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Commodification: The Market and the Public Service

by

John Rowell

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Abstract

This thesis explores the issue of "universal commodification," a tendency to view everything in terms of market rhetoric. I argue that this trend is detrimental to the public good, especially where it concerns the public service and in particular higher education.

I also offer critiques of libertarianism and liberalism, both of which would allow universal commodification to take place as free market activities. Contrary to these views, I try to justify legal moralism with respect to at least some free market exchange, especially where there is a pay-off with respect to increased public well-being.

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Introduction

In June 1996, the Canadian Government introduced legislation that could lead to a ban on surrogate motherhood arrangements and the buying and selling of body parts. The legislation followed recommendations by the Royal Commission on Reproductive Technologies, whose 1993 report Proceed With Care cited among other things objections to the "commodification" of the human body. In the same month, CBC radio news (28/6/96) ran a feature on the fifteenth anniversary of the death of Terry Fox, the cancer victim who attempted to run across Canada to raise money for cancer research. The item mentioned that Terry Fox's family had refused permission for commercial companies to use Fox's name for promotional purposes, even though they would have paid handsomely into cancer research to do so. Finally, again in the same month, author Ben Gadd protested Parks Canada's moves to revamp its operations so it can attract more tourists to national parks. [Globe and Mail, 17/6/96] According to Gadd's article, Parks Canada now uses familiar market rhetoric such as "downsizing" and "restructuring." In one brochure, it refers to Jasper National Park as "a world-class tourism product." [A19] Even in our increasingly consumerist society, these examples of resistance to suspect forms of commodification show there is still a will among the general public to protect certain ideals from being

consumed by commercial interests.

Margaret Radin defines commodification as a situation "where something is not only available for buying and selling but is also regarded in terms of market rhetoric." ["Market Inalienability" 174] Some things, though, have a value which cannot be priced: that value, according to Radin, is "nonfungible." She distinguishes fungible and nonfungible objects; she defines the former as being generally worth no more than their monetary equivalent and which can therefore be exchanged for money without effect on the owner ["Market Inalienability" 176.] A fungible object can therefore be exchanged for its cash equivalent without reluctance or personal loss by the seller. But to treat objects with nonfungible value in the same way is to undermine that value. This value is sometimes referred to as "sentimental value:" we attach special emotional and/or moral significance to certain things and that significance cannot be explained in market terms.¹

In the current context of contested commodities, Radin distinguishes (not explicitly) those disputed items which are now only the object of possible commodification (those which commodifiers have their eyes on but which are not yet commodified,) and those, such as body parts, which may now be the object of actual trade. I will focus on the former case, which involves not individuals but public

institutions. However, these are not separate issues entirely; there are arguments against commodification which present a general case against attitudes which overstate the importance of the free market in our lives.

Critics of commodification argue that such attitudes degrade and distort nonfungible values attached to things. Something cannot be the object of emotional or moral regard if at the same time it is viewed as a mere object of exchange.² On the question of commercialising body parts, Radin says that their loss through commodification removes an essential part of personhood ["Market Inalienability" 176.] Body parts cannot be separated from a person "without significant injury to personhood." ["Justice and the Market Domain" 187].³ My second example also illustrates a form of commodification that is regarded as degrading or demeaning, in this case to a (dead) person's name and reputation. Even though commercialising Terry Fox's name would have helped financially the cause he died for, the family presumably felt that the symbolism of the name as a role model would be damaged if it appeared on a commercial product.⁴ Similar sentiments are applied to a country's art treasures and historic buildings: the symbolic value of such things is much greater than any price they might accrue. This perspective also has a place in conventional Christian morality, symbolised by Christ overturning the tables of the moneylenders in the temple.

My final case, of Jasper National Park, represents commodification of a public service rather than a particular person or group. In his Globe and Mail article, Ben Gadd speaks of the clash between wildlife in Jasper National Park and the increasing number of tourists lured there by officials eager to turn the park into a Disneyfied tourism commodity. Already this year, Gadd reports, park wardens have shot seven "problem" female elk seen as a threat to tourists; as well, they have sawn-off the antlers of male elk that have exhibited aggressive behaviour towards people. Just as personal attributes could be considered to possess a higher value, the public service also involves nonfungible values. In his list of nonfungible items, Michael Walzer includes the public service, observing that "The market in services is subject to restraint only if it distorts the character, or lowers the value, of common provision." [102] The Jasper Park example is a clear case of lowering the value of "the common provision," especially to those who tend to view the environment in intrinsic rather than instrumental terms.⁵

Opposition to commodification falls into two camps, which, following Debra Satz's classification, may be called "essentialist" and "nonessentialist" views. ["Markets in Women's Productive Labour" 110] Essentialist views hold that there are forms of commerce which essentially violate human dignity. This view either condemns commerce outright

or condemns commerce in certain areas, typically the sale of human beings or parts of human beings, of sex, and of reproductive labour. The strictest form is the Marxist view, which sees all forms of commodification as inherently degrading, regardless of cultural norms. In any form, commerce demeans the personhood of participants and relationships between them. In particular, Marx says, the use of money appears as a "distorting power both against the individual and against the bonds of society." [qtd in Arneson "Commerce and Selfishness" 214] To use Radin's term, Marxists believe in "universal noncommodification," where nothing (or very little) can be bought or sold.

A second type of essentialist view is presented by Michael Walzer in his book Spheres of Justice. Walzer sees nothing wrong with impersonal economic relationships as long as they are confined to the proper market sphere. Walzer sums-up this view when he says: "It is one thing to clear the Temple of traders, quite another to clear the streets." [109] Walzer argues, then, for "universal commodification" in some spheres and "universal noncommodification" in others. This is an essentialist view because, for Walzer, some things are essentially noncommodities and should never be the object of commercial exchange. Walzer allows that some spheres may be impersonal as long as there is no carry-over into a sphere which should be personal. This is because economic transactions have

become largely impersonal, where people agree to use each other to attain mutual economic benefits. Impersonal relations may actually be mutually beneficial, but, Walzer says, they also presume an indifference to the well-being of the other party which should not be (and has in the past not been) a feature of noneconomic transactions such as acts of altruism. Those spheres dealing with essentially non-fungible transactions, such as those based on altruism, should not be influenced by trends in those spheres dealing with impersonal, fungible activities.

Both the Marxist view and Walzer's are acontextual in their essentialism: that is, regardless of context all or some forms of commerce are essentially objectionable on moral grounds. The essentialist view, however, has been criticised⁶ for failing to provide an argument which shows a causal link between certain forms of commerce and the "essential" degradation of people involved. On this question, Bob Brecher remarks

It will not do merely to insist that prostitution is 'essentially degrading,' for one has to give reasons for such a description, rather than merely asserting it. It is hard to imagine, without begging the question at issue, any social practice which is essentially anything out of the context of the society in which it takes place. [191]

Placing a particular act in context allows us to see it

not as an isolated incident but as part of a broader social picture where a link can be made between the social and economic status of certain people and the type of economic activities they perform. That prostitution, for example, is not essentially anything can be seen by comparing the lot of streetwalkers, whose lives and incomes are controlled by pimps, with high-society call girls and male prostitutes, who are comparatively safe and independent, and who as well enjoy a relatively high standard of living. [Satz "Markets in Women's Sexual Labour" 65-7]

It is not difficult to find counter-examples to the claim that all or some forms of labour and commerce are essentially degrading. Contexts can be found to counter the essentialist claim. Does a woman degrade or ennoble herself when she turns to prostitution as the only available means to feed her children?⁷ Also, there is an inconsistency when essentialists focus their criticisms on subjects like prostitution and commercial surrogacy while tolerating by silence more widespread practices like monotonous wage labour, which also commodifies people by making them mere extensions of a machine. [Satz "Markets in Women's Sexual Labour" 72-3]

Those holding a nonessentialist view, by contrast, aim to deflect judgement of suspect forms of commodification to the social contexts in which they occur. Nonessentialist critics hope by this method to show that suspect activities

are symptomatic of wider social problems such as race and gender inequality. Commercialised reproductive labour, for example, can be traced to systemic gender inequality. In a sexist society, where men and women are not equal and where many women play a stereotyped role, such practices reinforce the stereotype and hence the inequality. [Satz "Markets in Women's Reproductive Labour" 127] Even if all women are not stereotyped, women who are poor are particularly vulnerable to being stigmatized as self-commodifiers because they are the group most likely to engage in such labour. Radin points out that these women are often in a dilemma: either they engage in a "desperate exchange" or they become even more desperate by refusing (or being refused by law) to take part in the exchange. ["Justice and the Market Domain" 187] The fact that their situation will not be improved by eliminating commodification of reproductive labour shows deep-rooted injustices exist in "the larger social context in which this dilemma is embedded." [ibid]⁸

The type of stereotyping that concerns Satz and Radin can adversely affect the general well-being of specific groups. In such cases, there occurs what Brecher calls "morality-affecting harms," where "the impact of an action, practice or institution on people's moral attitudes, and thus their moral behaviour, is harmful..." [184] Brecher argues that allowing context to be seen as a potential

cause of harmful attitudes introduces a new dimension to the concept. On this view, we no longer need to be confined by what Brecher calls "the excessive liberal emphasis on artificially isolated individuals." [186] We can now consider the idea of harms to groups without having to specify particular individuals. "Morality-affecting" harms to attitudes can cause harms to identifiable groups. Ignorance, misinformation, and cultural chauvinism can cause one group to hold a distorted view of another: the appalling consequences of hegemonistic attitudes towards aboriginal people of North America is a classic example.

The nonessentialist view, then, shifts the focus of attention away from individuals performing individual acts. This allows assessment of whether identifiable groups typically suffer as a result of the prevailing attitude towards them. For example, an empirical assessment can be made of the social and economic status of a particular group. Where members of a group have little opportunity to advance themselves beyond a typical level, we must at least investigate whether they are victims of systemic discrimination. We can also assess the status of these groups by considering their range of options compared to those in the predominant group. In the case of suspect forms of commodification, it is pertinent to ask whether some groups rather than others participate in these activities.

In contexts where specific groups are restricted economically because of discrimination, they cannot be said to be freely engaging in market activity. At least, their freedom should be measured against that enjoyed by dominant groups in a given culture. The ideal solution would be to remove the discrimination; where this is not possible, rectifying economic disadvantage due to discrimination could then involve external interference with the market.

The possibility of external moralistic interference with the market raises the issue of whether contemporary capitalist societies are free-market societies. Many people believe they are, and staunchly defend the market's independence. The market, in David Gauthier's phrase, is a "morally free zone," where moral considerations are alien to the free and voluntary exchange of goods, whatever they may be. Thus the issue of what is or is not morally proper is, according to this view, irrelevant. It betrays as well an ideological bias which seeks to impose on others interests and goals they do not actually have.

In my first two chapters I will address these counter arguments. In the first chapter, I offer a critique of Gauthier's free zone argument, that a free market activity should not be subject to moral or legal restraint. If the argument can be shown to apply only to an ideal market that bears little resemblance to the actual market, then

the relevance of Gauthier's argument can be questioned. In particular, I question whether Gauthier's Pareto-style notion of the ideal market containing no harmful externalities can ever be realised in the context of contemporary Western capitalist societies.

In the second chapter, I tackle the question of moralistic interference with nonharmful interests. I take issue with the standard liberal position on interests put forward by Joel Feinberg in his extensive work Harm to Others. Where Feinberg argues that a person's actual interests must be supposed to reflect her true interests, I question whether the thwarting of actual interests a person happens to have is the only relevant criterion in assessing whether that person has been harmed. If actual interests are based on attitudes which are a result of ignorance, misinformation, or deliberate deception, a person can be harmed or damaged by having those rather than more salutary or beneficial interests. In Radin's words, if our actual beliefs and interests keep us from becoming "well-developed persons" or "hamper self-development," then people confined in this way can be harmed or wronged. Feinberg's argument rules out moralistic interference because it insists on legal neutrality with respect to concepts of human flourishing.⁹ I will argue, though, that this neutrality stymies debate on issues involving notions of the good.

The concept of human flourishing can be made not from an acontextual perfectionist ideal, but in terms of what seems to be our best available alternative. This approach has the effect, I believe, of meeting some of the concerns about moralistic interference that Feinberg raises. On the issue of universal commodification, for example, we can ask whether human flourishing is best served by upholding some inalienabilities or by allowing everything to be assessed in terms of market rhetoric. The pay off for restrictions on freedom entailed by inalienability (or incomplete commodification) is a general increase in well-being. In my final chapter, I will discuss the effect of commodifying the public service with special attention to higher education. I will assess the merits of publicly-subsidized education in comparison to the proposed commodified version, and argue that the latter decreases the value of education, which is a primary public good.

I argue that moves to commodify higher education undermine basic values which have come to define and distinguish the nature of academic studies. There may be more, but I will focus on three: first, the value of academic freedom, the right to have one's research and teaching judged by competent peers; second, the belief that an education is not simply a question of acquiring information, but a process of intellectual self-development (the notion of "citizen" rather than "consumer;") finally,

the idea that education is a service to the public, not a commodity to be bought and sold on the market. Making higher education available only to those who can pay violates the principle of universal accessibility to those with merit.¹⁰

Notes

1. Among things with sentimental value would be gifts from loved-ones and friends, momentos, pets, items of historical, religious or cultural significance, unique natural objects, unique artifacts, and so on. One could, of course, attach a price to any of these but not, in Radin's words, "without effect on the owner."
2. I mean this to echo Kant's distinction between using people as means and using them as mere means. One might be forced to sell a precious object because of economic necessity but would still, all things being equal, uphold its nonfungible value. Such sales would not involve treating these things as merely fungible. There are no things which are essentially nonfungible because there are no limits on wants and needs; however, there is certainly a range of objects which have traditionally been the object of nonfungible value.
3. It is a loss to personhood if the sale is made

reluctantly because of adverse economic circumstances--in other words, under duress. The same cannot be said for voluntary donation or loss of body parts from disease. It is not so much the loss of the part that injures personhood as the stigma attached to those perceived as self-commodifiers.

4. The anti-consequentialist tenor of the family's attitude is possibly only an appearance. Perhaps they reasoned that if Terry Fox's name remained unsullied by commercialism, his continued credibility would in the long run bring in more money to cancer research than would have been gained by selling the rights to use it commercially. Where someone is identified primarily as a moral role model, commercialising that person's name is inappropriate and possibly damaging to her reputation. No-one would expect Mother Theresa, for instance, to allow her name to be used in a commercial no matter how much money accrued to her charities.

5. Why? Because, for one thing, it denies some visitors a genuine wilderness experience. Those visitors who bother to acquaint themselves with wilderness etiquette and behave accordingly are having their experience spoiled by those who want merely to consume a "product." I will dwell more on the effects of "consumer choice" in Chapter One. The preliminary point, though, is that consumer choices cannot be emptied of moral regard without, at least in some cases,

harm being done. In this case the harm is to the considerate visitors as well as to the animals.

6. See two articles by Arneson listed below. See also the two articles by Satz, and the one by Brecher.

7. See Arneson "Commerce and Surrogacy" [218-222] and Satz "Markets in Women's Sexual Labour" [65-6] for further examples.

8. Given that women who are poor are disproportionately women of colour, they are faced with the double whammy of being the target of both racism and sexism. Also, Brecher [194-5] imagines a possible future free market in surrogate arrangements where women would be imported from poor countries (like Filipino domestics) to act as surrogate mothers. This is tantamount to trade in human flesh.

9. While it is true that Feinberg discusses harm-causing activities as a basis for litigation, there are compelling reasons to discuss the issue of commodification separately, as a moral problem. Once this separation is made, and the moral issue is highlighted, the question of what legally, if anything, should be done becomes a separate matter. Surrogacy, for example, might still be objectionable even if, in certain contexts, it would be counter-productive to insist on a legal ban.

10. The defence of a noncommodified system of higher education does not involve the kinds of problems noted by Radin that occur in preventing by legal remedy

prostitution, surrogate motherhood or the sale of body parts. There are no dilemmas created whereby enforced noncommodification may be a worse option for the people whom the law is trying to help.

Chapter Two: Is the Market a Morally Free Zone?

In Morals by Agreement, David Gauthier argues against any morally-motivated restrictions on market activity, asserting that the ideal market is a morally-free zone. According to this view, morality is irrelevant to market activity because the market, to use Gauthier's term, has an "antecedent morality;"[85] that is, it possesses its own rationale and justificatory process which pre-empts any interference on moral grounds. The market "satisfies the ideal of moral anarchy," says Gauthier [84] because it can function without the "artifice" of morality and politics--it needs no constraints.

This would be a very implausible claim if applied to the actual market as it exists in advanced capitalist societies today, although Gauthier is envisaging not the actual market but a "perfectly competitive market" that presupposes no injustice in acquisition or exchange. In postulating the conditions of an ideal market, though, he diverts attention from the real issue, which is the conditions under which the actual market operates. Somehow there is supposed to be a divorce between actual and ideal market conditions, but Gauthier and his libertarian allies never make clear how the ideal is to become a reality. Where the onus is on them to provide the connection, critics may feel free to intersperse objections to the

ideal with observations about the reality.

There are at least three central claims backing the ideal of the market as a morally-free zone. First, the ideal market requires no regulation instigated by moral concerns to function properly; when markets do require regulation, they have ceased to function according to internal market principles. Second, market participants are protected from interference by property rights, and, in effect, all human rights can be reduced to property rights.[Narveson 66] Property rights entail the right to dispose of one's property as one sees fit. Third, the market in equilibrium (of supply and demand) allows no disproportion in power relations between those who participate in market activity. Each of these claims can be challenged by arguments addressed both to real and ideal conditions.

Freedom and the Market.

The ideal of the market as a morally-free zone might also be expressed by saying it is a totally free zone in that ideally it should be free of what Gauthier calls "externalities," factors not intrinsic to market transactions. "Internalities," by contrast, such as keeping agreements and respecting property rights, are what make up the market's antecedent morality. Ideally, then, each transaction in the market would be governed solely by

externalities and would not allow external factors, negative or positive, to arise [Gauthier 87-9; Narveson, The Libertarian Idea 188-9]. According to Gauthier, a positive externality arises when a market transaction creates a benefit others (those not part of the transaction) can use as freeloaders. He gives the example of a lighthouse financed by a group of shipowners that other shipowners can use without payment. A negative externality, on the other hand, is created when a transaction or enterprise has a negative effect on those not part of the transaction: the creation of pollutants would be an example.

Gauthier regards any intervention into market activity to counteract externalities as arising from "market failure." The market has failed if its activities create the need for such intervention. In the case of positive externalities, various measures could be taken against the lighthouse freeloaders, such as persuading port authorities not to allow them to dock and unload at any harbour served by the lighthouse.¹ Another example would be where a drug company develops a formula which can be copied by other companies and sold at a cheaper price. This case could perhaps be covered by patent law. It is a curious argument, though, which describes a possible public benefit as a failure, but in the perverse world of the market the object is profit and not necessarily public good. In any case the "problem" of positive

externalities for the market does not arise with sufficient frequency for it to be too much of a hindrance to profit-making. The presence of any externality, however, seriously undermines the dream of pure market activity: the market, especially one creating environmental degradation, cannot help but cause externalities and in most cases the externalities are negative.²

Suppose my neighbour's economic activity (or any other activity for that matter) pollutes the atmosphere around my property, creates noise that disturbs me, spoils my view, or adversely affects my moral climate.³ My neighbour's activities could be called "true negative externalities" if I neither engage in transactions with her nor carry-on similar activities myself. I have a claim against her when my own activities create very few negative externalities by comparison. Whether the claim is a legal one or merely a grievance claim would depend on the extent to which my own survival activities were affected. But even a grievance claim signifies market failure because it creates a need for market regulation.

If my livelihood is affected by negative externalities, we might call this, following Daniel Hausman [327-30], a pecuniary (negative) externality, while a nonpecuniary externality would not directly affect my essential economic activities but affect only my "space." Hausman gives the example of Capitalist Howard's mechanised weaving factory

and its effect on handloom weavers: if Howard's factory pollutes the hand weavers' environment but does not spoil their cloth so that people will no longer buy it, the effect is nonpecuniary. But if Howard puts them out of business because of the negative externalities his factory creates, then a pecuniary externality occurs. The hand weavers would have no grounds to complain, though, if they went out of business owing to purely competitive factors, that is, so-called pure internalities.⁴ As I will argue, however, the very engagement in economic activity, at least in a highly industrialised society, has the potential to create negative externalities and renders the idea of pure internalities something of a fairytale.

The fairytale is that market transactions are isolated incidents of consenting capitalist acts, so there should be no overall regulation of the effects of such acts on noncontributing (or sometimes nonconforming) citizens. But if we distinguish those transactions which create negative externalities from those that do not, an essential difference emerges. Let's say Capitalist Howard's cloth used to provide me with cheap clothes until I developed an environmental and aesthetic awareness such that its production now signifies to me air and noise pollution, and horrible taste in clothes. I therefore decide to buy cloth only from the hand weavers. If, before, I tacitly supported Howard's business in buying his cloth, I had

no complaint against the nuisance his business caused me. But my new-found preference gives me cause because I am no longer a tacit accomplice. Now, my neighbour Jones might argue, on utilitarian grounds, that as she and other neighbours prefer Howard's cloth, their preferences outweigh mine, so I have no grounds to complain. But, I reply, my preferences create no nonpecuniary externalities: my support of the hand weavers does not affect Jones, but her preferences affect me. Similarly if I walk to work, my choice affects no-one negatively, but if I drive to work in a noisy, gas-guzzling car, my choice has immediate effect on those around me. Yet producing gas-guzzling cars rather than more environmentally friendly ones is in the libertarian ethic a neutral activity: it simply supplies a demand.

So there exists, given technological advances, a disproportion in negative effect between some people's choices and those of others. Let's say Joe's choice of lifestyle creates much less negative impact than Mike's; the antecedent morality of the market makes no distinction between the two. In market terms, Mike's transactions and Joe's transactions are morally neutral regardless of the greater negative impact of Mike's not only on Joe but on anyone who has contact with Mike or feels the effect of his activities. But grounds for complaint regarding nonpecuniary externalities weaken in so far as one's own

activities as a consumer negatively affect others. In contemporary industrial society, even the purchase of "basics" such as refrigerators, air-conditioning, and automobiles contributes to serious environmental degradation. Anyone could use a scale to assess the negative impact of any particular activity she might be contemplating. On a scale of one to ten, with ten being the greatest negative impact, Joe would score close to zero if he buys a bicycle, while Mike would score close to ten if he bought a sports car. The scale would measure not total negative impact but relative impact based on type of basic need e.g. housing, recreation, food, transportation. So buying a sports car is relative to buying a bike not relative to buying a nuclear reactor.

However, Gauthier's vision of the ideal market cannot recognize the disproportion in terms of negative externalities between Joe's and Mike's preferences. In the market, these preferences are treated as demands for consumption, and the only relevant issue is to supply those demands. Joe's desire for a clean environment, let us say, is simply a demand the market can try to satisfy in various ways: the moral superiority of his desires over Mike's cannot be recognized. This highly artificial perspective cannot account for the essential conflict between Joe's and Mike's desires, where satisfaction of one would entail frustration of the other but where, in terms of creating

negative externalities, more overall good occurs in satisfying Joe's desires. The market is concerned only that there be demands it can supply; it is not interested in the nature of those demands or what motivates them. This indifference, though, is defended by Gauthier as an essential market freedom.

Indifference, he says, allows for "fundamental liberation," which means "Men and women are freed from the need to establish more particular bonds, whether these be affective or coercive, in order to interact beneficially." [102] Gauthier argues that those who hanker for more close-knit communities are guilty of a kind of Sartrean bad faith, fleeing "the freedom to choose the persons in whose interests they will take an interest." [ibid] In other words, the free market allows people to make affective ties with those they choose rather than with those on whom they are economically dependent. This assumes that in market society there are no class or power relationships, an issue I will address shortly. But what is the political implication of Gauthier's assertion?

Gauthier implies here that nonmarket societies do not allow such freedom from coercive affective ties, which means that people are forced through economic necessity to form bonds with those they would choose not to deal with in noncoercive circumstances. Is it true that nonmarket societies coerce their citizenry in this way? Hard-line

communist states have been guilty of forcing on people at least a public display of affection for the state and party. However, it is unclear whether such states act this way because they are nonmarket economies or because they happen to have developed into authoritarian regimes. I suppose also that tribal self-sufficient societies may have ways of enforcing emotional attachment to the tribe. Again, though, they may not. Some North American native people would in the past form an alliance with a chief because he happened to be the most successful hunter around, not because of any deep-felt reverence for him. In any case, it is hard to see how one can draw a causal connection between the free market and freedom from coerced affective ties, and derive from that a normative point connecting markets and freedom. Fascist states, for example, are market economies but are guilty of even worse oppression than hard-line Stalinist states. It would seem that freedom from coerced affective ties has less to do with the market than with the type of political and social organization that governs a particular society. Gauthier fails to explain how the ideal market could eradicate class and caste systems that exist in contemporary market societies, or how it would eliminate sexist and racist attitudes that often impose role identification on particular groups. In short, the claim that capitalism is tied to democracy and democracy to capitalism is simply false.

As Gauthier well knows, the present market is not itself free from affective coercion. When people sell their labour to a particular company or institution, they are frequently expected not just to do a job, but also to assume an affinity with the organization they may or may not possess: the egregious example of Wal-Mart comes immediately to mind. Apparently using a Japanese model of instilling an assumed affinity for the employer (and perhaps, for the more gullible, an actual affinity) firms like Wal-Mart believe it profitable to try and develop in their employees a loyalty more often associated with contemporary religious cults. One does not have to be a deconstructive social critic to notice that such methods of gaining employee loyalty (do Wal-Mart employees have any choice but to join in the sessions?) are insulting to the dignity and personal integrity of employees. This example, and countless more, creates doubt about Gauthier's ideal of an ideologically pure market.

Without addressing these social issues, the libertarian ideal seems utopian and unrealistic. What could possibly be the future starting point for Gauthier's ideal market? Any such starting point would have to rid the collective consciousness of the Western World of a host of ideologically-motivated biases. Again, Gauthier's market ideal simply looks naive in the face of market reality: in Michael Milde's words, the ideal does "conceptual

violence to one's experience of actual human competitive activity." [Milde 98] To quote Milde again, Gauthier's theory of ideal markets "does not treat the social aspects of human activities and human existence seriously enough." [137] In effect, Gauthier and other libertarians strip market participants of all ideological bias and negative personal traits. I have argued, though, that the negative externalities caused by Mike's preferences by far outweigh those created by Joe, so Joe and Mike can be considered equals neither in the current market nor in any ideal market without what Milde calls "supplementary moral regulation." [104]

Property Rights and Consumer Freedom

I want now to consider whether a defence of consumer freedom can be launched by appeal to property rights. Do people have a right to use or consume their own property regardless of the negative impact their activities create? I do not propose a thorough examination of property rights in general, which is far beyond my scope. However, a survey of the issue reveals the vulnerability of appeals to property rights.

To get the idea that ownership rights are fragile, one needs only consult recent philosophical literature on property (excluding, of course, those philosophers with libertarian leanings.) In one such text, A Right to Private

Property, Jeremy Waldron considers utilitarian, original acquisition, special rights, and general rights theories of ownership. The problem with all these theories is that they are always trumped by special needs (e.g. desperation, scarcity.) No theory of property rights is strong enough to withstand the demands of the needy or desperate. For example, in the Lockean original position, a starving outsider has natural rights against a property owner provided she does not deprive the property owner of her right to subsistence. In effect, property rights amount to no more than subsistence rights. Property rights are innocuous only when there is no competition for survival or basic maintenance. If Y owns a piece of property that is essential to X's maintenance, and X's use of that property does not deprive Y of her own means of subsistence, then X has an overriding or "trumping" claim.

X's right to self-preservation is endorsed by natural law theorists such as Pufendorf, Grotius and Locke as deriving from natural law. The main issue for these theorists is whether property rights provide the best way to guarantee self-preservation. If this link between property rights and self-preservation cannot be established, it cannot be claimed that property rights are an extension of natural law. If not, they must be part of positive law and political artifice. To create such a link, natural law theorists must demonstrate that a system of property

rights ensures self-preservation in ways alternative systems, such as communal ownership, cannot. Now, it may be argued on empirical grounds, on historical success rates, that private property has made people better-off economically than alternative systems. But this evidence, if true, does not establish any normative case by linking property rights to natural law such that there would be a prima facie duty to promote and establish a private property system. The empirical arguments cannot provide a level of justification sufficient to eliminate alternatives to private property as means of self-preservation. The link to natural law can be made only by appeal to self-preservation not to levels of wealth because a luxurious state is not necessarily closer to natural law or even preferable to subsistence. It might be that we would be happier and more fulfilled merely to survive provided mere survival was not too painful.

If, then, there is no hook between private property and self-preservation to justify any normative claims about property rights, all private property systems are artificial in that they belong properly to positive not natural law. Thus whatever internalities a market system based on private property creates will themselves be artificial in the important sense that they are not derivable from natural law. If not, market internalities are not justifiable outside themselves; a principle of non-interference with

market internalities cannot be maintained without appeal to the artificial principles that govern market operations. But such appeals beg the question if they presuppose the market system to have independent justification.

In Gauthier's ideal market, internalities will be justified provided they do not create negative externalities--or, rather, if negative externalities occur, it will be a result of market failure. A pertinent question here, though, is whether negative externalities are caused by the internal principles of the market or are the result of some other cause. It seems that negative externalities are caused not by free exchange or by the exercise of property rights per se, but by what is exchanged, used or consumed. Most obviously, what causes environmental pollution or degradation is a market failure because of the negative externalities it creates. The failure is that such causes need to be subject to regulation in order to protect wider interests than those tied up with exchange and barter. The ideal market would justify itself only if it severely curtailed the type of goods that are commodified, which would involve a return to some kind of neo-Lockean original position; Gauthier cannot realistically argue for his ideal market if consumers require goods that create negative externalities.

We might here consider whether market freedom is more important than the creation of negative externalities:

how might we decide this point? If market freedom creates a certain level of prosperity, people might feel they can live with, or not care too much about, the negative externalities thereby caused. This kind of reasoning, though, is a trade-off of wants and desires and does not at any level represent a justification of these wants. This level of justification is very weak, theoretically; it says in effect that certain wants and needs, where satisfiable, can be satisfied by the market. Under market ideology, my need for a nuclear weapon is simply something the market can or cannot satisfy: it nowhere addresses the adverse consequences my needs might incur or the rationality of my need. By taking needs at face value, market ideology ignores the serious consequences that can arise from human wants and preferences.

Contemporary libertarians deliberately ignore quality of motive and quality of life entailed by motive in constructing their theoretical models.⁶ They assume, rather, that market participants are somehow free and equal when they engage in transactions, and that their choices have equal effect. But surely, rather than recreate for their theoretical models the perfect motive, libertarians should examine real motives and explain how such motives could be rationalised and absorbed into the market's internal structure. Without such an explanation, there is simply too large a gap between reality and the ideal: again, the

ideal seems to do "conceptual violence" to our understanding of market reality.

Does the Free Market Contain Power Relations?

Another form of negative externality that libertarians think would be eliminated in an ideal market is the existence of power relations between participants. Based on the Walrasian model, the idea is of a market free of power relations such that "Because each economic agent can refuse any exchange at no cost, coercion must be absent in an equilibrium state of a competitive economy." [Bowles and Gintis 324] In a recent paper, Samuel Bowles and Herbert Gintis have challenged the Walrasian assumption by focusing on two sets of potential power relationships created by the market: that between employer and employee, and that between lender and borrower.

Bowles and Gintis define power as "the capacity of some agents to influence the behaviour of others to their advantage through the threat of imposing sanctions." [325] The absence of power is signified by the ability to walk away from a transaction without threat of sanction. [327] In labour relations, the threat of sanction arises in the employer's power to dismiss the employee for unsatisfactory performance (as determined by the employer.) This threat varies in significance according to what Bowles and Gintis call the employee's "fallback position," [334] which is

usually a combination of unemployment insurance and easily-found alternative employment. So the threat of dismissal is more coercive when the employee's fallback position is weak, where there is no "U.I." and where there are few alternative jobs (at least ones offering equivalent pay and conditions.) In a "nonclearing" labour market, where supply and demand are not in equilibrium, one party can be placed on the short side of the market and the other on the long side: "agents on the short side of the market have power over agents on the long side with whom they transact." [Bowles and Gintis 339]

Of course, this can work both ways--when employers are on the short side, they have the power; when workers are on the short side, they have the power. But one way to determine who has the balance of power, which party tends most to be on the short side, is whether in a clearing market (where supply equals demand) one side can still have power over the other. Bowles and Gintis argue that capitalists retain power over their workers even in a clearing market because they own the wealth and wealth equates with power. The argument Bowles and Gintis provide is technical economics, but the nontechnical gist is this: "the locus of short side power...[is] often (but not always) related to ownership." [344] This power is not always related to ownership because in many cases control of a business resides with employee-managers. [see also Moene

405] However, wealth-holders have a powerful weapon in their ability to use collateral either as a means of enforcing compliance with a transaction, or by being able to post collateral as a means of complying with a demand that collateral be posted as part of a transaction. [Bowles and Gintis 345-6] The clearing market would have no means of eliminating the possibility that collateral could be used as a coercive weapon in hiring labour (where a worker could lose a bond on dismissal) and in lending money (where failure to repay a loan could entail forfeit of a bond posted as part of a loan transaction.)

The worker's position is also weakened if all employers are equally exploitative. If a worker feels unjustly treated or exploited in a situation where all employers are unjust and exploitative, she has a considerably weakened fall back position. Moene calls this situation "worker lock-in," where "workers have no credible threats against such employer behaviour." [402] Such a situation could occur in a clearing market because a worker would lose by being forced to relocate to a new, equally exploitative employer. These analyses show that even a "perfect" market cannot eliminate, by its very set-up, certain unfair and exploitative situations without at least some form of regulation. This forces free-market advocates into the contradictory position that external regulation is required to achieve the ideally free market, which by their own

definition is one that requires no externalities.

We already know that everyone is not free and equal in the actual market, but we are supposed by libertarians to entertain the ideal that there is some perfect market out there which requires no externalities in order to be morally acceptable in the very dubious sense of being morally irrelevant. There is no such thing as being morally irrelevant or indifferent if this means an activity which has no moral effect or impact. Any social engagement creates moral impact; people can fail to create moral impact only by cutting themselves off entirely from human contact. Those who oppose libertarianism [e.g. Singer 210, Brecher 183-6, LaFollette 197] argue that as social beings, people cannot help but affect each other's lives. Libertarians reply [e.g. Mack 190-91] that the view of socialization put forward by their opponents is vague, and that the fact people live together is not incompatible with libertarian principles. I have argued, however, that in a technological and consumer-oriented society, various forms of intrusion upon private space are possible and that their regulation would go far beyond libertarian first principles.

Notes

1. Perhaps in cases like this, shipowners could bring harbour owners in on the lighthouse project so that the latter could refuse access to the freeloaders.
2. A similar point is argued in greater detail by Hugh LaFollette, who argues that any rule which regulates freedom (e.g. against plunder and pillage) introduced by a libertarian society would lead logically to the possibility of other measures (e.g. laws to redistribute wealth.) LaFollette [194-206] challenges libertarians to find a relevant difference between types of freedom-restricting laws.
3. See Brecher [183-6].
4. However, it may be rational for the hand weavers in a premarket bargain to opt for some kind of insurance policy against losing their livelihood. Pre-market bargains need not, as Narveson suggests, be restricted to pure internalities. This raises the question of what constitutes a pure externality and what makes it both "pure" and an externality. See Hausman [130] on this.
5. Such as occurred in Oka, Quebec. Perhaps native people who objected to the golf course would not have objected if hikers or bird-watchers had sought permission to use their land. Clearly some uses and not others constitute a violation of natural surroundings by anyone's standards.
6. Unlike their famous predecessor John Locke, who notes

that once money is introduced into an economy, simple motives of survival and subsistence give way to "amor sceleratus habendi," mere love of possession.[#111,2] Again unlike his contemporary counterparts, Locke is aware of the artificial nature of the market. He writes, "But since gold and silver, being little useful to the life of man in proportion to food, rayment and carriage, has its value only from the consent of men...[#50,15] These remarks clearly recognize (contrary to Gauthier) the need for the artifice of law once money is introduced.

Chapter Three: Commodification and Harm.

I argued in the last chapter that there is no convincing argument to defend a totally free market. I think also that there are no convincing arguments to defend its opposite, a totally unfree market with no commodification, no free commerce. The advantages of having some commerce, especially among small, independent business people, are obvious even if large-scale, monopoly capitalism has given free enterprise a bad name. If one accepts, then, what Margaret Radin calls "partial or incomplete commodification," [185] it follows that some capitalist acts should on moral grounds be forbidden or regulated by law or be subject to intervention by some other effective means like boycotts or publicity campaigns. I want to consider the claim that any such restriction of freedom based on moral grounds is anti-liberal because the moral importance of implementing such laws cannot outweigh the violation of personal freedom they entail.

Those who advocate measures to restrict liberty are confronted by an immediate problem: that a certain act should on moral grounds be restricted or even outlawed does not imply that the law can enforce what morality requires. The law could be either powerless to prevent that type of act, or applying the law would create a worse situation than if the targeted act were permitted.

Typically, a worse situation is said to occur if the law intrudes on a person's freedom to engage in non-harmful acts. So there are two possible lines of objection to laws against commodification (and, of course, other morality-regarding laws,) a non-normative or practical objection that such laws would be impossible or difficult to enforce, and a normative objection that these laws would clash with the greater value of personal freedom.

Both objections have been offered by Joel Feinberg in his book Harm to Others, part of his larger work The Moral Limits of the Criminal Law. Discussion of the first, the feasibility objection, is beyond my scope, and is perhaps a topic for a separate study. With respect to the second, normative objection, I will discuss first Feinberg's analysis of moral harm, which, he says, cannot be thought of as a harm proper unless it is associated with an individual's wants (and hence interests.) I question the principle Feinberg offers that no-one can be harmed unless there occurs a set back to his or her actual desires and wants. In the second section, I discuss Feinberg's view of public interest and whether the idea of harmless wrongdoing can be thought of as detrimental to the public interest. In particular, I discuss the idea of moral corruption as a potential source of public harm. In the final section, I try to make intelligible the notion of false consciousness, and discuss, by way of an example,

commodity fetishism and conspicuous consumption as exhibiting warped or undeveloped states of consciousness. The general thrust of my argument against Feinberg will be to question whether personal freedom based on the actual wants some people have is always morally weightier than measures designed to enhance the public good.

Feinberg on Harm.

Feinberg's analysis of harm presents a classical liberal case. Harm must be tied to "interests," where having an interest implies having a want (although not necessarily a want we will choose to pursue [38].) An overall "interest" is made up of our collective "interests," whatever they may be. If someone promotes one of our interests, she or he can be said to advance our interest in the singular; conversely, a person who thwarts one of our interests can be said to set-back our interest. In short, according to Feinberg, that person harms us.[34] Now, different interests (plural) affect our interest (singular) in differing degrees: our most important interest is our welfare interest, our basic needs, without which we could not realize other goals.[37] Although we do not regard the satisfying of our day to day welfare interests as being of huge significance in our lives, "when they are blocked or damaged," Feinberg says, a person is very seriously harmed indeed."¹[ibid]

The distinction between "interests" and "interest" is in effect one between immediate and ulterior interests, such that "Satisfaction of an immediate want is in one's interest...only when it is a means to the promotion of more ulterior ends in which one has [Feinberg's emphasis] an interest." [56] There is therefore a relationship of instrumentality between interests and interest, whereby ulterior interests are intrinsic. Feinberg argues that from the legal point of view, the government does not generally protect ulterior interests unless a threat is thereby made to instrumental welfare interests. Therefore, those causes which affect "only" our ulterior interests are not subject to law because once our instrumental interests are guaranteed, it is up to us to protect our ulterior interests. Because ulterior interests are often tied to moral ideals, "the law cannot protect me by interfering with the liberty of those whose character and lifestyle falls below my standards, without oppressive invasion of their [Feinberg's emphasis] liberty." [62]

The final step in Feinberg's argument, at least in so far as I want to pursue it, is that the idea of moral harm can be assessed only in terms of wants rather than ideals. Harm, he argues, is a wholly "want-regarding" concept, in contrast to an "ideal-regarding" concept (Brian Barry's terms.)

A concept is want-regarding if it can be analyzed

entirely in terms of the wants people happen to have, whereas it is ideal-regarding if reference must also be made to what would be ideal, or best for people, their wants notwithstanding...[67]

In the absence of wants, we cannot be said to be harmed if we lack a certain moral character that some deem to be superior. If we do not want such a character, it is not in our interest (and hence its absence is not a source of harm for us) to have it. Thus moral education would be a process of convincing people they have a stake in having a good moral character.[69] The argument for the normative thesis becomes clear at this point: it would be an intrusion on a person's freedom to insist she adopt (or be seen to adopt) a set of wants she does not in fact have. In short, we have the classic liberal thesis against an intrusive moral agenda. Can this argument be met?

One thing is clear: the argument applies only to people we presume to be autonomous, and disregards, except in extreme cases, the actual quality of their actions. For those we presume to be unautonomous, again regardless of how their characters are manifested, we do not hesitate to impose external values through upbringing and education. In raising a child, we do not always regard encouragement alone as enough of an inducement to instill the right behaviour in a child; even nonauthoritarian parents to some extent force their children through threat of

punishment to develop the kind of character that typically has the right sort of wants. Feinberg quotes Stanley Benn to the effect that the child's current wants are irrelevant in assessing its real (i.e. long-term) interests, which would be to develop such a character. "It might be in the child's interests," Benn writes, "to deny him satisfaction of some of his desires to save him from becoming the sort of person who habitually desires the wrong thing." [qtd in Feinberg 69] This is the standard case for parentalism towards children: their own desires can be overridden because it can be assumed their characters are not fully formed, which, were that the case, they would have a different set of desires. The moral of the upbringing argument is that if parentalism applies to children because their characters are not fully formed, could it not also apply to adults with similar limitations of character?

The argument that justifies parentalism for children is that they cannot be presumed to want in the future what they want now. The conflict between a child's stated interest and her (perceived) real interests justifies parentalistic treatment towards her. Noting that it is not the age of the child but the presumed level of maturity that counts, why cannot the same considerations be extended to foolish and immature people of adult age? The short answer is that there is no reason except that autonomy must be presumed at a certain age. (what age?) There is

no non-arbitrary way to decide where to draw the line between justified paternalism and presumed autonomy.

One way we try to develop autonomy in children is through education; once that education is complete, the rest is up to the child or now presumed adult. Feinberg says that the aim of education is not to impose desires upon children but to provide the means by which they will come to have those particular desires for themselves. I assume Feinberg's point is that the child must come to want these desires intrinsically, not instrumentally as a means, for example, of pleasing a parent or teacher. But this view is neither as neutral nor as uncontroversial as Feinberg's argumentative style makes it seem. Rather, it imparts an ideal of purity of motive: we should perform acts because we want to and because we regard those acts as valuable. But inculcating the correct motive is an impossibly difficult task for education to perform. Not only must the child or young person make the right choices, she or he must have the right attitudes. A more behavioural and determinist approach might, by contrast, seek only to instill in the child a certain sort of behaviour so that both as a child and later as an adult, he or she can best realise certain vital interests such as healthy relationships and (later) a successful career. Of course, our approach will often be influenced by the nature of the child. A well-adjusted, sensitive and intelligent child

can possibly be taught to sincerely desire certain motives. Less fortunate children may benefit more, in terms of benefits accruing from right behaviour, from severe and rigorous behaviour modification.

Feinberg's view stresses the "inner" nature of human excellence. One of the advantages of this view, he argues, is that "it enables us all the more forcibly to praise personal excellence." [69] But why? Presumably, Feinberg's ideal moral actor has the best motives as well as the best behaviour, but cannot we praise equally someone who has developed only the best behaviour under appalling circumstances? Purity of motive is, perhaps, a rare thing and relevant only to certain types of moral acts, especially those involving love relationships. At a public level, where a person's acts involve strangers or acquaintances, it is much less important. It matters little that a stranger's behaviour to me is the result of a process of painstaking character development or the product of drug therapy. Ordinary social functioning usually requires only that we behave decently, and most people are willing to take behaviour at face value in deciding whether "forcibly to praise personal excellence." Most often, behaviour is all we have to go on. So Feinberg's purely motivated actor is somewhat in excess of what is reasonably required for minimum standards of acceptable social conduct, although his standards may apply to more intimate interactions.

If our perspective of human excellence varies depending on whether we take a libertarian or a determinist view of free will, and if libertarians and determinists have failed to settle their differences by rational argument, surely we need not accept Feinberg's account of autonomy as uncontroversial. There are certainly many questions that could be raised about the view of autonomy which places emphasis on the causal role of an inner self in determining behaviour. What is the inner self? Is it just a series of brain states or brain states plus a self-sufficient mind? Are actions autonomous just because they are inwardly motivated or does inner motivation itself have an external physical cause? One is reminded here of John Hospers' tuna salad argument: perhaps all murders are committed as the result of an adverse reaction to eating tuna salad (choose your own cause.)]616] Of course, what actually causes people to commit murder will be far more complex, but the point is that we simply do not know the full story of what causes human behaviour or what forces, if any, prompt us to do the things we do.

Feinberg's and Benn's positions amount, then, to little more than a clash of perspectives about whether declared autonomous acts ought to be respected as a true expression of self. Feinberg says they ought, but Benn allows that society may impose upon immature minds, by overriding actual interests, in a way "necessary to the development of an

individual into a person capable of making responsible decisions in his own interests." [139] Benn, if I understand him correctly, places the most emphasis on a person accepting the norms so that her interests can be realised. Feinberg is concerned more that the norms actually be her real interests. That is to say, Feinberg's autonomous actor must recognize the norms as being part of or conducive to her real set of wants and desires. Benn's view, however, leaves open the question of whether following the norms is a recognised want the person happens to possess; it would allow this to be so, but not insist on it as a condition of that person's interests being met.

Benn's view, or my interpretation of it, entails, therefore, that rational agency is always in a person's interest regardless of what that person actually believes to be in her interest. Feinberg notwithstanding, this is not as anti-liberal as it might at first appear. In fact, this view of rationality lies behind Mill's distinction between qualitative and quantitative pleasure, that it is better and more human to pursue the quality pleasures. [Mill 12-14] This is because a person with a wider range of experiences and greater knowledge is better equipped to judge preferences and actions. If a person is unaware of an option, or because of some unrecognised external barrier unable to chose it, then she cannot rationally judge that option not to be in her interests. Mill is not

claiming here that experience is a necessary or sufficient condition for choice; at least, he cannot plausibly make that claim. For example, if a woman raised in Western culture says she would never marry a Moslem fundamentalist, the rationality of her choice does not depend on her having experienced such a marriage. However, its rationality does depend on her knowing something about the usual form such marriages take. It would be irrational if based on blind ignorance. I believe this to be Mill's point, that the fool and the pig are ignorant of the quality pleasures or are unable to experience them. As such, it would be irrational for them to say they prefer the quantity to quality pleasures (although not irrational necessarily for them merely to pursue those pleasures.)

Preferences based on ignorance may not, then, be in a person's interest even though the information that person has strongly suggests a certain preference is in her interests. The next step is to argue that it would be in her interests to have that ignorance or barrier removed. The new-found knowledge may not alter her preferences, but it is still in her interests that she be aware of options that might turn out to be in her interest. And this is the point socialist critics of capitalism have been making all along. Liberals may reject as quaintly idealistic such critiques of consumer society as provided by Marcuse.[1-18] Marcuse nevertheless has a point, which

is that contemporary Western society hardly provides a context in which enlightened awareness of vital issues can be achieved, at least outside of high-brow circles. Our culture tends to produce too few high-brows and too many low-brows, and from some perspectives the low-brows are too easily duped into identifying with the interests of the rich and powerful at the expense of their own possibly real but unrealised interests.[Chomsky 121-136]

May not the high-brows, who have more information and understanding, impose some restraints on low-brow indulgences? The liberal complaint against any such move is that it would be an intolerable intrusion on freedom of the low-brow to follow their desires and values. The radical critic counters that such assumed freedoms are illusory and based on misinformation. For the liberal, the radical's view is "ideal-regarding" because it does not conform to the perspective of the majority. But if the "want-regarding" interests of the majority are based on misinformation, there is room for the radical to argue that if these wants have not been formed fairly it would be in the public interest to force people to be free. In the next section, I will examine whether we can separate conceptually the notion of public interest from the want-regarding interests of the majority.

The Public Interest.

In his discussion of interests, Feinberg admits that while the notion "public interest" is not an unambiguous term, some separation can be made conceptually between the interests of the public as a whole and those of individual citizens. Public interests, he writes, "are so widely shared that they can be said to be possessed by the community itself. Public peace, health, security from foreign enemies, and a sound economy are the clearest examples." [63] However, Feinberg refuses to make the separation of interests complete, saying that "in the last analysis" community interests "belong to individual citizens." [ibid] A set-back to community interests will eventually filter down to individuals and affect them in an adverse way. Notice, though, that Feinberg's list of community interests are all directly related to welfare interests: the law can protect only my life, health, economic adequacy, liberty and security. "The rest," he says, "is up to me." [62]

To place within the realm of the law only those public interests directly related to individual welfare interests is a requirement of liberal theory. Liberals are committed to the view that "non-grievance evils" and "wrongless harm," a subgroup of the former, have little or no weight compared to violations of personal autonomy that would occur if the law were used against such evils. [Feinberg Vol.4, 19]

Only "grievance evils," those which create personal grievances in the form of harms and offences, should be subject to legal remedy. However, Feinberg recognizes that criminalizing some non-grievance evils may be "legitimate in principle" even if impractical to implement.[Vol 4, 30] Parfit's case of a mother conceiving a severely handicapped child with the intention of causing it suffering would be a candidate here. As long as the child concedes later that his handicapped existence is more in his interest than non-existence (which would be his only choice,) he cannot claim he was wronged by his mother even though he is in a "harmed state." [Vol 4, 27-8]

This example Feinberg finds too extreme to warrant interference by the law. But in admitting that criminalizing some non-grievance evils is "legitimate in principle," Feinberg departs from the strict liberal insistence that only grievance evils--those affecting interests--are subject to law. The question now to ask is whether the Parfit case is extreme enough to distinguish it from other non-grievance evils that might also be candidates for legal action. With this view in mind, Feinberg distinguishes two types of non-grievance evil: those tied to welfare interests, however indirectly, and those that are "free-floating," that is, not tied to interests. The latter includes impure and evil thoughts, moral corruption, and capricious damage to things, including natural objects and creatures, not tied to

anyone's interest.[Vol 4, 20-25] From the liberal perspective, there is clearly a much less compelling case to outlaw free-floating evils than those evils linked to welfare interests. However, some free-floating evils may be said to cause or allow welfare-related non-grievance evils. In Parfit's case, the mother's action is the result of moral corruption--she sadistically wants to cause her son suffering.

This woman's actions may, as Feinberg says, be too extreme and rare to justify legal remedy because there is not enough impact on the public good, but less egregious and more common cases of moral corruption do have a significant impact on the public good. We are frequently told by social workers of the extent to which children today are abused by members of their family. The law protects children against threats by family to their welfare interests, but does not cover psychological cases such as parental indifference, lack of love, affection and so on. These same social workers tell us that such neglect frequently makes children "go wrong;" they turn to street gangs and pimps for a sense of belonging they cannot get at home. And if, as psychologists now tell us, our adult characters are formed by our childhood experiences, especially our relationships with our parent/s, then parent/s bear a very large responsibility for how their children turn out.

Can the law require parents to be lovingly connected with their children? Here we return to the question of public interest. Feinberg argues that "If the impairment [of shared interests] is great and the shared interest important, then the social harm is also great, indeed even great enough, in extreme cases, to render it natural for most individuals to address their grievances in the first person singular." [Vol 4, 34] The neglected teenager who becomes a prostitute and experiences the horror that way of life usually entails could surely be said to have a "personal grievance" against her parents rather than just a grievance on behalf of teenage prostitutes. Feinberg requires the social harm to be "great" before even thinking of legislation; still, it might be argued that legislation which could prevent the problem from becoming great is warranted, at least "in principle," regardless of practicalities.² I return here to a point made earlier: the law cannot force upon parents an inner love for their children. However, it can intervene where children are displaying behavioural symptoms; the law cannot create love in parents, but it can demand behavioural standards in them that would at least give the child a sense of being wanted and loved.

Liberals might claim that monitoring parents in this way would violate their autonomy by imposing alien standards of behaviour on them. If this is the case, they place more

importance on the autonomy of the parents than on the well-being of the child. Should we place so much weight on presumed autonomy even at the expense of important social issues such as child welfare? To answer this question invites analysis of what autonomy amounts to in contemporary capitalist society. Some cultural critics argue that far too much moral weight is placed on presumed autonomy, which fails to acknowledge the effect of coercive (and often illiberal) social forces that shape our consciousness. Steven Lukes puts this point forcibly when he says that modern capitalist democracies exercise power "to prevent people...from having grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things..."[qtd in Lindley 165]

This type of criticism of capitalist societies is familiar: it is not saying that there is direct, physical coercion on people to conform, but rather that, through its various media, capitalist society hegemonizes thought by eliminating from consideration critical alternatives. In short, capitalist ideology induces passivity, a tendency to be uncritical and too easily satisfied by appearances. [Meyerson 157, Marcuse 1-16, Lindley 174] Radical critics are not saying that moral corruption is unique to contemporary capitalist societies; however, they argue (validly, I believe) that even though there exists a large

amount of information on the various social ills which beset our culture, information which points to ways we could create a more progressive culture, it never gets fully disseminated in a way that could alter the consciousness of the majority.³ But even if it were fully disseminated, would it "reach" people in a significant way?

Radical critics are sceptical in this regard and point to "false consciousness," a form of oblivion to viable progressive alternatives, as an effect of living in consumerist culture. They argue that mass consumerism warps people's sense of self and other. As workers they are no more than commodity producers and their labour is merely a factor in costing the products they create. When they are not working, they have earned the right, as paid workers, to become consumers themselves. And consume they do, such that each American creates 50 times more environmental impact than does each citizen of Bangladesh. [Pierce and Vandeer 25]

The vision of life as one of perpetual consumption and production is perhaps in its theoretical form somewhat exaggerated for the purposes of polemic. As I observed earlier, there is still resistance to universal commodification in the public consciousness. But the political question remains whether that resistance can overcome what Margaret Radin calls the hegemonistic tendency

of market rhetoric to overwhelm alternative discourse. Thus resistance to market rhetoric can be seen as a defence of a humanistic alternative to mass consumerism, not as an absolutist alternative, but a better available form of human flourishing. Too often, alternatives to consumerism are seen, falsely, as idealised accounts of human flourishing. Perhaps this tendency is due to the power of market rhetoric to convince people of the "naturalness" of contemporary capitalist societies. In the next section, I will claim that far from being natural, consumerism distorts our sense of self and alienates us from our species and our natural world.

Commodity Fetishism and Destructive Consumerism.

While they are distinct concepts, commodity fetishism and conspicuous consumption are closely related. The first might be said to be a form of conceptual corruption because, according to G.A. Cohen, to fetishize something "is to invest it with powers it does not in itself have." [115] Fetishism is not, though, an illusion like a hallucination: the imaginary powers are "registered" in the mind rather than created by the mind. [Cohen 116] Thus a commodity is registered as being independent of labour expended on its production, as if something that appears out of nowhere. Cohen demonstrates the artificiality of commodity fetishism by contrasting market society with economic systems whose

production is "immediately social." In feudal and communal societies, for example, production is a social event where the source of each product, the labour expended on it, is not concealed. In market societies, however, commodities appear as social products only in the "independent" world of commodities and only in terms of exchange value. The value invested in them by human labour is ignored because labour power is merely an instrument of capital: "the capitalist thus appears as the producer." [Cohen 122] Where capital and not human labour are seen as the creators of wealth, capital can subordinate human labour to an inferior and dispensable position. This is why today the trade union movement is fighting for survival and recognition. [Globe and Mail, August 2, 1997. A7] Capitalism is "unorganic" precisely because it distorts and obscures the organic origins of commodities. How much thought does the buyer of neatly packaged supermarket meat give to the animal suffering and human labour that goes in to creating the product?

The unnaturalness of capitalist society is most emphasised in conspicuous consumption, which uses the imaginary power of commodities as a way for a person to create another appearance, an image or status. Advertisers play on this illusion, which is why there are so many image advertisements rather than informative advertisements in the media. The illusion is reinforced in being shared by

others, so if possession of a luxury car or gadget actually gives the owner a certain status, the mind will register a connection between the object and specific human qualities that tend to go with status. According to Thorstein Veblen, people in consumer-oriented societies gain status by the amount of money they have, or "pecuniary strength," as he puts it: "and the means of showing pecuniary strength, and so of gaining or retaining a good name, are leisure and conspicuous consumption of goods." [84] In such societies, where everyday acquaintance is often little more than presenting an appearance, the ability to pay "is the only practicable means of impressing one's pecuniary ability on those unsympathetic observers of one's everyday life..." [Veblen 87] Veblen concludes his analysis of conspicuous consumption by arguing that waste in consumer-oriented societies can be defined as those expenditures traceable to "invidious pecuniary comparisons." [100] The production of consumer items that function as status symbols is a waste of human labour and natural resources.⁴ Conspicuous consumption distorts moral perspectives so that the waste and pollution it creates is not considered important enough to warrant a change in lifestyle or behaviour patterns.

By adopting the tone of an ironic, satirical outsider, Veblen is able to capture the highly artificial motives that operate in consumer-oriented society. In particular,

such "invidious" consumption creates waste not only of natural resources and human labour resources, but also waste is created by discarded consumer items, which contaminate the environment. Our impact on the environment has been such that there is very little pristine wilderness left on our planet. As Paul Taylor puts it:

Due to the emergence of large-scale industrialization in the past century, the recent rise in the growth rate of human population, and the expansion of economies that stimulate and depend on high levels of consumption, our human presence is now felt throughout the Earth...Unless these dominant trends of our age are brought under control, we will see the natural environment of our planet turned into a vast artifact.[4-5]

Taylor is not a Marxist, but his last statement captures what Marxists refer to as the artificiality of consumerism. Alienation from nature means that we set ourselves apart from our natural origins such that the natural world is merely there for us to consume.

In place of the consumer mentality, Taylor offers a biocentric ethic of (following the title of his book) respect for nature as having intrinsic value. Taylor stresses the role of character building and the virtues in attaining a respectful attitude to nature.[84-8] But it is not just a biocentric ethic that opposes consumerism;

as characterized by Taylor, the standard anthropocentric view is also opposed. This argument states that we have a duty "to conserve natural resources so that future generations will be able to enjoy their fair share of benefits derived from these resources." [11] Seeing the natural environment merely as a place to exploit immediate consumption needs is a selfish refusal to acknowledge the needs of future generations.

The connection between commodity fetishism and selfish consumerism in sum is this: the consumer is psychically propelled to consume regardless of consequence either to the future of his species or to the natural environment which ultimately sustains him. The consumer lives in a perpetual present of gratifying immediate needs. But when the question of liberation from this prison-house of consumption is raised, the consumer reacts with indifference or hostility. As Richard Lindley puts it, "One of the pervasive features of false consciousness is that it restricts people's vision of feasible alternatives." [167] What Marcuse calls "one-dimensional thinking" is precisely the inability to assess critically one's own moral character and the collective moral virtue of one's culture. People cannot be autonomous and emancipated without such reflexive self-awareness. [see, e.g. Taylor on honesty 87] However, there is a "paradox of emancipation" involved here that reverberates to what Feinberg says of interests: if people

do not consent to be emancipated, if they do not see it in their interests to be aware of critical alternatives, then they are no worse off having false rather than true consciousness.

Feinberg believes this argument virtually eliminates the possibility of making a case for legal moralism, but radical critics can reply that they do not have to take the point about interests at face value. They do not have to accept that the declared interests of any individual comes from an independent or "unencumbered" self. Feinberg's argument that what we do with our lives is "up to us," something uncontrollable by law, seems in light of the radical construal of reality to be remarkably insensitive to how our culture shuts off ways people can develop the moral character to choose an independent way of life. The liberal view is thus reminiscent of the uncaring parent who says "get a grip on yourself," while insensitive to the deeper problems we may be facing. Perhaps, then, it is no coincidence that liberal theory would protect the uncaring parent from the reach of the law.

I have not attempted a full justification of legal moralism, but rather to show that there are weaknesses in arguments which rule it out a priori. My main complaint against Feinberg has been that his notion of interests takes at face value wants and desires people may have,

and does not take into account how they are formed. I then tried to show that the consequences of unimpeded wants and desires in consumerist society leads to enormous waste and environmental degradation. In the current environmental context, and in others that may be far worse, some form of environmental regulation of production and consumption is necessary to avert further degradation of the planet's ecosystem. The consequences of limiting the freedom to consume are by no means as serious as those of allowing unfettered consumption. Liberal neutrality on the issue of the environment is a prime example of inviting, in Joseph Raz's words, "a political standoff from support of valuable conceptions of the good."

Moralistic notions of the "good" need not, though, be presumed to be idealized. Here I echo Margaret Radin's proposal that conceptions of the good be seen as the best available alternatives that result from reflection upon what we know about human life. [Contested Commodities 92] I will take this idea into my next chapter, where I discuss the consequences of commodifying the public service. Here is a clear case in which we can compare the commodified and noncommodified versions of the service to see which is the best available alternative.

Notes

1. I agree with Feinberg that violations of welfare interests are indeed very serious matters. However, we should not consequently refrain from using the word "serious" to apply to nonwelfare interests, nor should we use the seriousness of welfare interests as a yardstick by which to devalue nonwelfare interests in terms of legal priorities. To do either would, as Joseph Raz says, be to invite "a political stand-off from support of valuable conceptions of the good." [quod in Kymlicka 217] Will Kymlicka argues, though, that even if Raz is right, governments could offer this support in ways other than direct intervention. [218] My own case for legal moralism presented in this chapter will not presume that direct intervention is always necessary but will presume some intervention is necessary in cases of serious nonharmful wrongdoing.
2. The law could, for example, require parents of problem children to undergo counselling. An action like this is possibly an example of justifiable autonomy-overriding legislation because of the serious consequences of parental indifference.
3. See the many political essays of Noam Chomsky, but especially Chomsky [137-202].
4. See also Marcuse on wasted labour in capitalist societies: "...social controls exact the overwhelming need

for the production and consumption of waste; the need for stupefying work where it is no longer a real necessity..."[7]

NOTE TO USERS

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Notes

1. Documents brought out by U.S. corporatist think-tanks are now of biblical significance to some Canadian college and university administrators. They are written in a language both threatening and evangelical. Heretics are referred to as the "status quo," who must be "aggressively led towards the information age." [Dolence and Norris 66] Another source adds: "Change is inevitable in our colleges. Although we may not go so far as to label as heretics those who are slow to change, we have to commit our efforts to shifting to a new paradigm...." [Boggs 1]
2. Here are two examples of the fatalistic language used in the various think-tank documents. "Now at the brink of the 21st Century, we find ourselves being compelled towards a new paradigm." ["Creating 21st Century Learning Environments" 1] "There are powerful societal forces at work driving the transformation of education. And these forces are inexorable." [Transforming Higher Education 9]
3. The following sources provide both direct and anecdotal evidence of this tendency: Laghi D3; McBride and Shields 119; McQuaig 5-40; Ralston Saul 72-89.
4. The Protagorean view that "man is the measure of all things" means that no one perception can claim the status of knowledge in contrast to a differing perception of the

same thing. In Platos Theaetetus [151e-162d] Socrates shows the doctrine to be pragmatically self-refuting: Protagoras cannot advance his view as being superior to its opposite, namely that there are objective standards of knowledge.

5. For discussion of the term "efficiency" and the threat to academic freedom it implies, see Russell 59-62.

6. One consumerist model proposed for higher education is "modularization." Under this concept, students can pick and choose, as if in a supermarket, which parts of various courses will be useful to them. This concept presupposes that students are competent to judge which bits of which courses will be of use to them even though they cannot possibly prejudge how the bits relate to the whole course.

7. See Hurka 121-4. Hurka cites studies which show that students in liberal arts and science disciplines regularly outperform those in applied programmes both in aptitude tests and job performance. Why? In part because of the restrictive narrowness of professional programmes which, unlike their academic counterparts, fail to teach basic reasoning and problem-solving skills.

8. In contrast, private services are provided only on the basis of ability to pay. It was precisely for this reason that public services were started in the first place, and so their purpose in being is to provide universal accessibility.

9. Again, because the purpose of private services is to

serve only those who can pay. Private charitable services are an exception, of course, but it is doubtful that such services can provide universal accessibility.

10. To give one among many other possible examples, Whitehead's and Russell's Principia Mathematica, a purely theoretical book, proved to be necessary in the development of computers.

Conclusion

I have tried to develop a critique of universal commodification, a term introduced by Margaret Radin to describe the tendency to view all things and all human activities in terms of market rhetoric. The question posed by Radin is whether universal commodification provides the basis for a superior form of human flourishing than partial or incomplete commodification, whereby some things are protected from the market and its discourse. This protection could take the form of state regulation or prohibition, or voluntary refusal to participate in certain market activities. My argument, though, has not addressed to issue of intervention directly. I have instead presented a case that attempts on the one hand to undermine arguments against outside interference with market activity, while on the other to show the adverse consequences of some forms of commodification.

The case presented in chapters one and two examines two defences of free market activity: the libertarian position that sees the market as a "morally-free zone," and the liberal position which would defend any free activity not causing direct harm to participating individuals. Not all liberals defend an unregulated free market, and my arguments are directed only to those views which entail uncritical acceptance of universal

commodification.

The libertarian view, presented by David Gauthier, is that market activity in its pure form, one in which no "externalities" are created, operates independently of morality. That is to say, there is no need to regulate market activity as long as it operates according to its own internal principles. Against this view, I argued that in today's context, pure market activity is virtually impossible because of the disproportionate effect of some economic activities over others. Because of our highly technologised world, some activities create more noise, disturbance, and pollution than others. Those who, through choice or circumstance, pursue activities that create little or no negative impact have a legitimate case to restrict the activities of those that do. In addition, I argued that the current market contains an imbalance of power relations and that there is no clear case by which libertarians can argue that property rights "trump" other concerns.

In Chapter Two, I discussed the liberal view offered by Joel Feinberg that regulation of activities by the state must occur only in cases of harm: that is, when people's interests or actual wants are thwarted. The paradigm case of such harm is where a person's basic or welfare interests are threatened such that he or she is denied the necessities of life. I tried to show that Feinberg's account of interests is not neutral but ideologically biased. We are

told by him that we must presume each person has freely and autonomously established her particular set of interests. I questioned whether this assumption can be made in contexts where perceived interests are the result of misleading or incomplete information. Could it not be that some people would hold different interests if they were fully informed?

I then questioned whether contemporary capitalist societies offer a context where free and autonomous decisions about interests can be made. I discussed the issue of false consciousness and commodity fetishism as possible barriers to full understanding of forces that shape people's understanding of our world and their place in it. I claimed that lifestyle alternatives to consumerism are marginalised in consumerist culture and are thus not fully discussed or appreciated.

In the final chapter, I argued that the first symptoms of universal commodification are appearing in the overhaul of the public service to make it more "efficient" and "accountable." The public service is now to be run as a metaphorical corporation and to be viewed in terms of market rhetoric. Rather than being a free or subsidized body serving the public good, these services are now something to be bought as if just another consumer item. I then focused on the example of higher education, noting that the broader goals of education are being undermined by

a narrowing of focus to job training. Education is now conceived by government and administrators as a product to be bought by "customers." This trend, if implemented, would have two major effects on the academic community. First, faculty would lose job security by having their services contracted out; this insecurity in turn threatens academic freedom, which has in the past been protected by tenure or ongoing contracts. Second, any plan to raise tuition fees to a level where students must pay full price for their education would undermine the principle of universal accessibility on the basis of merit.

I titled the final chapter "The Limits of Commodification" to imply that the commodification of the public service is an example of unnecessary commodification. Unnecessary commodification occurs when viewing something in terms of market rhetoric distorts it and makes it worse. In general, commercialising the public service has distorted and made worse the service aspect of these institutions. Although, in Canada at least, services have not yet been fully commodified in the sense that one must pay a full market price to attain them, there are clearly moves afoot in this direction. A public service exists to help promote the public good, which in turn implies that the public as a whole should benefit regardless of ability to pay. Thus public services have to be free or subsidized so that everyone can use them. The taxes and involuntary monthly

contributions levied to support the service cannot be seen as being equivalent to paying the full market price. These levies are progressive in that they are based on ability to pay.

Whether or not taxpayers are prepared to support public services is another issue. My argument has been only that their commercialisation distorts their true function. In effect, the choice is either to pay for the services or not have them, as services, at all. This point gets lost in the rhetoric sometimes used to describe these services as "products" or to describe their operations with terms like "efficiency" and "cost effectiveness." These terms could be construed to suggest that public services are efficient when they are run at the lowest possible cost regardless of whether they are fulfilling a service to the whole public. Indeed, cutbacks have severely compromised this bottom line. Services ought to be efficient and cost-effective in the sense that they can competently provide this bottom line; but they should not be viewed in this way to draw parallels with private businesses.

The critique of universal commodification should not be taken to imply an attack on the free market in ordinary fungible goods. My discussion of the public service is designed to reinforce the point made by Radin in her original article that some things are distorted when treated

as commercial products, and that a system of partial or incomplete commodification, one which upholds market inalienability, is more beneficial to human flourishing than universal commodification. While Radin has focused on self-commodification by individuals, I have concentrated on the public sector, whose threatened loss would clearly have an adverse effect on human flourishing, especially on those too poor to pay a full market price for these services.

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produce tangible job-relevant skills. [Training for What?
1]

Not only does this policy marginalise academic disciplines, it also threatens academic freedom. Only when academic courses meet the approval of "the community and the employer" will they be funded. [Charting a New Course 5] The new emphasis is on "accountability" and "relevance," which means that the content of academic courses will be scrutinized by nonacademics to judge their relevance to the job market. Much of the premise for justifying the move away from academic studies is based on surveys which show underemployment in new technological fields: there are not enough graduates from institutions of higher learning qualified to fill these positions. It appears, though, judging by statistics quoted in Training for What?, that students are not particularly interested in training for high-tech jobs and continue to demand an academic education. [28-9]

The theme of the new policy is that students may want an academic education, but they are not going to get it. The Ministry is so determined to make them want such training that little else will be offered at colleges in the future. Here one would expect the Ministry to accept the burden of proof and show with empirical evidence that students are unhappy with their lot under the status quo. Instead, the documents show that the vast majority of

students are happy with their college programmes. [Charting 34] The same source indicates that 69 per cent of students think of their education as a means to a job [33], which means that 31 per cent value education for other reasons, perhaps one of which is that education is valuable for its own sake--a surprisingly high number given the current atmosphere where we are told that academic studies are out of touch with student needs.

The method of implementing this policy is typically undemocratic and paternalistic. The inclusion of the B.C. Faculty Association in producing Charting a New Course does not mean that the document received input from faculty, students, and other interested bodies. In fact, the Association president endorsed the document unilaterally and consulted faculty for input only after he had signed it on their behalf. He later claimed that the Ministry and employers' association told him that the plan would go ahead with or without the approval of the Faculty Association, making it a fait accompli. These tactics are in direct violation of B.C. law. Section 33(a) of the B.C. College and Institute Act of 1979 recognises

The professional status of the professional employees and the resulting need for their participation in management of the institution, and in evaluation of and by their professional colleagues.

This clause is an explicit statement of participatory

democracy and academic freedom, two principles routinely flouted in the drive to make colleges "efficient" and job-oriented. In short, through manipulation and the exercise of sheer power, this policy now governs day to day reality in the Province's colleges.

The Ministry made acceptance of its plan by faculty a condition for signing a new contract with the faculty association in April 1996. Signing the contract gave protection to existing faculty from layoff and guaranteed the continuation of their long-term contracts. However, the employer was given the right under this contract to contract-out all future work such that new faculty will be hired only on short-term contracts with no benefits or job security. In time this will mean that all work will be contracted-out, and job security and academic freedom will disappear from B.C.