part of oneself. We will suppose that no other persons could offer the child the personal affection that you can, and that this affection is virtually irreplaceable, in the sense that whatever the child did under the care of anyone else, the absence of you in particular will make his life less good than it would otherwise be. This personal factor will indeed put children, for most of us, beyond the reach of the market.

Well, what if someone doesn’t care that much for her children, knows that she makes a poor parent, and reasonably believes that another could not only provide better care but
would genuinely make the child happier? (Or—difficult case—someone who has good evidence that her beliefs of the aforementioned kind are false?) It is still hard to see, though, that a monetary offer would be appropriate, and the quality of that person’s affective life would be very much in question were she willing to consider one.

Even so—as Radin seems to agree—24 it is not clear that this is a sufficient reason for not permitting such exchanges. If you knew that your parents were willing to sell you to just anyone, provided only that the price was right, you’d probably be inclined to run away from home. You would be less inclined to love them, and less inclined to think that they loved you. Since the value of a loving domestic environment is familiar to all, it is difficult to see that permitting the buying and selling of children would bring it about that very many children came to be for sale. What one would expect is that altering current laws so as to permit the buying and selling of children would lead to a very tiny amount of activity in that market, except perhaps in the case of infants, who do not have personhood in sufficient degree to make these considerations quite as potent. (Similarly, we have the problem of orphans, to whom some of the foregoing considerations cannot apply.)

Do we treat children unjustly by buying and selling them? The attitudes most of us quite naturally have toward children are such that those aren’t the terms we would be inclined to use. One who would sell her own child shows herself to be inhuman, deficient in a major area of human affection—and yet were she to go ahead and sell that child to someone who would also make the child a better parent, the transaction might well be to that child’s benefit. (The hitch is that we might also think less of one who was willing to acquire a child by purchase. We might, but if that was the only way a loving adoptive parent could get the child, wouldn’t that be forgivable?)

Fundamental to any consideration of what to do regarding children, surely, is the fact that they grow up to become adults, with the usual range of competences and powers for good or ill. There is plainly a community interest in how they will use those powers when they reach adulthood. That these particular commodities are loaded with potential for third-party effects is obvious, and that involuntary third-party effects are cause for the
imposition of requirements and limitations is, therefore, also obvious. At the very least, young humans are potentially dangerous substances. Just as the defender of the market need not object in principle to restricting the sale of nitroglycerin or automatic rifles, so he need not object to restrictions on the sale of children.

A further point about this subject is more fundamental, if it is not actually another way of saying the same thing: namely, that the defender of the market may also take the line that children cannot be owned. Certainly the marketer thinks that adult humans are not ownable: slavery is fundamentally objectionable, in his view. Since slavery is a relation of domination in the literal and uncontroversial sense of that term in which it involves the exercise of force over one person by another, it is ruled out. At what point children become rational agents who therefore have the rights of agents on the market instead of commodities on it is no doubt difficult to decide in any satisfactory manner. Some, though not I, would hold that children simply are by nature not commodities. But even if we reject this latter, in my judgment obscurantist position, the considerations adduced in the foregoing paragraphs may have the same effect. It may be that we do best simply to declare that children are not to be for sale, and that is that.

This doesn't leave Radin answered entirely satisfactorily, I agree. But I hope at least to have shown that the specter of "universal commodification" is not one we need fear in market society.

6. RADIN ON "INCOMPLETE" COMMODIFICATION

Let us turn in conclusion, to Radin's theses concerning incomplete commodification. The suggestion is that we develop a theory of justice alternative to that in which there are, on the one hand, agents with their inviolable personal rights and, on the other, things owned or ownable by them that are available for exchange. In this alternative theory, "who should get what things of value depends upon the appropriate relationship between persons and things, and between persons and other people." But that is not a helpful statement, since every theory of justice is statable in such a form. The underlying theory of the
market, for example, is the theory that the appropriate relation between people and other people is that each should respect the rights of each other, including that other's rights in external property and personal capacity to render services.

But in Radin's version, various departures from this fairly simple principle are recommended. For example, she suggests that there is a connection between housing and personality. Housing is to be "incompletely commodified in recognition of its connection with personhood." But why does that call for incomplete commodification? Consider, for example, the right of eminent domain, which is eminently claimed by all American community governments. If housing is so intimately connected with personhood, wouldn't that be best expressed by allowing individuals actual rights over their housing, instead of a set of watered-down rights, subject to the whims of the local government? What if Mrs. Jones doesn't want to part with her long-loved dwelling in order that a new school or expressway can go through? What if she will not accept any proffered price for it? Full property rights would protect Mrs. Jones, but I imagine that what Radin has in mind would do nothing of the sort.

Take, for example, Radin's disaffection for economic inequality, which she wishes to associate, as do so many, with economic injustice. This is a very large issue, to be sure, but a couple of remarks are in order. One is that the vast majority of mankind over the ages have been very much worse off than the poorest of Americans, at least in material terms. Is it to be supposed that a malaise of injustice hung over all these ages? Or that people lacked personality or personhood prior to, roughly, the late twentieth century? If not, then is the objection to inequality an objection to poverty, as she implies, or is it something else? And if something else, then what possible connection does it have to personality? How does it promote personality and personhood to be foisting vast arrays of regulations and other incursions on what an individual can control? For that matter, how is genuine community fostered by such impositions?

The market idea divides the world into persons and nonpersons; it says that the nonpersonal is available for ownership by persons, who in turn must relate to each other by respecting their rights, including their rights to nonpersonal things. It reminds us that what we call sales are, after all, trades—money
is a medium of exchange—and that all trades are trades between persons, persons who employ their own judgment on the matter of what to do with and to and about the material portion of the world. Radin is entirely right to say that "People engaged in market interactions are not just acquiring things, they are relating to each other."  

It is difficult to see how we could have a better program for respecting personhood than this. One suspects that in Radin's proposal, we will find community often taking precedence over personhood. That can hardly be what she wanted: One supposes that a good community would be one that is enthusiastically and voluntarily supported by those who live in it, rather than an ideal crammed down the throats of its unwilling citizens by philosopher kings. And so on. In general, therefore, I am unmoved by her criticisms of the market, and emerge more, rather than less, impressed with its virtues.

NOTES

2. Ibid., 34–35.
3. Ibid., 40.
4. Ibid., 39.
5. Ibid., 42.
6. Ibid.
7. Ibid.
10. Ibid., 44.
13. Argued in Gauthier, Morals by Agreement, chap. 6. Many have expressed doubts about Gauthier's view here, including myself in "Reason

14. The point about promising was noted by Hobbes in Leviathan, chap. 15.


17. Ibid., 222.


20. Ibid., 167.

21. Ibid.

22. Ibid., 171–72.

23. Ibid., 167.

24. Ibid., 175.

25. Ibid., 184.

26. Ibid.

27. Ibid., 183. She does not, however, flatly identify justice with equality.

28. Ibid., 184.